

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
2 **HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**
3 **HENRICO COUNTY GOVERNMENT COMPLEX, ON THURSDAY, OCTOBER 21,**
4 **2004, AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND**
5 **TIMES-DISPATCH ON SEPTEMBER 30 AND OCTOBER 7, 2004.**
6

Members Present: James W. Nunnally, Vice-Chairman
Elizabeth G. Dwyer
Helen E. Harris
Richard Kirkland

Members Absent: R. A. Wright, Chairman

Also Present: David D. O’Kelly, Assistant Director of Planning
Benjamin Blankinship, Secretary
James F. Lehmann, County Planner
Priscilla M. Parker, Recording Secretary

7
8 Mr. Nunnally - Good morning, Ladies and Gentlemen. We welcome you to
9 the October meeting of the County of Henrico Board of Zoning Appeals. Would you
10 stand for the **Pledge of Allegiance**. Mr. Secretary, would you read the rules and
11 procedures, please.

12
13 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies
14 and gentlemen. The rules for this meeting are as follows. As Secretary, I will call each
15 case. Then at that time the applicant should come to the podium. I will ask everyone
16 who intends to speak on that case, in favor or in opposition, to stand and be sworn in.
17 The applicants will then present their testimony. After the applicant has spoken, the
18 Board will ask them questions, and then anyone else who wishes to speak will be given
19 the opportunity. After everyone has spoken, the applicant, and only the applicant, will
20 be given the opportunity for rebuttal. After hearing the case, and asking questions, the
21 Board will take the matter under advisement. They will render all of their decisions at
22 the end of the meeting. If you wish to know their decision on a specific case, you can
23 either stay until the end of the meeting, or you can call the Planning Office later this
24 afternoon, or you can check the website. The vote on each case will be posted to our
25 website within an hour of the end of the meeting. This meeting is being tape recorded,
26 so we will ask everyone who speaks, to speak directly into the microphone on the
27 podium, to state your name, and to spell your last name please. And finally, out in the
28 foyer, there are two binders, containing the staff report for each case, including the
29 conditions that have been suggested by the staff.

30
31 Mr. Nunnally - Thank you sir. Do we have any requests for withdrawals or
32 deferrals on the 9:00 o’clock agenda?

33
34 Mr. Blankinship - I believe there was one deferral, case A-134-2004, which is
35 at the bottom of page 3.

36
37 Mr. Kirkland - That's on the 10:00 o'clock agenda.

38
39 Mr. Nunnally - All right sir, will you call the first case.

40
41 **Beginning at 9:00**

42
43 **A-121-2004** **WILLIAM AND ANDREA CASEY** request a variance from Section
44 24-94 to build a front covered stoop and rear screen porch at 11712
45 Lincolnshire Court (Hampshire South) (Parcel 743-773-5282),
46 zoned R-2AC, One-family Residence District (Conditional) (Three
47 Chopt). The front yard setback and rear yard setback are not met.
48 The applicants propose 42 feet front yard setback and 41 feet rear
49 yard setback, where the Code requires 45 feet front yard setback
50 and 45 feet rear yard setback. The applicants request a variance of
51 3 feet front yard setback and 4 feet rear yard setback.

52
53 Mr. Nunnally - Does anyone else desire to speak with reference to this
54 case? Would you raise your right hand and be sworn please?

55
56 Mr. Blankinship - Do you swear that the testimony you are about to give is the
57 truth, the whole truth, and nothing but the truth, so help you God?

58
59 Mr. Casey - I do. William Casey.

60
61 Ms. Casey - I do. Andrea Casey.

62
63 Mr. Casey - Good morning. The first thing I'd like to note is on your case
64 report, page one of three, the property owner is listed as Austin Davidson, and we are
65 the current property owners. We took occupancy on August 27 of this year, so I just
66 wanted to note that for the record. Also, in some of the documents, it refers to it as a
67 porch; it's very small; it's really a stoop. It's about nine feet wide, and it sticks out from
68 the house about five feet. We're requesting to have that stoop covered. You also have
69 a picture, I noticed this morning, of what we're proposing and how it might look. That is
70 the front of the house; the stoop there is nine feet wide and sticks out five feet from the
71 house. It is a western exposure; it gets a lot of sun and a lot of rain and wind with that
72 exposure. It would add to the aesthetic beauty of the house, as well as to the
73 functionality of the house, if we were allowed to cover that stoop. If you flip through the
74 pictures there, you'll see the kind of cover that we are proposing.

75
76 Ms. Casey - That's a house that's on our street, that's already been built.
77 It's not so much that stoop on our rendering, but there's an actual photo that you have
78 taken of a house in our neighborhood with the type of stoop that we propose.

79
80 Mr. Blankinship - I think it's the last one, Jim. Cul-de-sac.

81
82 Mr. Casey - There's a close-up of that house on the right. That gives you
83 an idea of what we would like to do and in doing that, the setback would become 42 feet

84 instead of 45 feet. We're also requesting a 41-foot setback in the back yard; our deck
85 sticks out twelve feet from the house, and in the next year, we would like to put a
86 screened-in porch on that deck. In doing so, the setback would become 41 feet instead
87 of 45 feet.

88
89 Mr. Nunnally - Mr. Blankinship, didn't we deny this request for the builder
90 when he built this house?

91
92 Mr. Blankinship - Yes sir, exactly the same application, I believe.

93
94 Mr. Nunnally - Were you told this, that it was denied then?

95
96 Ms. Casey - We attended the hearing.

97
98 Mr. Kirkland - What new information, or what hardship is this causing you
99 now that it didn't cause you before you started?

100
101 Mr. Casey - I think now that we've lived in the house for a couple of
102 months, there's a lot of glass around the front door; there's a lot of sun, wind, and rain
103 when you open the front door with that western exposure. I don't know if I'd classify that
104 as a hardship per se, but it's certainly not as functional as if it were a covered stoop. It
105 is only extending three feet into the setback.

106
107 Mr. Nunnally - Are there any other questions from the Board or staff?
108 Anyone here in opposition to this request? Hearing none, that concludes the case.
109 Thank you for appearing.

110
111 After an advertised public hearing and on a motion by Ms. Harris, seconded by Ms.
112 Dwyer, the Board **granted** application **A-121-2004** for a variance to build a front
113 covered stoop and denied the variance to build a rear screen porch at 11712
114 Lincolnshire Court (Hampshire South) (Parcel 743-773-5282). The Board granted the
115 variance from the front yard setback, subject to the following conditions:

116
117 1. Only the improvements shown on the plan filed with the application may be
118 constructed pursuant to this approval. No substantial changes or additions to the layout
119 may be made without the approval of the Board of Zoning Appeals. Any additional
120 improvements shall comply with the applicable regulations of the County Code.

121
122 2. The new construction shall match the existing dwelling as nearly as practical.

123
124 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
125 Negative: 0
126 Absent: 0

127
128 The Board granted this request for a variance from the front yard setback, as it found
129 from the evidence presented that, due to the unique circumstances of the subject
130 property, strict application of the County Code would produce undue hardship not
131 generally shared by other properties in the area, and authorizing this variance will

132 neither cause a substantial detriment to adjacent property nor materially impair the
133 purpose of the zoning regulations.

134
135 After an advertised public hearing and on a motion by Ms. Harris, seconded by Ms.
136 Dwyer, the Board **denied** application **A-121-2004** for a for a variance from the rear yard
137 setback.

138
139 Affirmative: Dwyer, Harris, Kirkland, Nunnally, 4
140 Negative: 0
141 Absent: Wright 1

142
143 The Board denied the request for a variance from the rear yard setback, as it found from
144 the evidence presented that there was no “hardship approaching confiscation,” as
145 required by the Code of Virginia to justify a variance.

146
147 **A-122-2004** **RANDOLPH JOHNSON** appeals a decision of the Director of
148 Planning pursuant to Section 24-116(a) regarding the property at
149 8909 Midway Road (Westhampton Settlement) (Parcel 750-739-
150 5987), zoned R-3, One-family Residence District (Tuckahoe).

151
152 Mr. Nunnally - Does anyone else desire to speak with reference to this
153 case? Would you all raise your right hands and be sworn please?

154
155 Mr. Blankinship - Do you swear that the testimony you are about to give is the
156 truth, the whole truth, and nothing but the truth, so help you God?

157
158 Mr. Johnson - I do. My name’s Randolph Johnson. First of all, I want to
159 say, I want to clear this record up. That property is my dad’s property. My daddy’s
160 been there since 1935. I have always parked my trucks there. I have one truck. They
161 have harassed me, up and down the road, the policemen. I’m going to tell it like it is.
162 We’ve been to court on the issue, and the judge threw it out of court. We’ve been to
163 court twice on this issue, and I hate to say it, why the issue is, why they keep harassing
164 me when other people have trucks all around. I had to talk to a different officer. They’re
165 sitting around at my house, waiting for me to come in, to harass me like that. To come
166 to my daddy’s house on a Sunday, laugh about that issue, bringing a little piece of
167 paper and a warrant. They’re not saying anything about back when they had barbed
168 wire fence all through my daddy’s property. The County’ boss hasn’t said anything
169 about that, and it hurts me to see them dragging me back and forth to this court for this
170 stupidity. All my life, my daddy’s been there. I don’t have anywhere to park my truck.
171 I’m trying to run my business. I’m not running any business out of my daddy’s property,
172 but the lies they’re putting on him. I just park my truck there. There’s eleven of us own
173 that property, and I wish they’d stop attacking my sisters and brothers, coming up there
174 and scaring them. Those policemen do not scare me. They come up to my house,
175 sitting three different policemen in three different cars. It doesn’t make any sense. Just
176 to inform me not to park my truck, all because one officer lives beside us. Some people
177 have lived there for 40-some years, and they didn’t complain to me. I always kept the
178 truck clean and didn’t disturb anybody. I asked the people around the neighborhood if I
179 disturbed them, and they said no. They don’t even know I’m up there. I even took the

180 beeper off the truck so it wouldn't make any noise and disturb anybody. I don't leave
181 there sometimes till 9:00 or 10:00 o'clock. I'm not disturbing anybody. They've tried to
182 put a bad name on the Johnsons. We haven't done anything to anybody. We haven't
183 got any record. They haven't got anything on me, not even a parking ticket. They're
184 going to keep dragging me up and try to get me all scared. I'm not scared of those
185 policemen; they don't scare me, just wasting their time. I just want to say, all the stuff
186 where they've been trying to pump charges up to my running a business out of our
187 home. My family doesn't have anything to do with that. I've got the trash truck. I've
188 been parking there all the time. My daddy's had trucks there since back in the '50's. As
189 far as the County, he didn't have a business license back in the '60's or '50's, and my
190 daddy always had trucks back in there. I got former policemen had been there, who
191 came and talked to us about different things; they didn't have to come to us about any
192 disturbance or anything. There were thirteen officers, and we have never been inside of
193 a jail.

194 Ms. Dwyer - Mr. Johnson, who lives in the house now? Our staff report
195 says that you don't live there.

196
197
198 Mr. Johnson - It's my brothers who live there. All of us own the property.
199 My truck has always been there since my daddy's been living there. I had trucks; my
200 daddy had trucks; my cousin had trucks there. So all of us own the property, and I wish
201 the County, when they sent them letters out, would stop attacking my family. They've
202 got my address; they know me. They're doing it only because of Miller. He's the one
203 caused me to be here, losing time from work. I'm not going to hush it up. I'm not going
204 to sweep anything under the rug for him. If he doesn't like me, this is all the issue. We
205 didn't have that problem when blacks lived down the road, we couldn't even get the
206 County to come in and tar the road. Now we've got a few whites there, coming in the
207 neighborhood. Now they want to change things around. Now they want to say this and
208 that, this and that, this Code and that Code. Should have had the Code way back then,
209 only they built around it. I don't have anywhere to carry my truck, one little truck, and
210 they're making all this fuss about it. I'm tired of going to the judge and the court, and
211 they threw it out twice; we keep going back and forth to the court harassing me.
212 Sending the police, sitting around my house, watching me. I'm not a criminal. Just for
213 one little truck, stopping me all up and down the road, and laughing about it, because
214 they think they've got that little gun and all that old stupidity.

215
216 Ms. Harris - I have several questions, Mr. Johnson. The hours that you
217 move your truck, that you operate, basically what hours, how early in the morning?

218
219 Mr. Johnson - I don't leave out of there till maybe 9:00 o'clock or 10:00
220 o'clock. I did that because I didn't want to disturb anybody. I always did that, and I've
221 never had any complaints. Only time I had a complaint was when that guy built that
222 house beside me. We haven't had any complaints.

223
224 Ms. Harris - What time do you get back in the evening?

225
226 Mr. Johnson - I get back in the evening sometime around about 5.

227

228 Ms. Harris - And on the truck itself, I know you pick up refuse, right. Do
229 you unload it there?
230
231 Mr. Johnson - I carry the truck to the landfill three times a week. On
232 weekends there's no trash in the truck. I spray the truck. The County guys have been
233 up there and talked to me and told me that as long as I kept no trash on the truck over
234 the weekend, it wouldn't be any problem. I built a nice pretty fence all around the truck.
235 You can't see the truck. You have to come up in the yard to look for the truck. The
236 people who live right beside me, two or three of my neighbors, live right beside me, they
237 said the truck never bothered them. They didn't smell anything. I made sure of that
238 because I didn't want anyone complain about the truck smelling. I've been there all my
239 life, and that's where the truck has always been parked. I'm not running any business
240 out of there. The truck leaves every morning, 9 or 10 o'clock, and it comes back
241 sometimes at 5 o'clock.
242
243 Ms. Harris - What we see around one of those pictures that showed us a
244 picture of the truck – can you show us a picture of the truck?
245
246 Mr. Blankinship - I don't think that's the truck that we're concerned with. The
247 refuse truck was not on the site when we went to take the photographs.
248
249 Mr. Johnson - They've been jumping the fence and stuff, taking pictures.
250
251 Ms. Harris - What is this truck right here?
252
253 Mr. Johnson - That's my pick-up.
254
255 Ms. Harris - What we see around here is that your property?
256
257 Mr. Johnson That's my pickup.
258
259 Ms. Harris - What we see around here, is that your property or your
260 father's property?
261
262 Mr. Johnson - Yes, and we've cleaned all that up. I've got pictures that
263 we've cleaned all that up. When they came out there and asked us to clean that stuff
264 up, we've cleaned up that stuff.
265
266 Ms. Harris - Could we see the pictures, please?
267
268 Mr. Johnson - I don't know if I have them with me.
269
270 Ms. Harris - Go back to the barbed wire; I wasn't following you then.
271
272 Mr. Johnson - Back when it was my daddy's property, and I say that it's
273 unlawful to even have done that, and the County knew about it, and nobody said
274 anything about it. My daddy probably, all the way down, he's got people down that
275 road, I could bring a hundred people in this court. They don't want to waste their time

276 coming here. Back there on Midway Road, that's an old road back there, they built all
277 the houses on that side, white folks only. And down through where the black people's
278 homes, they took barbed wire fence and ran it all the way down the line. My brother ran
279 and cut himself all up in that wire.

280
281 Ms. Harris - That was on your father's property?

282
283 Mr. Johnson - That was down the side of my daddy's property, divided from
284 the white people's private side to the black, and the County knew about it, and they
285 won't believe me. I'll get Channel 12 to come out there and show everybody.

286
287 Mr. Blankinship - Excuse me, just a second, could you get closer to the
288 microphone please, because we're not getting you on the record; want to make sure we
289 record what you're saying, sir.

290
291 Ms. Harris - One last question – did you finish the question about the
292 barbed wire? I just wanted to know where it was.

293
294 Mr. Johnson - They knew about that barbed wire fences back then, when
295 they built those homes back there, they run that fence all the way down, with telephone
296 poles they put that barbed wire fence. And that's how bad the situation is.

297
298 Ms. Harris - And it's not there now?

299
300 Mr. Johnson - I hope my truck has torn half of it down, and some of it's still
301 back there on the property. I can bring anybody from that row and show them. The
302 County knew about that stuff, and we've got people that told me when I put up that
303 fence, told me I couldn't put a fence up that was, but yet they allowed certain people to
304 put the fence up and do what they want to do.

305
306 Ms. Harris - One last question – do you live on the property?

307
308 Mr. Johnson - I don't live on the property; that's my dad's property, and
309 that's where I always kept my truck.

310
311 Mr. Kirkland - Where is your place of business where you run your records
312 or your phones or whatever?

313
314 Mr. Johnson - I run it right off of my kitchen table.

315
316 Mr. Kirkland - Is it in Henrico County?

317
318 Mr. Johnson - Yeah.

319
320 Mr. Kirkland - Where? Do you have a big enough place to park this truck
321 on it?

322
323 Mr. Johnson - No, if I had a big enough, that is my daddy's place.

324
325 Mr. Kirkland - But I'm saying, do you have

326
327 Mr. Johnson - I live off of Laburnum – do you want me to park it on the
328 streets?

329
330 Mr. Kirkland - I just wondered.

331
332 Mr. Johnson - If I could park it on the streets, but I don't have nowhere, but
333 my dad has always had trucks there on the place, and I haven't had nowhere else to
334 carry my truck at all. Ain't but one little trash truck.

335
336 Mr. Nunnally - What about this pick-up truck that you have? You say that's
337 your pick-up truck. Where are the rest of your trucks? Where is the truck that you haul
338 all your trash with? Do you park it here when you pick up your pick-up truck?

339
340 Mr. Johnson - I park it at my dad's.

341
342 Mr. Nunnally - I said do you park it in the same space that this pick-up truck
343 is in? And you can't see it from the road?

344
345 Mr. Johnson - No.

346
347 Ms. Dwyer - Is this the back of the house, the rear of the house, this
348 picture that we're looking at?

349
350 Mr. Johnson - Yeah, that's the back of the house. If you're on the road
351 going that way, you probably can see the top part of the truck of whatever, but I've
352 always got fences and stuff on both sides all around the truck.

353
354 Ms. Dwyer - Could you describe the truck that we're talking about, the
355 refuse truck? What's its gross vehicle weight, do you know?

356
357 Mr. Johnson - You've got it on the paper; I don't know if the weight's right
358 or not, what you've got on the paper.

359
360 Mr. Kirkland - Mr. Blankinship, do we have any photos of the trash truck?

361
362 Mr. Blankinship - I do not. Mr. Johnson, I think, does. Mr. Paul Johnson,
363 excuse me, does. Mr. Johnson, I just want to make sure that I'm clear on which case is
364 which, because I know there are a couple of these same businesses on Midway. Was
365 there a time in the last year or so when you had a large amount of refuse stored on this
366 property, with the truck broken down for a time and left on the property, with refuse in it?

367
368 Mr. Johnson - No, I've never had nothing like that. People tell lies.

369
370 Mr. Blankinship - I'm just remembering another case then. I know there's
371 more than one on that road. I just wanted to make sure.

372
373 Mr. Johnson - We've got more than one people on that road. We always
374 had people on that road. We've got people on there with horses, ducks, cows,
375 everything, with trucks; we've got everything on that road. I'm not the only one who's
376 got trucks on that road. There isn't any need to hassle me. I'm just tired of going to
377 court and spending money, paying for lawyers.

378
379 Mr. Nunnally - Any further questions for Mr. Johnson at this time, from
380 Board or staff. All right, Mr. Johnson, you have a seat, and we're going to call on the
381 opposition, and then you'll have a short time to rebut after they're through, okay.
382 Anyone in opposition now, who wants to speak?

383
384 Mr. Marlles - Good morning, Mr. Chairman, members of the Board. My
385 name is John Marlles, and I am Director of Community Revitalization for the County.
386 The appeal before you involves the parking of a commercial garbage truck and
387 operation of a commercial business at 8909 Midway Road. As pointed out in Mr.
388 Tokarz' letter to you, written on my behalf, the issue before the Board is whether Mr.
389 Johnson may continue to park a commercial garbage truck and operate his refuse
390 business from a residential lot in violation of the zoning ordinance. Staff's research
391 indicates that the zoning ordinance has never permitted operation of a commercial
392 business or the parking of commercial vehicles with a gross weight of 33,000 pounds.
393 Nor has staff been able to find any record that the Board of Supervisors, the Board of
394 Zoning Appeals, the Planning Office, has ever given permission for the operation of a
395 commercial business or for the parking of commercial garbage trucks on this property.
396 It's also clear from the record that Mr. Johnson's father purchased the property and
397 constructed a home after the property had been zoned for residential development. We
398 do have a picture that I provided to Mr. Blankinship, that does show the commercial
399 garbage truck on Mr. Johnson's property. I'm here with Paul Johnson, who is the
400 Manager of the Community Maintenance Division, which is part of the new Department
401 of Community Revitalization, and Sherry Gemmill, the inspector for the property, to
402 answer any questions that you have. There was a question about the weight of the
403 vehicle. The empty weight of the vehicle, according to DMV records, is 8,895 pounds.
404 The gross weight, according to DMV records, is 33,200 pounds. Again, I'd be glad to
405 answer any questions that you have.

406
407 Ms. Dwyer - So the picture that you've shown us shows the refuse truck,
408 it looks like it's behind some laundry, it's kind of hard to tell, but this is not the pick-up
409 truck that we looked at earlier.

410
411 Mr. Marlles - Yes ma'am.

412
413 Ms. Harris - I noticed that you included the parking of a truck and the
414 operation of a business, so which are we dealing with?

415
416 Mr. Marlles - Both ma'am.

417
418 Ms. Harris - So you're saying that he operates the business here, and
419 he's saying that he does not.

420
421 Mr. Marlles - The truck is the business in this case. That's his only truck,
422 and he's parking it on this lot, which again is in a residential area. It's always been
423 zoned residential.
424
425 Ms. Harris - Are you familiar with other – I heard some other things that
426 are going on in this area – are you familiar with those things, the horses and all of that?
427
428 Mr. Marlles - Yes ma'am, we have other enforcement actions that are
429 pending against some of the other operations on that same street.
430
431 Ms. Harris - Are you familiar with the grandfather clause?
432
433 Mr. Marlles - Very much so.
434
435 Ms. Harris - Are you familiar with County records prior to the change of
436 the Code?
437
438 Mr. Marlles - Change of the Code? I can tell you that our staff has
439 researched all of the County Zoning Ordinances, dating back to the first one, which was
440 September 5, 1933, and in none of those ordinances is the parking of a commercial
441 vehicle at this weight, or a commercial business, permitted in a residential district.
442
443 Ms. Dwyer - So what you're saying is that the parking of this truck in this
444 residential area has never been permitted by the Zoning Ordinance? So there's been
445 no change in the law; it's just that it's not been enforced until now.
446
447 Mr. Marlles - Until we received a complaint, that is correct.
448
449 Ms. Dwyer - So it's been unlawful since this business has been
450 conducted, but the Planning Office operates on a complaint basis, so normally when
451 you receive a complaint, then you investigate and take action, and that's what has
452 happened here. That's why we're here, even though this business has been going on
453 since the '50's.
454
455 Mr. Marlles - Yes ma'am. Correct.
456
457 Ms. Dwyer - What Code Section is it that prohibits or specifies what is
458 permitted in this district?
459
460 Mr. Blankinship - 24-11.
461
462 Ms. Dwyer - Are the letters from the County Attorney and the
463 correspondence between, the notice of a violation, that we received in our package
464 yesterday, by fax yesterday, and the letter to Mr. Johnson from Mr. Blankinship dated
465 May 14 – are all those in the record for this case?
466
467 Mr. Blankinship - Yes ma'am.

468
469 Ms. Dwyer - In your position, it is the vehicle on site that is the problem,
470 because commercial vehicles of this size are not allowed in residential districts, and the
471 very fact that the vehicle is parked in this lot on a daily basis constitutes operating a
472 business in your view.
473
474 Mr. Marlles - Yes ma'am.
475
476 Ms. Dwyer - Is there anything else in this case, in these facts, that leads
477 you to believe a business is being conducted here?
478
479 Mr. Marlles - I think you summed it up.
480
481 Ms. Dwyer - You mentioned earlier the storage of some refuge that
482 you've noticed in the past, that you've received complaints about in the past, so that
483 would be another incident of
484
485 Mr. Marlles - And I believe those violations were corrected in the past.
486 There has been a problem with storage.
487
488 Ms. Dwyer - That's no longer an issue, the storage?
489
490 Mr. Marlles - I don't believe so, no.
491
492 Ms. Dwyer - So it's all summed up in the parking of the vehicle on this
493 lot?
494
495 Mr. Nunnally - Any other questions of Mr. Marlles? Is anyone else in
496 opposition who wishes to make a statement? Mr. Marlles, I believe you have some
497 people behind you.
498
499 Mr. Marlles - They're staff, here to answer any questions that the Board
500 may have.
501
502 Ms. Harris - How many complaints did you get from the neighbors?
503
504 Mr. Marlles - One that I'm aware of.
505
506 Mr. Nunnally - All right, Mr. Johnson, you can come back up and say a few
507 words if you'd like.
508
509 Mr. Johnson - I want to ask one question. Are you Mr. Blankinship right up
510 here?
511
512 Mr. Blankinship - Yes sir.
513
514 Mr. Johnson - Why would they keep telling me that you weren't even on the
515 case when I tried to speak to you? They said that you were no longer, that somebody

516 named Kelly or somebody would handle it.

517

518 Mr. Blankinship - The Planning Office was reorganized earlier this year. It
519 used to be that Zoning Enforcement was handled out of the Planning Office, and my
520 division oversaw that. In the beginning of July of this year we divided into two
521 departments, the Planning Department and the Department of Community
522 Revitalization, and this enforcement responsibility went to Revitalization, which is the
523 three people behind you, they're not the whole department of course, but they represent
524 that department.

525

526 Mr. Johnson - I've been trying to speak to you, and every time I try to speak
527 to you, they say you're no longer handling that case. And now, all of a sudden, you're
528 back on the case.

529

530 Mr. Blankinship - I don't handle the enforcement of that kind of violation at all.

531

532 Mr. Johnson - It just kind of looked like they were lying to me when I tried to
533 get in touch with you, even been to your office, and they keep sending me back for
534 some reason. I never knew you.

535

536 Mr. Blankinship - I do still work with the Board of Zoning Appeals, but I no
537 longer handle that sort of enforcement; I used to do both.

538

539 Mr. Johnson - My other question. He keeps saying "a business operation."
540 That's not a business operation, driving a truck off the property. A business operation
541 means that you're bringing business here to the property. That is not a business
542 operation. I just use my dad's property.

543

544 Mr. Blankinship - You testified earlier that you operate the business off
545 Laburnum Avenue. That's where you do the bookkeeping and use of the phones.

546

547 Mr. Johnson - Where I do my bookkeeping is on my kitchen table, and little
548 piece of paper, that's my bookwork, but I don't need any bookwork for that. I've got it up
549 here.

550

551 Mr. Blankinship - That's not at this site; that's at another address in the
552 County. I think that's important.

553

554 Mr. Nunnally - Do you have insurance on that refuse truck?

555

556 Mr. Johnson - Sure, I've got insurance.

557

558 Mr. Nunnally - Do you pay commercial rates on it?

559

560 Mr. Johnson - No, I don't pay no commercial rates. With the insurance,
561 yeah.

562

563 Mr. Nunnally - That's a business you run.

564
565 Mr. Johnson - Yeah, it's a business, but that don't mean my family is
566 running a business out of the property; I want to make that clear.

567
568 Mr. Nunnally - Yes, but your truck is the business truck, and you're parking
569 it on that property.

570
571 Mr. Johnson - You all are twisting it around, and I can't figure it out, driving
572 a truck off the property. There's a lot of people got dump trucks, is that business? A lot
573 of people got cars and pick-up trucks parked on their property. Is that a business
574 they're driving to work to here? You've got me confused when you're saying a
575 "business." I'm not operating a business out there. I'm parking a truck there. My truck
576 has always been parked there. It's not like I'm bringing the business to the house,
577 nothing like that. I think what my cousin, Senator Lambert, he could come testify how
578 long that truck's been there, how long because he has property. I asked him; he said
579 he would write a letter. If you want him to write a letter or something like that. My
580 attorney's not here, and I know a lot of attorneys, and I know the Senator, and all of
581 them know me, and I don't have to lie. I come here to tell it like it is. I'm not going to
582 sweeten it up for nobody. We need to focus on the kids and stuff in school and this
583 drugs stuff. I'm for that. I ain't worried about nobody's trucks, but I have always been
584 there. I understand, all of a sudden, I mean I just didn't like the way it all suddenly come
585 up with these Codes because I felt like, fine, I'm a black man. We're going along
586 digging up a Code and try to force me out of business. That's my issue. That's what I
587 think they're trying to put me out of business some kind of way, because I don't have no
588 where to park my truck. I've been around looking for a place. I don't have a place to
589 park my truck at all; it's always been there at the family place.

590
591 Mr. Nunnally - Ms. Dwyer, do you have another question?

592
593 Ms. Dwyer - I just wanted to make a statement. I know there might be
594 some confusion about this issue of what constitutes doing business where, but the
595 bottom line is, the County Code doesn't allow the truck to be in a residential area, and
596 never has, even though you've been parking it there for a long time. The County Code
597 has never allowed that. The difference is, the County is now enforcing that Ordinance.

598
599 Mr. Johnson - If they didn't allow it, why did they let it went on all this time?
600 Now all of a sudden, because you've got one complaint, I could have told you that you
601 had one complaint and saved you time. I could have told you one person complained.
602 What about all those people who've been living there forty and fifty years back there,
603 and they never come up and complained? Why all of a sudden, as soon as this guy
604 comes here and built that house, when he built that house, the truck was there then.
605 I'm certainly not going to build my house if a man has a bunch of pigs that are smelling;
606 I'm not going to put no house there. So he knew the truck was there. I even went over
607 and talked to him; I said that was the only place I had for my truck, I said I would keep it
608 clean, I said I wouldn't disturb him. I even gave him an instance, we have cookouts on
609 the road all the time for the neighbors and stuff; he complained about that, that we were
610 making noise. So he's one of these peoples that nothing is going to satisfy him. I told
611 him they've got plenty of houses on Windsor on the James; I'd like to have me one of

612 them. I know a few judges and stuff who live all around there, and I go over there
613 sometimes and take dinner. My attorney David Boone, I go over his house sometimes,
614 sit down and eat dinner with him. All them folks know me. I tell it like it is. I'm not going
615 to be dragging my foot in the mud for nobody.

616
617 Mr. Nunnally - Thank you, Mr. Johnson. We'll make a decision on this
618 sometime today, so you can call back later this afternoon if you like.

619
620 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.
621 Kirkland, the Board **denied** application **A-122-2004**, for the above-referenced appeal,
622 sustaining the decision of the Director of Planning.

623
624 Affirmative: Dwyer, Kirkland, Nunnally, 3
625 Negative: Harris, 1
626 Absent: Wright 1

627
628 The Board denied the request as it found from the evidence presented that neither the
629 use of the property for a refuse business, nor the parking of a commercial vehicle over
630 5,000 pounds, was ever a lawful use.

631
632 **UP-26-2004** **RYAN HOMES** requests a temporary conditional use permit
633 pursuant to Section 24-116(c)(1) to operate a temporary sales
634 trailer at 501 Dabbs House Road (Kingsridge) (Parcels 809-725-
635 8954 and 809-726-1917), zoned R-5, General Residence District
636 (Varina).

637
638 Mr. Nunnally - Does anyone else desire to speak with reference to this
639 case? Would you raise your right hand and be sworn please?

640
641 Mr. Blankinship - Do you swear that the testimony you are about to give is the
642 truth, the whole truth, and nothing but the truth, so help you God?

643
644 Mr. Lanphear - Good morning, Mr. Chairman, members of the Board. My
645 name is Rob Lanphear. I'm here representing Ryan Homes. I request to locate a
646 temporary sales trailer in the approved Kingsridge Subdivision off of Laburnum Avenue.
647 This will be a 40 by 12 trailer; it will be landscaped with eight hollies and three 2 ½-inch
648 **(unintelligible)** shade trees. It will have five parking spaces. It will have a ramp for
649 handicapped access. It will have two double spotlights on the front of the trailer. This
650 will be a temporary trailer that will be relocated as soon as the model building is
651 completed on the site. There will be a portable toilet that is screened by a six-foot
652 privacy fence.

653
654 Mr. Nunnally - How long do you think it will be before you get the model
655 home? I know you're asking for a year's permit here, but do you think you'll get it before
656 then?

657
658 Mr. Lanphear - I would suspect so. It typically takes around three or four
659 months to construct a model home building. We're also waiting for development, so

660 that would be a factor as well. It would be no longer than a year.

661
662 Mr. Nunnally - Would you object to if we put a clause in there saying you
663 would take this portable toilet down when the model home is through, in three months or
664 four months or five months?

665
666 Mr. Lanphear - Yes, as soon as it's completed, we'd be happy to take it
667 away, immediately, no problem. We've read the five other recommendations and are in
668 agreement with those, so we request your approval in this case.

669
670 Mr. Nunnally - Any other questions from the Board?

671
672 Mr. Kirkland - Is the parking lot for the trailer going to be paved or just
673 gravel?

674
675 Mr. Lanphear - My understanding is that it is graveled.

676
677 Ms. Harris - Why is it that you don't landscape the parking lot? I've seen
678 some of the other trailers around the city, and there's a lot of mud. I just wondered why
679 you don't just go ahead and landscape it, just put some grass seed down or something.

680
681 Mr. Lanphear - Around the trailer, there's quite a bit of construction typically
682 in this area; they have to construct building pads, which involves moving a lot of dirt,
683 and that's typically the reason we don't landscape around it during the construction
684 process, and again, as soon as that process is done, we'll have our model home up,
685 and we'll be able to take the trailer away. This is just temporary.

686
687 Mr. Nunnally - Any other questions of the Board? Staff? That concludes
688 the case. Thank you.

689
690 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
691 Dwyer, the Board **granted** application **UP-26-2004** for a temporary conditional use
692 permit to operate a temporary sales trailer at 501 Dabbs House Road (Kingsridge)
693 (Parcels 809-725-8954 and 809-726-1917). The Board granted the use permit subject
694 to the following conditions:

695
696 1. Only the improvements shown on the plan filed with the application may be
697 constructed pursuant to this approval. No substantial changes or additions to the layout
698 may be made without the approval of the Board of Zoning Appeals. Any additional
699 improvements shall comply with the applicable regulations of the County Code.

700
701 2. The trailer shall be removed from the property on or before December 2, 2005, at
702 which time this permit shall expire.

703
704 3. All landscaping shall be maintained in a healthy condition at all times. Dead
705 plant materials shall be removed within a reasonable time and replaced during the
706 normal planting season.

707

708 4. Skirting must be provided for the trailer.
709

710 5. Sanitary facilities may be provided by a portable toilet, screened from view by a
711 6' privacy fence. The toilet shall be removed when the certificate of occupancy is issued
712 for the model home.

713
714 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4
715 Negative: 0
716 Absent: Wright 1
717

718 The Board granted the request because it found the proposed use will be in substantial
719 accordance with the general purpose and objectives of Chapter 24 of the County Code.
720

721 **A-123-2004 TANYA HENRIQUES** requests a variance from Section 24-9 to
722 build a one-family dwelling at 8413 Strath Road (Parcel 817-684-
723 5605 (part)), zoned A-1, Agricultural District (Varina). The public
724 street frontage requirement is not met. The applicant has 0 feet
725 public street frontage, where the Code requires 50 feet public street
726 frontage. The applicant requests a variance of 50 feet public street
727 frontage.
728

729 Mr. Nunnally - Does anyone else desire to speak with reference to this
730 case? Would you raise your right hand and be sworn please?
731

732 Mr. Blankinship - Do you swear that the testimony you are about to give is the
733 truth, the whole truth, and nothing but the truth, so help you God?
734

735 Ms. Jennings - Yes I do. Good morning. My name is Cheryl Jennings. I'm
736 standing in behalf of my sister Tanya Henriques, requesting a variance because there is
737 no right-of-way from the front street.
738

739 Mr. Nunnally - How do you plan on getting into this property?
740

741 Ms. Jennings - Currently I own the property which I deeded to my sister, the
742 other half of it. About a year ago I came before you for a variance for my property, and
743 I'm requesting the same thing coming from Strath Road onto the easement into the
744 property.
745

746 Ms. Dwyer - It looks like the road where the little hand was on, that's how
747 you access your property?
748

749 Ms. Jennings - No, it's Strath Road coming down from where the hand is.
750

751 Ms. Dwyer - How will you
752

753 Ms. Jennings - It's coming from the right, keep on going straight, and go
754 straight across, where the yellow line is.
755

756 Ms. Dwyer - Is it an existing drive, or will you put one in there?
757
758 Ms. Jennings - It is an existing roadway
759
760 Ms. Dwyer -to the property we're looking at today. Will the house
761 be facing – do you see where the red line is that says "concept road"?
762
763 Ms. Jennings - Yes.
764
765 Ms. Dwyer - Will the new house be facing that road, or will it be
766
767 Ms. Jennings - No, it will be the same direction that my house is currently
768 facing, so it will be going west.
769
770 Mr. Blankinship - Facing back towards Strath Road.
771
772 Ms. Jennings - No, not facing towards Strath Road. My property is now
773 facing toward that lot to the right.
774
775 Mr. Kirkland - Your house is not facing Strath Road?
776
777 Ms. Jennings - No, it's not facing towards Strath, no.
778
779 Mr. Blankinship - Does it face to the south, toward that other house there?
780
781 Ms. Jennings - Yes.
782
783 Mr. Blankinship - So this one will be also oriented south, so that the back of it
784 will be to the concept road?
785
786 Ms. Jennings - Right.
787
788 Ms. Harris - So will they be facing each other, the two houses?
789
790 Ms. Jennings - No.
791
792 **(Unintelligible)**
793
794 Ms. Dwyer - I would like to ask staff what they think about the concept
795 road and whether we should try to plan for the orientation of the house toward a future
796 road – is that something that would be appropriate at this point?
797
798 Mr. Blankinship - I don't know how concerned we are about the orientation of
799 the house toward the road. I did meet with Mike Jennings, of the Department of Public
800 Works, to discuss the concept road, and let me interrupt myself and ask her, are you
801 familiar with this drawing that was submitted with the application? Is this accurate and
802 something we can really rely on, as far as you know?
803

804 Ms. Jennings - Yes. Yes.
805
806 Mr. Blankinship - Mr. Jennings told me that the concept road right-of-way
807 would probably be fifty-five feet wide, and in this zoning district, the front setback would
808 be fifty feet, so assuming the concept road aligns along the north of this property, we
809 would need a setback of 105 feet from that property line, if the concept road went
810 through, 55 for the road and then 50 more for the front setback. This plat that was
811 submitted here shows it scales at about 110 feet, so if they are actually building
812 according to this plat, we could put the concept road in there and still meet the front
813 yard setback. We have suggested as a condition that they maintain that setback when
814 they actually build the house.
815
816 Ms. Harris - The report says that the access to the property may have a
817 detrimental impact on adjacent properties.
818
819 Mr. Blankinship - Until the concept road does get built, which no one knows
820 the time frame on that, I think there is a concern about how many houses we're getting
821 on extended private drives back in this area. I think staff just wants the Board to have
822 that in mind as you consider this case. The more houses you build that don't have
823 public street frontage, the more opportunity you have for detrimental impact.
824
825 Ms. Dwyer - Ms. Jennings, are you and Ms. Henriques familiar with the
826 concept road that's showing? Do you realize that at some point a road may come
827 through?
828
829 Ms. Jennings - Yes, I am. Eventually, yes.
830
831 Ms. Dwyer - Mr. Blankinship, for these lots that are not on the road, how
832 do you handle addresses, I'm thinking especially for emergency vehicles. How do they
833 know how to get to these homes?
834
835 Mr. Blankinship - My understanding, and I'm going to keep my eye on Mr. Uzel
836 as I say this, is that they are addressed according to where they meet Strath Road,
837 where the access to this house meets Strath Road, so that if you were in an emergency
838 vehicle, you're going to turn at the correct point, even though you may have to follow a
839 meandering driveway going back into the property.
840
841 Ms. Harris - Is this the road that leads to your property?
842
843 Ms. Jennings - It kind of looks like it.
844
845 Mr. Nunnally - Any other questions?
846
847 Ms. Dwyer - So you understand that the house would have to be built 105
848 feet from the property line to allow for that concept road?
849
850 Ms. Jennings - Yes.
851

852 Mr. Nunnally - Thank you ma'am; you can have a seat. I think we have a
853 little opposition, so if you'd come forward sir.

854
855 Mr. Lindsey - Good morning. My name is Walter Lindsey, and I'm the
856 owner of the property at 8409 Strath Road, and I'm not in opposition. My only concern
857 was that all parties involved sign a road maintenance agreement, or maintenance
858 agreement for the easement, so that any of the homeowners would share equally in the
859 maintenance of the road. I was not aware of any study concerning detriment
860 concerning the number of homes. My main concern, as I said, is just that the access be
861 maintained, and that was my major concern this morning. Just a great glimpse into the
862 operation of County government; it's very refreshing to see county government in
863 action, and I appreciate that glimpse, but I do not oppose.

864
865 Mr. Blankinship - Is there a road maintenance agreement currently?

866
867 Mr. Lindsey - With the other homeowners, yes.

868
869 Ms. Dwyer - Is your home the one where the little hand is showing on the
870 map right now? How many other homes are served by that road?

871
872 Mr. Lindsey - Yes. Ms. Jennings' home, my home, Mr. Hewlett's home,
873 Mr. Tyler's home is nearer Strath Road, and Mrs. Hughes' home.

874
875 Ms. Dwyer - So they use that road also. All the people you've named are
876 part of the maintenance agreement? That sounds like a private contract. Mr.
877 Blankinship, does the County have any control or authority over that?

878
879 Mr. Blankinship - Not control, but you could certainly make it a condition of the
880 variance, that the occupant of this house join that agreement.

881
882 Mr. Nunnally - Thank you Mr. Lindsey. Ms. Jennings, do you want to
883 rebut?

884
885 Ms. Jennings - I totally agree.

886
887 Mr. Nunnally - Thank you. That concludes the case. Thank you for
888 coming.

889
890 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
891 Dwyer, the Board **granted** application **A-123-2004** for a variance to build a one-family
892 dwelling at 8413 Strath Road (Parcel 817-684-5605 (part)). The Board granted the
893 variance subject to the following conditions:

894
895 1. This variance applies only to the public street frontage requirement. All other
896 applicable regulations of the County Code shall remain in force.

897
898 2. At the time of building permit application, the applicant shall submit the
899 necessary information to the Department of Public Works to ensure compliance with the

900 requirements of the Chesapeake Bay Preservation Act and the code requirements for
901 water quality standards.

902
903 3. Approval of this request does not imply that a building permit will be issued.
904 Building permit approval is contingent on Health Department requirements, including,
905 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
906 of a well location.

907
908 4. The applicant shall present proof with the building permit application that a legal
909 access to the property has been obtained.

910
911 5. The owners of the property, and their heirs or assigns, shall accept responsibility
912 for maintaining access to the property until such a time as the access is improved to
913 County standards and accepted into the County road system for maintenance.

914
915 6. At the time of building permit application the owner shall demonstrate that the
916 parcel created by this division has been conveyed to members of the immediate family,
917 and the subdivision ordinance has not been circumvented.

918
919 7. The house shall be set back at least 105 feet from the north property line.

920
921 8. [Added] At the time of building permit application, the owner of the property shall
922 demonstrate that the property has been made subject to the existing private road
923 maintenance agreement.

924
925 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4
926 Negative: 0
927 Absent: Wright 1

928
929 The Board granted this request, as it found from the evidence presented that, due to the
930 unique circumstances of the subject property, strict application of the County Code
931 would produce undue hardship not generally shared by other properties in the area, and
932 authorizing this variance will neither cause a substantial detriment to adjacent property
933 nor materially impair the purpose of the zoning regulations.

934
935 **A-124-2004** **CADMUS GROUP** requests a variance from Section 24-94 to build
936 a containment basin for fuel tank at 2905 Byrd Hill Road (Parcel
937 777-743-3330), zoned M-1, Light Industrial District (Brookland).
938 The front yard setback is not met. The applicant proposes 19 feet
939 front yard setback, where the Code requires 25 feet front yard
940 setback. The applicant requests a variance of 6 feet front yard
941 setback.

942
943 Mr. Nunnally - Is anyone here to represent this case?

944
945 Mr. Kirkland - Let's pass it by.

946
947 **(Recalled at end of 9:00 o'clock agenda)**

948
949 Mr. Nunnally - Anyone here for that case?
950
951 Mr. Kirkland - Move it to the end.
952
953 **(Recalled at end of 10:00 o'clock agenda)**
954
955 Mr. Nunnally - Is anyone here representing this case?
956
957 Upon a motion by Mr. Kirkland, seconded by Ms. Harris the Board **deferred** application
958 **A-124-2004** for a variance to build a containment basin for fuel tank at 2905 Byrd Hill
959 Road (Parcel 777-743-3330). The case was deferred at the applicant's request, from
960 the October 21, 2004, until the November 18, 2004, meeting.
961
962 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4
963 Negative: 0
964 Absent: Wright 1
965
966 **A-125-2004 N. JOSEPH COSBY, JR.** requests a variance from Section 24-
967 95(q)(5) to build an addition at 11200 Churchwood Court (Church
968 Run) (Parcel 745-757-5236), zoned R-3C, One-family Residence
969 District (Conditional) (Three Chopt). The rear yard setback is not
970 met. The applicant proposes 25 feet rear yard setback, where the
971 Code requires 35 feet rear yard setback. The applicant requests a
972 variance of 10 feet rear yard setback.
973
974 Mr. Nunnally - Does anyone else desire to speak with reference to this
975 case? Would you raise your right hand and be sworn please?
976
977 Mr. Blankinship - Do you swear that the testimony you are about to give is the
978 truth, the whole truth, and nothing but the truth, so help you God?
979
980 Mr. Cosby - I do. My name is Joe Cosby; I am the owner of the property.
981 This case is virtually identical to a case that was presented to this Board early in 2003
982 and approved. The one difference is this case is requesting a variance of ten feet,
983 where the original case requested a variance of nine feet. That approval expired
984 several months ago, and in order to apply for a building permit, I needed to reapply, and
985 after consulting with a builder, I determined that the plans as presented to the Board last
986 year, needed to be amended by one foot. Other than that, there are no other changes
987 to this application, vs. the one that was approved last year.
988
989 Mr. Nunnally - If this is approved, are you ready to start on this now?
990
991 Mr. Cosby - Yes I am.
992
993 Mr. Nunnally - Any other questions from the Board?
994
995 Mr. Cosby - I would like to make a point. I think this was made in the

996 original case. The variance in this case is really up against the rear of my property,
997 which abuts a conservation area that's probably about 150 feet deep. There is no real
998 variance against any of my neighbors to either side of my house, no issue there.
999

1000 Ms. Dwyer - No detriment.

1001
1002 Mr. Cosby - No detriment. And both those neighbors in the previous
1003 case had represented letters stating that they had no issues with this case, and that was
1004 all discussed last year.

1005
1006 Ms. Dwyer - Is that a "C" zoning?

1007
1008 Mr. Blankinship - Yes ma'am.

1009
1010 Ms. Dwyer - And the shape of your lot is rather unusual; it does limit your
1011 options, I notice. It's not rectangular.

1012
1013 Mr. Cosby - Well, it's a pie-shaped lot, and because of that, my lot fans
1014 out in the rear, and as you go straight back from my house, you really get further away
1015 from my next-door neighbors, as opposed to getting closer to them. My neighbors to
1016 the rear are on a whole another subdivision on the other side of the conservation area
1017 that I would guess is at least 150 feet wide.

1018
1019 Ms. Harris - Mr. Cosby, does it concern you that you are near a flood
1020 plain?

1021
1022 Mr. Cosby - I'm very aware of the flood plain issues behind my house,
1023 particularly this year, but this addition does not come within the flood plain area, which
1024 is designated on that drawing right there.

1025
1026 Ms. Harris - It moves you closer.

1027
1028 Mr. Cosby - Yes, and where that addition is, there was an existing deck
1029 and porch, and this just extends that out an additional three feet from what was
1030 originally on the house, and it also includes an addition that's in the shaded area on the
1031 drawing, behind what is the dining room of the house, so the back of the house would
1032 just be straight across, but still probably at least fifteen or so feet from any flood plain.

1033
1034 Mr. Nunnally - Any other questions? If not, that completes the case. Thank
1035 you for coming.

1036
1037 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.
1038 Kirkland, the Board **granted** application **A-125-2004** for a variance to build an addition
1039 at 11200 Churchwood Court (Church Run) (Parcel 745-757-5236). The Board granted
1040 the variance subject to the following conditions:

1041
1042 1. The new construction shall match the existing dwelling as nearly as practical.
1043

1044 2. The property shall be developed in substantial conformance with the plan filed
1045 with the application. No substantial changes or additions to the layout may be made
1046 without the approval of the Board of Zoning Appeals.

1047
1048 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4
1049 Negative: 0
1050 Absent: Wright 1

1051
1052 The Board granted this request, as it found from the evidence presented that, due to the
1053 unique circumstances of the subject property, strict application of the County Code
1054 would produce undue hardship not generally shared by other properties in the area, and
1055 authorizing this variance will neither cause a substantial detriment to adjacent property
1056 nor materially impair the purpose of the zoning regulations.

1057
1058 **A-126-2004 NIKI AND PAUL MAKRIS** request a variance from Section 24-94
1059 to build an addition at 10002 Ravenstone Court (Foxchapel) (Parcel
1060 739-739-7422), zoned R-0, One-family Residence District
1061 (Tuckahoe). The rear yard setback and total side yard setback are
1062 not met. The applicants have 34 feet rear yard setback where the
1063 Code requires 50 feet rear yard setback. The applicants request a
1064 variance of 16 feet rear yard setback.

1065
1066 Mr. Nunnally - Does anyone else desire to speak on this case? Would you
1067 raise your right hand and be sworn please?

1068
1069 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1070 truth, the whole truth, and nothing but the truth, so help you God?

1071
1072 Mr. Makris - I do. I'm Paul Makris, and we request a variance for an
1073 addition, which was approved about five years ago, but we delayed because we thought
1074 the money was going to be too much. We are applying for that today. I didn't have any
1075 problem five years ago, and it was approved then.

1076
1077 Ms. Dwyer - Mr. Makris, if you could look at the drawing that's shown on
1078 the screen now, and when I looked in our package, I was a little bit confused about
1079 exactly what was being added and what wasn't. Could you explain.

1080
1081 Mr. Makris - Exactly. There is an existing porch, which is fifteen by
1082 fifteen, and then we'll extend that 28 feet to the edge of the house, long-ways.

1083
1084 Ms. Dwyer - Will it be beyond the edge of the house, because something
1085 is shown beyond the edge of the house?

1086
1087 Mr. Makris - Straight down where the existing porch is, in the rear of the
1088 house, and where the crossed out is, we were supposed to have a master bedroom,
1089 which we're not going to build. Then next to the existing porch, we're going 28 feet
1090 down, we'll have a deck there, 15 by 15. I spoke to Mr. Lehmann a couple of days ago,
1091 and I came over to correct that.

1092
1093 Ms. Dwyer - So the deck will extend beyond the edge of the house.
1094
1095 Mr. Makris - Beyond the edge of the addition.
1096
1097 Ms. Dwyer - I'm looking at the edge of the house.
1098
1099 Mr. Makris - Exactly where your hand is, that's where the addition of the
1100 deck should be.
1101
1102 Ms. Dwyer - Mr. Lehmann, as you understand it, if you would outline the
1103 deck. So it would be a very small deck then. The hash marked area is the addition,
1104 which does extend beyond the edge of the existing house, is that correct?
1105
1106 Mr. Makris - Not the house, the existing porch, that's where it will extend.
1107
1108 Ms. Dwyer - Right. I know you're extending from the existing porch, but
1109 I'm looking at the side of your house – will it extend beyond that edge?
1110
1111 Mr. Makris - Yes, I would say four or five feet probably.
1112
1113 Ms. Dwyer - Okay. That's the way it appeared on the drawing, but there
1114 were so many cross-outs, I wasn't sure. You say this was approved in the past, the
1115 same.
1116
1117 Mr. Makris - Yes, about five years ago I believe.
1118
1119 Ms. Dwyer - I notice the staff report said that the house was pushed back
1120 fairly far from the road, and I think part of that was because you have a steep incline in
1121 the front of your house, you really had to push the house back on the side.
1122
1123 Mr. Makris - Yes, I bought it about 24 years ago. I didn't even know then,
1124 I didn't even have 50 feet on the rear either.
1125
1126 Mr. Nunnally - Any other questions?
1127
1128 Ms. Harris - Have you had any complaints from your neighbors?
1129
1130 Mr. Makris - No ma'am.
1131
1132 Mr. Nunnally - Any others? That concludes the case. Thank you for
1133 coming.
1134
1135 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.
1136 Kirkland, the Board **granted** application **A-126-2004** for a variance to build an addition
1137 at 10002 Ravenstone Court (Foxchapel) (Parcel 739-739-7422). The Board granted the
1138 variance subject to the following conditions:
1139

1140 1. Only the improvements shown on the plan filed with the application may be
1141 constructed pursuant to this approval. No substantial changes or additions to the layout
1142 may be made without the approval of the Board of Zoning Appeals. Any additional
1143 improvements shall comply with the applicable regulations of the County Code.

1144
1145 2. The new construction shall match the existing dwelling as nearly as
1146 practical.

1147
1148 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4
1149 Negative: 0
1150 Absent: Wright 1

1151
1152 The Board granted this request, as it found from the evidence presented that, due to the
1153 unique circumstances of the subject property, strict application of the County Code
1154 would produce undue hardship not generally shared by other properties in the area, and
1155 authorizing this variance will neither cause a substantial detriment to adjacent property
1156 nor materially impair the purpose of the zoning regulations.

1157
1158 **A-127-2004** **JUDY C. CHAVIS** requests a variance from Sections 24-10(b), 24-
1159 95(i)(2), 24-95(i)(2)(a), 24- 9 and 24-94 to build a one-family
1160 dwelling at 5810 Bethlehem Road (Parcel 770-745-7506), zoned R-
1161 2, One-family Residence District (Brookland). The accessory
1162 structure distance requirement, accessory structure location
1163 requirement, allowable area of accessory structures, public street
1164 frontage requirement, and width at front yard setback are not met.
1165 The applicant has 20 feet lot width, 20 feet public street frontage
1166 2,485 square feet of accessory structures, and stable in the front
1167 yard 100 feet from a dwelling, where the Code requires 100 feet lot
1168 width and 50 feet public street frontage, and allows 1,350 square
1169 feet of accessory structures, and stables in the rear yard 400 feet
1170 from the nearest dwelling. The applicant requests a variance of 80
1171 feet lot width, 30 feet public street frontage, 1,135 square feet of
1172 accessory structures, and 300 feet distance requirement for a
1173 stable.

1174
1175 Mr. Nunnally - Does anyone else desire to speak on this case? Would you
1176 raise your right hand and be sworn please?

1177
1178 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1179 truth, the whole truth, and nothing but the truth, so help you God?

1180
1181 Ms. Chavis - I do. Judy Chavis. I think it might be important to give you
1182 just a brief history of how the property got to this size and shape, which is a little out of
1183 the ordinary. Many years ago my grandfather owned it, and the County condemned a
1184 portion of it that had an old house on it, and they built a school next door, which is
1185 Charles M. Johnson. Actually I remember most recently the strip he had to sell for I-64.
1186 So I have I-64 on one side and the school on the other, and just a vacant property
1187 across the street. My mom let my two children build on the property, which is what

1188 granddaddy and all of us wanted, and now I would like to build. I know it's several
1189 variances that we need to get your approval for, hopefully. There is a stable there;
1190 these things have been there since I was a child. There used to be cows there even.
1191 There is a designated access road off Bethlehem, and we've tried to space the houses,
1192 so they'd be well away from each other, to give each family enough room. If you have
1193 any specific questions, hopefully this gentleman who's willing to build for me could
1194 answer them appropriately.

1195
1196 Mr. Kirkland - Ms. Chavis, you don't own that brick house that's fronting on
1197 Bethlehem, do you?

1198
1199 Ms. Chavis - That's my rental house, yes I do.

1200
1201 Ms. Harris - Are horses housed in that stable?

1202
1203 Ms. Chavis - Yes ma'am, they always have been.

1204
1205 Mr. Foster - George Foster. I'd just like to say one thing; public water is
1206 there. I just noticed that on the suggested conditions, it was mentioned the approval for
1207 well location, and she will not be putting a well on it, but of course she will put a septic
1208 system, it's been approved.

1209
1210 Ms. Dwyer - Are all the homes on this lot served by public sewer and
1211 water?

1212
1213 Ms. Chavis - They each have a septic tank and a back-up system, and
1214 they have public water.

1215
1216 Ms. Dwyer - You'll have public water.

1217
1218 Mr. Nunnally - Any other questions from the Board? That concludes the
1219 case. Thank you for coming.

1220
1221 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
1222 Dwyer, the Board **granted** application **A-127-2004** for a variance to build a one-family
1223 dwelling at 5810 Bethlehem Road (Parcel 770-745-7506). The Board granted the
1224 variance subject to the following conditions:

1225
1226 1. Only the improvements shown on the plan filed with the application may be
1227 constructed pursuant to this approval. No substantial changes or additions to the layout
1228 may be made without the approval of the Board of Zoning Appeals. Any additional
1229 improvements shall comply with the applicable regulations of the County Code.

1230
1231 2. Approval of this request does not imply that a building permit will be issued.
1232 Building permit approval is contingent on Health Department requirements, including,
1233 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
1234 of a well location.

1235

1236 3. At the time of building permit application, the applicant shall submit the
1237 necessary information to the Department of Public Works to ensure compliance with the
1238 requirements of the Chesapeake Bay Preservation Act and the code requirements for
1239 water quality standards.

1240
1241 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4
1242 Negative: 0
1243 Absent: Wright 1
1244

1245 The Board granted this request, as it found from the evidence presented that, due to the
1246 unique circumstances of the subject property, strict application of the County Code
1247 would produce undue hardship not generally shared by other properties in the area, and
1248 authorizing this variance will neither cause a substantial detriment to adjacent property
1249 nor materially impair the purpose of the zoning regulations.

1250
1251 **A-128-2004** **IGOR MAKZIAEV** requests a variance from Section 24-95(q)(5) to
1252 build a sunroom at 10505 Runnymede Drive (Magnolia Ridge)
1253 (Parcel 781-767-9980), zoned R-3AC, One-family Residence
1254 District (Conditional) (Fairfield). The rear yard setback is not met.
1255 The applicant proposes 21 feet rear yard setback, where the Code
1256 requires 30 feet rear yard setback. The applicant requests a
1257 variance of 9 feet rear yard setback.
1258

1259 Mr. Nunnally - Does anyone else desire to speak with reference to this
1260 case? Would you raise your right hand and be sworn please?
1261

1262 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1263 truth, the whole truth, and nothing but the truth, so help you God?
1264

1265 Mr. Thom - Yes sir. My name is Carlton Thom; I'm representative of
1266 Melani Construction, and this project for Mr. Maksiaev. We're requesting to enclose
1267 that deck area that's on the back of the house, and that would require, because it is an
1268 enclosure, a nine-foot variance off the back.
1269

1270 Mr. Kirkland - What type of enclosure are you planning on making, glass,
1271 same as the existing building, or for a sunroom? Is it going to be glass windows?
1272

1273 Mr. Thom - It's a full sunroom enclosure, meeting the homeowners
1274 approval for vinyl siding and shingle roof. The back of that house, is kind of unusual in
1275 that there is of course the property lines. There's a 20-foot common area there that's
1276 decorated on Virginia Center Commons Parkway.
1277

1278 Mr. Nunnally - Is this sunroom going to be the same size as the deck?
1279

1280 Mr. Thom - Yes sir.
1281

1282 Ms. Harris - Is this fairly common for the area? Are you noticing that
1283 other neighbors are doing the same thing or something similar?

1284
1285 Mr. Thom - Yes ma'am. We meet both the County approval as best we
1286 can, and the homeowners association.

1287
1288 Ms. Harris - Do you see other neighbors doing the same thing, adding or
1289 enclosing?

1290
1291 Mr. Thom - Actually this is the first one, to my knowledge, that is
1292 purchased in this new neighborhood, but yes, we certainly hope so. When we look at
1293 the plot plans, it will kind of bring you up to date here. When you look at a person's
1294 back of the house, it just kind of never occurs to you that that's thirty feet or less, when
1295 you see a lot of woods and Virginia Center Commons Parkway is way back.

1296
1297 Mr. Nunnally - Any other questions from staff or Board? All right sir, that
1298 concludes the case.

1299
1300 After an advertised public hearing and on a motion by Ms. Harris, seconded by Ms.
1301 Dwyer, the Board **granted** application **A-128-2004** for a variance to build a sunroom at
1302 10505 Runnymede Drive (Magnolia Ridge) (Parcel 781-767-9980). The Board granted
1303 the variance subject to the following conditions:

1304
1305 1. Only the improvements shown on the plan filed with the application may be
1306 constructed pursuant to this approval. No substantial changes or additions to the layout
1307 may be made without the approval of the Board of Zoning Appeals. Any additional
1308 improvements shall comply with the applicable regulations of the County Code.

1309
1310 2. The new construction shall match the existing dwelling as nearly as practical.

1311
1312 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4
1313 Negative: 0
1314 Absent: Wright 1

1315
1316 The Board granted this request, as it found from the evidence presented that, due to the
1317 unique circumstances of the subject property, strict application of the County Code
1318 would produce undue hardship not generally shared by other properties in the area, and
1319 authorizing this variance will neither cause a substantial detriment to adjacent property
1320 nor materially impair the purpose of the zoning regulations.

1321
1322 **A-129-2004** **PHILLIP J. REED** requests a variance from Section 24-94 to build
1323 an addition at 11095 Quail Whistle Drive (Quail Walk) (Parcel 774-
1324 770-6065), zoned R-2, One-family Residence District (Brookland).
1325 The rear yard setback is not met. The applicant proposes 36 feet
1326 rear yard setback, where the Code requires 45 feet rear yard
1327 setback. The applicant requests a variance of 9 feet rear yard
1328 setback.

1329
1330 Mr. Nunnally - Does anyone else desire to speak with reference to this
1331 case? Would you raise your right hand and be sworn please?

1332
1333 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1334 truth, the whole truth, and nothing but the truth, so help you God?
1335

1336 Mr. Reed - I do. I'm Phillip Reed. We live at 11095 Quail Whistle, and
1337 we would like to put an addition on. Just looking over the papers, the hardship is that
1338 we have a house of five. I have a daughter who's in a room right now that's basically
1339 nine by ten, and we're looking to move her into the upstairs master suite to give her,
1340 hopefully, some space. It's pretty clear what we're looking at doing, just we need nine
1341 feet more to do it for the rear offset. I talked to the neighbors who are connected to our
1342 property; nobody had a problem with it. The one that they pointed out, on lot 5, which is
1343 2917; he is actually in the process of building a garage, which would actually be
1344 blocking his view from the addition itself. He's going to be putting it basically, coming
1345 back in by the shed at the 11099, if you see it back farther, and to the right of the
1346 property of 2917. The garage would be between that pool and the shed, so he's the
1347 only one who would have any real glance at the addition. I didn't realize that the lots
1348 were smaller. I just moved in myself; we just got married this year, so we're trying to
1349 accommodate everybody.
1350

1351 Ms. Dwyer - The property behind you that apparently you purchased,
1352 called the Willis, what are your plans for that?
1353

1354 Mr. Reed - The plans for that, with all the building that's going on,
1355 there's basically ten acres. Two elderly couples own the houses that face Greenwood,
1356 and they'd put up a sign wanting to sell some of their property, so we and the neighbors,
1357 the Harris's, got together and decided to buy $\frac{3}{4}$ each. This way it will be blocked, and
1358 will be left alone. We have no plans as far as doing any construction or anything to it. It
1359 is agricultural. We're just using it basically as a buffer because with ten acres of land,
1360 who knows what a builder can do.
1361

1362 Mr. Blankinship - There's a note on the plat stating that it's combined with the
1363 subdivision parcels and not to be used as a separate building lot.
1364

1365 Mr. Reed - That was the whole purpose. We just wanted to make sure
1366 that when someone did get a hold of that, actually I think it's thirteen acres back there,
1367 that we didn't have the houses built right behind us.
1368

1369 Ms. Dwyer - So you and your neighbors, 11091, and 11097, bought that.
1370

1371 Mr. Reed - We split it $\frac{3}{4}$ and $\frac{3}{4}$, they had three and a half acres
1372 themselves, and then the lady right next to them, actually has nine or ten from what he
1373 explained to me. The purpose was to do basically a buffer. What you're looking at now,
1374 over to the swing set, over to the left is where the other gentleman's house is that can
1375 kind of look over towards our yard, and he's the one who's building the garage basically
1376 in front of his shed.
1377

1378 Mr. Nunnally - Any other questions from the Board? That concludes the
1379 case. Thank you for appearing.

1380
1381 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
1382 Harris, the Board **granted** application **A-129-2004** for a variance to build an addition at
1383 11095 Quail Whistle Drive (Quail Walk) (Parcel 774-770-6065). The Board granted the
1384 variance subject to the following conditions:

1385
1386 1. Only the improvements shown on the plan filed with the application may be
1387 constructed pursuant to this approval. No substantial changes or additions to the layout
1388 may be made without the approval of the Board of Zoning Appeals. Any additional
1389 improvements shall comply with the applicable regulations of the County Code.

1390
1391 2. The new construction shall match the existing dwelling as nearly as practical.

1392
1393 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4

1394 Negative: 0

1395 Absent: Wright 1

1396
1397 The Board granted this request, as it found from the evidence presented that, due to the
1398 unique circumstances of the subject property, strict application of the County Code
1399 would produce undue hardship not generally shared by other properties in the area, and
1400 authorizing this variance will neither cause a substantial detriment to adjacent property
1401 nor materially impair the purpose of the zoning regulations.

1402
1403 **A-130-2004** **DONALD N. BLAKE** requests a variance from Section 24-9 to build
1404 a one-family dwelling at 11750 Old Washington Highway
1405 (Lakeview) (Parcel 772-777-4185), zoned A-1, Agricultural District
1406 (Brookland). The public street frontage requirement is not met.
1407 The applicant has 0 feet public street frontage, where the Code
1408 requires 50 feet public street frontage. The applicant requests a
1409 variance of 50 feet public street frontage.

1410
1411 **A-131-2004** **DONALD N. BLAKE** requests a variance from Section 24-9 to build
1412 a one-family dwelling at 11740 Old Washington Highway
1413 (Lakeview) (Parcel 772-777-4063), zoned A-1, Agricultural District
1414 (Brookland). The public street frontage requirement is not met.
1415 The applicant has 0 feet public road frontage, where the Code
1416 requires 50 feet public road frontage. The applicant requests a
1417 variance of 50 feet public road frontage.

1418
1419 Mr. Nunnally - Does anyone else desire to speak with reference to this
1420 case? Would you raise your right hand and be sworn please?

1421
1422 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1423 truth, the whole truth, and nothing but the truth, so help you God?

1424
1425 Mr. Blake - I do. Good morning. I'm Donald Blake. I've owned these
1426 properties several years now, thinking that we would have Thomas Mill Subdivision
1427 developed by now, and have public access almost to the home site, and then public

1428 water would be out there. It's just taken a little longer to do that development next door
1429 to me than people thought. I have started construction on my own property, where I
1430 plan to build my dwelling. The cleared property is above the yellow parcel, the two-acre
1431 parcel. My daughter's in the process of getting a construction permit, etc., to build on
1432 the two-acre parcel, and I'm in the process of selling the three-acre parcel south of that,
1433 the companion case, for another home. These homes will all be big homes that go
1434 there, 4,000, 5,000, 6,000 square feet. The private road has been there for a number of
1435 years, and I had variances, I think three years ago, on all of these, thinking that timing
1436 was good, but timing wasn't, and now timing is, and variances have run out. The
1437 Thomas Mill Subdivision, I'm hoping, will come in next spring, and will eliminate the
1438 need for most of the private road. Staff makes a comment on that.

1439
1440 If anybody has any questions, I do have two comments of my own about suggested
1441 conditions. Those would be on item # 6, vacating the private road. It is the intention to
1442 have road maintenance agreement for all three lots and to vacate the private road south
1443 toward Old Washington Highway. However, the condition bothers me because I have a
1444 separate agreement with the other property owner for an easement just in case Thomas
1445 Mill wasn't developed, so I'd have to come in off of Old Washington Highway, around
1446 the store, drive through the store parking lot. I'd be concerned if I agreed to item # 6,
1447 and I may not get my refund back on my other easement that I purchased, because it
1448 may be construed legally that I vacated my easement, so I don't have any reason to
1449 have this easement. I would have to vacate an easement with a frontage loss.

1450
1451 Ms. Dwyer - I need to know what you're talking about in reference to the
1452 map.

1453
1454 Mr. Blake - The red dotted line comes all the way down to Old
1455 Washington Highway. There it's a store, the Hunton store is right where the easement
1456 that runs with the property. When I bought the property, I didn't want to have to drive
1457 through, in case Thomas Mill wasn't developed, through the grocery store parking lot, to
1458 get to three homes. So I acquired an easement to the right of the red line through an
1459 adjacent property owner's property, so that I would have another right-of-way to get into
1460 there.

1461
1462 Ms. Dwyer - That would give you access to Old Washington Highway?
1463 Could you tell us where that access

1464
1465 Mr. Blake - Just beside the store, there's a structure to the right of the
1466 dotted line, a little square structure

1467
1468 Mr. Kirkland - Where you knocked down the old cinder block store,
1469 correct?

1470
1471 Mr. Blake - It's about where the blue line is; I have an easement there
1472 that I did pay for.

1473
1474 Ms. Dwyer - So you have two easements that are parallel?
1475

1476 Mr. Blake - Almost parallel. The original red line goes through the
1477 parking lot of the store, and you wouldn't want to drive a car down through a parking lot
1478 or have your guests come through there. So I purchased a right-of-way about where
1479 the blue line is. My concern is that if I'm forced to vacate the easement all the way
1480 down the red line, then the person who actually owns the property where the blue line is
1481 might say he wasn't going to give me my money back, because the County made you
1482 give up the easement anyway. I do have an understanding with the development
1483 Thomas Mill that we will vacate all the right-of-way down there, and obviously we don't
1484 want to have people coming down that road. I would like to have the opportunity to get
1485 a refund back on my easement that I'm not going to be using; however, that easement
1486 runs through a person's land, and the owner could say the County made me give this
1487 up, so you're right-of-way, this easement, is now gone, so you've lost your interest in
1488 this piece of land.

1489
1490 Ms. Dwyer - So you want item # 6 to be limited to the easement that
1491 actually came with the land and not with the easement that you have subsequently
1492 acquired.

1493
1494 Mr. Blake - That would be a help, yes.

1495
1496 Ms. Dwyer - That makes sense. I don't think it was intended to do that.

1497
1498 Mr. Blake - The County didn't know that I had this easement.

1499
1500 Ms. Dwyer - What are you suggesting in # 6, now that I understand?

1501
1502 Mr. Blake - You could probably maybe add a clause, "but not subject to
1503 any other easement they may already have across any other adjacent property." I
1504 would trust Ben to word that out okay.

1505
1506 Mr. Kirkland - Is that all right with you, Mr. Blankinship?

1507
1508 Mr. Blankinship - Yes, I think we can work that out.

1509
1510 Ms. Dwyer - Or we can just say that you vacate the easement that's on
1511 the map that's identified with this case.

1512
1513 Mr. Blake - Item # 7, I don't have any problem with, except that I don't
1514 have any assurance that County water's going to be there. We'll have a house there by
1515 June that my daughter will be living in, and if the water's not there, I need to have a well.
1516 Neither Thomas Mill, nor the County, nor Virgil have said there's going to be water out
1517 there to serve these, and I've already done a water drawing to show water going down
1518 the private road to serve all three houses, including two fire hydrants. In the event that
1519 water isn't there, I'll have two big houses there, I need to have wells to serve those until
1520 water does come.

1521
1522 Mr. Kirkland - Put something there, Mr. Blankinship, in reference to when
1523 Thomas Mill is developed or something?

1524
1525 Mr. Blankinship - As soon as it becomes available?
1526
1527 Mr. Blake - That'd be fine. I'd just planned to put water in so I'd have
1528 two fire hydrants.
1529
1530 Mr. O'Kelly - Mr. Blake, back on condition # 6, the second sentence in
1531 that condition, would you have any objection to that? We need to get the driveway to
1532 those two lots that are proposed off the end of the cul-de-sac in Thomas Mill.
1533
1534 Mr. Blake - I have no problem with that at all because we're going to use
1535 the cul-de-sac from my driveway to go up to serve the other three lots. I'm working with
1536 Attack Properties to something we can all agree to on vacating that.
1537
1538 Ms. Dwyer - I guess that was my next question, that this is a cul-de-sac,
1539 you would have access to your easement from this cul-de-sac that's shown? That
1540 might interfere with perhaps some building plans that the builder might have for that
1541 subdivision. Is that already etched in stone, that there will be access allowed?
1542
1543 Mr. O'Kelly - The Planning Commission looked at that very closely with
1544 the subdivision review. It was an issue, and there are a number of other property
1545 owners there that we were trying to get access to with the subdivision. Sometimes
1546 these private easements on somebody else's lot creates a lot of problems, and we're
1547 trying to avoid that here. We can't extend the public road across his private easement,
1548 so we have to end it at the easement itself, and then the two lots that are proposed at
1549 the end of the cul-de-sac will need to get access across his easement to the public
1550 road.
1551
1552 Ms. Dwyer - Has that been worked out?
1553
1554 Mr. O'Kelly - Hopefully Mr. Blake is

1555
1556 Mr. Blake - I'm in agreement with Attack Properties, because I won't
1557 need that road once I have a County road there in the cul-de-sac, I just have a short
1558 distance to go up to run a water line to serve these lots and private road there.
1559
1560 Mr. Kirkland - So you'll punch your driveway right into the end of the cul-
1561 de-sac?
1562
1563 Ms. Dwyer - And in turn, you're allowing access across your easement.
1564
1565 Mr. Blake - I'll just vacate that easement.
1566
1567 Mr. Kirkland - And give it to Attack Properties.
1568
1569 Ms. Dwyer - Is that easement on your property, or is that someone else's
1570 property?
1571

1572 Mr. Blake - Someone else's property. Actually, it's sort of like a no
1573 man's land; it was in court, who knows who it belongs to, but it's all those, there are
1574 three private lots, and there are more lots on down, but Attack has acquired those
1575 properties, so all those people and all those properties need to go join together to
1576 vacate that joint easement, all the way down to Old Washington Highway, because they
1577 wouldn't have any need for it. Obviously any homeowner wouldn't want some other
1578 homeowner coming in later on and saying they were driving across their easement and
1579 have access to it. That's what I suspected before all these houses were built, we'd
1580 have paperwork done and recorded that will take care of it.

1581
1582 Mr. Blankinship - It's a relic of a subdivision from 1921.

1583
1584 Mr. Blake - It's all going to be a nice addition to the County, Thomas Mill
1585 is going to be a great place to be out there, and I'm going to have nice home site with
1586 the grandkids next door, and it's going to be a neat place to live.

1587
1588 Mr. Nunnally - Any other questions from the Board?

1589
1590 Ms. Harris - What is this parcel of land behind the two parcels that we are
1591 discussing, this rectangular shape?

1592
1593 Mr. Blankinship - When you say behind, which direction are you

1594
1595 Ms. Harris - It's not on the CSX Railroad side; it's on the other side.

1596
1597 Mr. Blankinship - That's another dwelling, and you see the private road
1598 coming into it from the east there. That's going to be realigned slightly, but will continue
1599 to go through and join another street in Thomas Mill.

1600
1601 Mr. Nunnally - Any other questions? Hearing none, that concludes the
1602 case. Thank you.

1603
1604 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.
1605 Kirkland, the Board **granted** application **A-130-2004** for a variance to build a one-family
1606 dwelling at 11750 Old Washington Highway (Lakeview) (Parcel 772-777-4185). The
1607 Board granted the variance subject to the following conditions:

1608
1609 1. This variance applies only to the public street frontage requirement. All other
1610 applicable regulations of the County Code shall remain in force.

1611
1612 2. Approval of this request does not imply that a building permit will be issued.
1613 Building permit approval is contingent on Health Department requirements, including,
1614 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
1615 of a well location.

1616
1617 3. At the time of building permit application, the applicant shall submit the
1618 necessary information to the Department of Public Works to ensure compliance with the

1619 requirements of the Chesapeake Bay Preservation Act and the code requirements for
1620 water quality standards.

1621
1622 4. The applicant shall present proof with the building permit application that a legal
1623 access to the property has been obtained.

1624
1625 5. The owners of the property, and their heirs or assigns, shall accept responsibility
1626 for maintaining access to the property until such a time as the access is improved to
1627 County standards and accepted into the County road system for maintenance.

1628
1629 6. [Amended] When the streets in Thomas Mill Subdivision are completed, the
1630 owner shall vacate his interest in the private access road created by the 1921
1631 subdivision plat of "Lakeview", except for the portion necessary to serve the property
1632 from the new public street. Until the private road is vacated, the owner shall allow
1633 access across it as necessary for Thomas Mill Subdivision. This condition shall not
1634 apply to any other easement acquired by the owner.

1635
1636 7. [Amended] The property shall be connected to public water as soon as it
1637 becomes available.

1638
1639 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4

1640 Negative: 0

1641 Absent: Wright 1

1642
1643 The Board granted this request, as it found from the evidence presented that, due to the
1644 unique circumstances of the subject property, strict application of the County Code
1645 would produce undue hardship not generally shared by other properties in the area, and
1646 authorizing this variance will neither cause a substantial detriment to adjacent property
1647 nor materially impair the purpose of the zoning regulations.

1648
1649 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.
1650 Kirkland, the Board **granted** application **A-131-2004** for a variance to build a one-family
1651 dwelling at 11740 Old Washington Highway (Lakeview) (Parcel 772-777-4063). The
1652 Board granted the variance subject to the following conditions:

1653
1654 1. This variance applies only to the public street frontage requirement. All other
1655 applicable regulations of the County Code shall remain in force.

1656
1657 2. Approval of this request does not imply that a building permit will be issued.
1658 Building permit approval is contingent on Health Department requirements, including,
1659 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
1660 of a well location.

1661
1662 3. At the time of building permit application, the applicant shall submit the
1663 necessary information to the Department of Public Works to ensure compliance with the
1664 requirements of the Chesapeake Bay Preservation Act and the code requirements for
1665 water quality standards.

1666

1667 4. The applicant shall present proof with the building permit application that a legal
1668 access to the property has been obtained.

1669
1670 5. The owners of the property, and their heirs or assigns, shall accept responsibility
1671 for maintaining access to the property until such a time as the access is improved to
1672 County standards and accepted into the County road system for maintenance.

1673
1674 6. [Amended] When the streets in Thomas Mill Subdivision are completed, the
1675 owner shall vacate his interest in the private access road created by the 1921
1676 subdivision plat of "Lakeview", except for the portion necessary to serve the property
1677 from the new public street. Until the private road is vacated, the owner shall allow
1678 access across it as necessary for Thomas Mill Subdivision. This condition shall not
1679 apply to any other easement acquired by the owner.

1680
1681 7. [Amended] The property shall be connected to public water as soon as it
1682 becomes available.

1683
1684 Affirmative: Balfour, Kirkland, McKinney, Nunnally 4
1685 Negative: 0
1686 Absent: Wright 1

1687
1688 The Board granted these requests, as it found from the evidence presented that, due to
1689 the unique circumstances of the subject property, strict application of the County Code
1690 would produce undue hardship not generally shared by other properties in the area, and
1691 authorizing this variance will neither cause a substantial detriment to adjacent property
1692 nor materially impair the purpose of the zoning regulations.

1693
1694 **Beginning at 10:00**

1695
1696 Mr. Nunnally - Could we hear the rules for the 10:00 o'clock agenda.

1697
1698 Mr. Blankinship - The rules for this meeting are as follows. As Secretary, I will
1699 call each case. Then at that time the applicant should come to the podium. I will ask
1700 everyone who intends to speak on that case, in favor or in opposition, to stand and be
1701 sworn in. The applicants will then present their testimony. After the applicant has
1702 spoken, the Board will ask them questions, and then anyone else who wishes to speak
1703 will be given the opportunity. After everyone has spoken, the applicant, and only the
1704 applicant, will be given the opportunity for rebuttal. After hearing the case, and asking
1705 questions, the Board will take the matter under advisement. They will render all of their
1706 decisions at the end of the meeting. If you wish to know their decision on a specific
1707 case, you can either stay until the end of the meeting, or you can call the Planning
1708 Office later this afternoon, or you can check the website. The vote on each case will be
1709 posted to our website within an hour of the end of the meeting. This meeting is being
1710 tape recorded, so we will ask everyone who speaks, to speak directly into the
1711 microphone on the podium, to state your name, and to spell your last name please.
1712 And finally, out in the foyer, there are two binders, containing the staff report for each
1713 case, including the conditions that have been suggested by the staff. We have a
1714 deferral.

1715
1716 **A-134-2004** **WILLIAM E. MARANO** requests a variance from Sections 24-
1717 95(c)(1) and 24-9 to build a one-family dwelling at 2801 Irisdale
1718 Avenue (Hermitage Park) (Parcel 777-746-9404), zoned R-4, One-
1719 family Residence District (Brookland). The minimum side yard
1720 setback and public street frontage requirement are not met. The
1721 applicant has 46 feet public street frontage and a minimum side
1722 yard setback of 6 feet, where the Code requires 50 feet public
1723 street frontage and a minimum side yard setback of 7 feet. The
1724 applicant requests a variance of 4 feet public street frontage and 1
1725 foot side yard setback.
1726

1727 Mr. Marano - My name is William Marano, and we have requested a
1728 variance to build a house on the lot at 2801 Irisdale Avenue.
1729

1730 Ms. Dwyer - Did you want to defer that case and hear it another day, or
1731 did you want to hear it today?
1732

1733 Mr. Marano - I'd like to hear it today.
1734

1735 Mr. Nunnally - We had information that you were deferring it.
1736

1737 Mr. Marano - No. I was called before, and they told me that there were
1738 going to be two cases before they said the one that the house was on, which is 2803,
1739 and the one we are talking about today, the variance is for, is 2801, the corner lot.
1740 When I talked to the man at the Administrative Building, he said that he thought there
1741 were going to be two cases, so one was going to be taken today, the one on the house,
1742 and then this one would be next month. I said when we talked to them over there, they
1743 said the lot on the house at 2803 was grandfathered in, because that's the way it had
1744 been all along, and they were going to take under consideration for just this lot on the
1745 corner here today.
1746

1747 Mr. Blankinship - My understanding was that in addition to the request that
1748 was advertised, you found out later that you also needed a variance from the side yard
1749 setback. So in order to add that in, we were going to defer it to next month and pick up
1750 the whole issue at once, rather than take half of it this month and half of it next month.
1751

1752 Mr. Kirkland - Because we would have to re-advertise it.
1753

1754 Mr. Marano - Yes. That was really what it was about, was the three feet
1755 on the side of Woodrow Terrace that my father-in-law had donated to the County, I
1756 forgot what year it was, years ago. We thought that the three feet that he donated, if we
1757 were allowed to have that for the variance, then it would amount almost to the 50 feet.
1758

1759 Mr. Blankinship - But you hadn't proposed that when you applied; that just
1760 came up a week or two ago.
1761

1762 Mr. Marano - No, when we first applied for the variance, we brought that to

1763 their attention at that time.
1764
1765 Mr. Blankinship - So in order to add that now, the case would have to be
1766 deferred to next month, because the side yard setback was not advertised, just the
1767 public street frontage.
1768
1769 Mr. Nunnally - We have to re-advertise that.
1770
1771 Ms. Dwyer - This says side yard setback in our case report, one-foot side
1772 yard setback.
1773
1774 Mr. Blankinship - I think that was added after the ad was published though.
1775
1776 Ms. Dwyer - We're just trying to decide whether we need to re-advertise
1777 the case and defer it to next month because all the information has to be advertised in
1778 order for us to hear the case.
1779
1780 Mr. Marano - I thought it was before it was advertised. The contractor was
1781 to take the dimensions of the house, that he was going to put on the lot, and he said if
1782 he brought it over there the next morning, and I don't remember the days, because I
1783 don't have the date in my mind, but they told him if he got there the next morning with it,
1784 then it could probably be heard today.
1785
1786 Ms. Dwyer - We're going to check on that.
1787
1788 Mr. Blankinship - Yes, it needs to be re-advertised for next month.
1789
1790 Mr. Marano - Is that all?
1791
1792 Mr. Nunnally - Do you request that it be deferred to next month?
1793
1794 Upon a motion by Mr. Kirkland, seconded by Ms. Dwyer, the Board **deferred** application
1795 **A-134-2004** for a variance to build a one-family dwelling at 2801 Irisdale Avenue. The
1796 case was deferred at the request of the applicant, from the October 21, 2004, until the
1797 November 18, 2004, meeting.
1798
1799 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4
1800 Negative: 0
1801 Absent: Wright 1
1802
1803 The Board deferred the request because new information was submitted after the case
1804 was advertised.
1805
1806 **A-132-2004** **STEVEN C. SINNENBERG** requests a variance from Section 24-94
1807 to build a one-family dwelling at 2000 Pemberton Road (Parcel
1808 749-751-7350), zoned A-1, Agricultural District (Tuckahoe). The lot
1809 width requirement is not met. The applicant has 98 feet lot width,
1810 where the Code requires 150 feet lot width. The applicant requests

1811 a variance of 52 feet lot width.
1812
1813 Mr. Nunnally - Does anyone else desire to speak with reference to this
1814 case? Would you raise your right hand and be sworn please?
1815
1816 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1817 truth, the whole truth, and nothing but the truth, so help you God?
1818
1819 Mr. Sinnenberg - I do. My name's Steve Sinnenberg. What I'm requesting is,
1820 there's an existing house on this property that's a fairly old house, built about 1950, and
1821 what I really would like to do is build a house behind it and going back towards the back
1822 of the property, and I think it's situated on the map fairly well, and then tear down the
1823 house in front, so I can move off of Pemberton Road a little bit, and build a little bit more
1824 modern structure in there on the same property.
1825
1826 Ms. Dwyer - What are your plans for the rear of the property? It's kind of
1827 flag-shaped, and you have a fair amount of property in the back. You don't have plans
1828 to subdivide that?
1829
1830 Mr. Sinnenberg - No.
1831
1832 Ms. Dwyer - I guess one of the things that I noticed on the site was that if
1833 you have your house too far back, then you're out of alignment with the existing houses
1834 along the roadway, so that causes me a little concern. How far back would you want to
1835 go on the lot?
1836
1837 Mr. Sinnenberg - I'd like to start it about where that lot # 50 is, where the front
1838 of the house would be at lot # 50, so it actually lines up with the house across the back.
1839 I know there are two more that will be up close to the road, but it's only about 54 feet
1840 back from the road or so.
1841
1842 Ms. Dwyer - So the new house would be about 50 feet back, you say?
1843
1844 Mr. Sinnenberg - No, it would start about where that peg closest to Pemberton
1845 Road is on lot 50, where it is on the drawing.
1846
1847 Ms. Dwyer - What style house would it be?
1848
1849 Mr. Sinnenberg - One-story ranch.
1850
1851 Ms. Harris - Do you have the plans for that proposed house?
1852
1853 Mr. Sinnenberg - Not yet, no.
1854
1855 Ms. Harris - On the picture that shows the private driveway, can you
1856 explain, if we can get that picture that shows the older house that you're going to tear
1857 down. This is the house that you're going to tear down, right, this frame house? The
1858 houses that we see in the background, are you going to put your new house on that

1859 level, or is that across the street?
1860
1861 Mr. Sinnenberg - That's across Pemberton Road.
1862
1863 Ms. Harris - So it's going in the other direction.
1864
1865 Mr. Sinnenberg - That's from the back of the house towards Pemberton.
1866
1867 Ms. Dwyer - Are you familiar with the conditions that staff has
1868 recommended for the case?
1869
1870 Mr. Sinnenberg - Yes, the three conditions, yes.
1871
1872 Ms. Dwyer - There's a requirement that you apply for a demolition permit
1873 at the time you apply for a building permit, and that before you can occupy.
1874
1875 Mr. Sinnenberg - I don't have a problem with that. The only question I would
1876 have is on # 2. It calls for a well location, and it's public water now. I would keep public
1877 water.
1878
1879 Ms. Dwyer - So that's not applicable.
1880
1881 Mr. Nunnally - It's going to be a brick rancher or what?
1882
1883 Mr. Sinnenberg - Right now I would think it's a frame rancher; I really haven't
1884 checked the dollars on that yet.
1885
1886 Ms. Dwyer - Mr. Blankinship, can you tell me how far this is from
1887 Pemberton?
1888
1889 Mr. Blankinship - I eyeball it a little less than 200 feet, 180 feet.
1890
1891 Mr. Kirkland - Mr. Sinnenberg, what are you going to do with the property if
1892 you knock the house down? Are you just going to plant grass?
1893
1894 Mr. Sinnenberg - Right, it will be lawn in front.
1895
1896 Ms. Dwyer - Would you consider having it not quite as far from
1897 Pemberton, so it's not so far out of alignment with the neighboring houses?
1898
1899 Mr. Sinnenberg - I could do that; it's really more of a function of can I get the
1900 house built without tearing the other one down first.
1901
1902 Ms. Dwyer - Right. It's a practical matter.
1903
1904 Mr. Sinnenberg - As close up as we can come to the back of that house is
1905 fine. I understand there's a septic field; I haven't really found it yet, but there's a septic
1906 field to the back of the house, as you're facing the front house, off to the left. So to

1907 make sure we don't run into that either.
1908
1909 Ms. Dwyer - And if you did, then you would really need to fix that
1910 problem. For that reason, I think I would hesitate to put a requirement or a condition
1911 that you build the house within a specified distance, because you don't know where the
1912 drain field is, and it might interfere with that.
1913
1914 Mr. Sinnenberg - It may.
1915
1916 Mr. Blankinship - Do you intend to put in a new drain field, or are you going to
1917 connect to public sewer?
1918
1919 Mr. Sinnenberg - There's access to public sewer off of the back of the
1920 property. That's about an 800-foot run or so. I don't know about the economics of that.
1921 The very back, where you're talking about that wooded area in the back. That's very
1922 low and wet, and that's really not conducive to a drain field or anything, so I think it
1923 would have to be up towards the front of the house. I don't know if we can take out the
1924 old one and send it in the other direction or what. That's one of the nuts and bolts that
1925 hasn't been worked out yet. There is a drain field there now, so I feel fairly certain
1926 there's no problem with it, so I feel fairly certain we can get one in. I think I have to go
1927 through about 100 feet of one of my neighbor's yards for the easement, and I'd like to
1928 avoid that.
1929
1930 Ms. Dwyer - What if we had a condition that said that the house will be no
1931 farther off the road than 200 feet?
1932
1933 Mr. Sinnenberg - Including the back of it, or are you talking about the front?
1934
1935 Ms. Dwyer - The front edge of the house.
1936
1937 Mr. Sinnenberg - I don't think that's a problem. I think even 150 feet would be
1938 okay.
1939
1940 Mr. Kirkland - Since you don't know where the existing drain field is, how
1941 far the runners are out on it, at this point, you'd better stay with the 200 feet, because if
1942 you come in any closer

1943
1944 Mr. Sinnenberg - The back of the house is at 80 feet, and the drain field is
1945 fairly close to that, but

1946
1947 Mr. Kirkland - You don't know which way it's running – lateral, from the left,
1948 right, up, down – it was put in a long time ago I assume.
1949
1950 Mr. Sinnenberg - I'm sure it was.
1951
1952 Mr. Nunnally - So we'll say 200 feet?
1953
1954 Ms. Dwyer - Yes, but if possible, I think it would be aesthetically more

1955 pleasing to have the house as close as you can get it, but I'm not going to obligate you
1956 at this point, because it's a fine aesthetic issue, and not as much a zoning question.

1957
1958 Mr. Nunnally - Any other questions for Board? Staff? Anyone else want to
1959 speak for this case?

1960
1961 Ms. Boyle - My name is Jane Boyle; I live at 2005 Rockstone Place, and
1962 I've just been in very casual discussion with my neighbors, and our only concern was
1963 what he plans to do with the back part of that property, because all of our properties
1964 back onto it. As you mentioned, you don't have any plans, so I just wanted to be sure
1965 that because it's zoned agricultural, that there aren't going to be any stables built or
1966 horses back there, or anything like that. That was my only concern, which you have
1967 answered.

1968
1969 Mr. Nunnally - Thank you ma'am. You can rebut now.

1970
1971 Mr. Sinnenberg - It's not really a rebuttal, as much as – the land in there is
1972 very low, and there's a lot of old pines down, and it's really a problem, you walk back in
1973 there and fill those. You walk through there, and you're knee deep in a pine hole, so
1974 there's not going to be any livestock or anything going through there. My dogs will run
1975 through there.

1976
1977 Ms. Dwyer - As far as horses are concerned, there are limits to that, even
1978 in an agricultural district.

1979
1980 Mr. Blankinship - Yes, there'd be distance requirements that couldn't possibly
1981 be complied with here.

1982
1983 Mr. Nunnally - Is anyone else interested in this case? That concludes the
1984 case. Thank you for coming.

1985
1986 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.
1987 Kirkland, the Board **granted** application **A-132-2004** for a variance to build a one-family
1988 dwelling at 2000 Pemberton Road (Parcel 749-751-7350). The Board granted the
1989 variance subject to the following conditions:

1990
1991 1. This variance applies only to the lot width requirement. All other applicable
1992 regulations of the County Code shall remain in force.

1993
1994 2. Approval of this request does not imply that a building permit will be issued.
1995 Building permit approval is contingent on Health Department requirements, including,
1996 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
1997 of a well location.

1998
1999 3. At the time of building permit application for the proposed dwelling, the owner
2000 shall also apply for a demolition permit to remove the existing dwelling. Before a
2001 certificate of occupancy may be issued for the proposed one-family dwelling, the
2002 existing one-family dwelling shall be demolished.

2003
2004 4. [Added] The front of the house shall be set back no more than 200 feet from the
2005 right-of-way of Pemberton Road.

2006
2007 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4
2008 Negative: 0
2009 Absent: Wright 1
2010

2011 The Board granted this request, as it found from the evidence presented that, due to the
2012 unique circumstances of the subject property, strict application of the County Code
2013 would produce undue hardship not generally shared by other properties in the area, and
2014 authorizing this variance will neither cause a substantial detriment to adjacent property
2015 nor materially impair the purpose of the zoning regulations.

2016
2017 **A-133-2004** **PIZZERIA UNO** requests a variance from Section 24-96(b)(11) to
2018 build a restaurant at 5996 Audubon Drive (Parcel 823-716-1295),
2019 zoned B-3, Business District (Varina). The parking lot location
2020 requirement is not met. The applicant has 197 parking spaces,
2021 where the Code requires 213 parking spaces. The applicant
2022 requests a variance of 16 parking spaces.

2023
2024 Mr. Blankinship - I'm sorry; that's a typographic error. It should say "the
2025 number of parking spaces is not met."

2026
2027 Mr. Nunnally - Does anyone else desire to speak with reference to this
2028 case? Would you raise your right hand and be sworn please?
2029

2030 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2031 truth, the whole truth, and nothing but the truth, so help you God?
2032

2033 Mr. Andreano - I do. It's Chris Andreano, applicant. We are requesting a
2034 variance because we are a couple of spaces short, according to the County Code, to fit
2035 the size restaurant that we want to do, in the area indicated. We feel that because we
2036 are going onto a property with a hotel, and we've done some studies that indicate a
2037 number of the guests arrive by other means, and actually many of them ride several per
2038 vehicle, and that a number of our guests will be guests from the hotel, not requiring
2039 additional spaces, we feel like in this case, we probably don't need as many spaces as
2040 normally required.

2041
2042 Mr. Nunnally - You say a couple of parking spaces. You're talking about
2043 sixteen parking spaces.

2044
2045 Mr. Andreano - Sixteen, yes sir.

2046
2047 Mr. Nunnally - Did you require this survey that we have here, or did the
2048 hotel do this?
2049

2050 Mr. Andreano - The Planning Department recommended that we do that

2051 study, and the hotel itself actually did the study.
2052
2053 Ms. Harris - So this survey was actually based on reality, actual
2054 numbers?
2055
2056 Mr. Andreano - Actual numbers, correct.
2057
2058 Mr. Nunnally - You're with the restaurant; you're not with the hotel?
2059
2060 Mr. Andreano - Correct, I'm the restaurant owner, and I can assure
2061 everybody that I would not spend \$2,000,000 on a restaurant if I thought there was a
2062 parking problem. And the hotel as well. I don't think it would be in their interests either,
2063 to put us in there if they thought their guests would be squeezed out. We've had a
2064 number of discussions together, and we both feel like it won't be a problem. We also
2065 anticipate there's another hotel just to the back of it, a micro-hotel, that we anticipate a
2066 large number of our guests would come from that hotel as well, without a vehicle. They
2067 could walk right from over there.
2068
2069 Mr. Nunnally - I've driven by there several times this week, at different
2070 times of the day, and I don't think you'd have any problem with that parking.
2071
2072 Mr. Andreano - That's our feeling, yes sir.
2073
2074 Mr. Kirkland - What's your hours of operation?
2075
2076 Mr. Andreano - We open lunch at 11:00 o'clock, and typically serve until
2077 midnight, seven days a week.
2078
2079 Ms. Harris - Will you have a connecting driveways or walkways, or have
2080 you thought that far?
2081
2082 Mr. Andreano - The building would fit right on that space, and really won't
2083 change much of the existing format right there. We're going to use most of the existing
2084 sidewalks. Most of the infrastructure is in place, and it's really just a matter of dropping
2085 the building right on the pads, so we don't anticipate, we're going to have to make a little
2086 bit of an adjustment to fit the building. There's a trash dumpster there right now that
2087 we'll have to take out, but not many changes to it.
2088
2089 Mr. Blankinship - Is this the first Pizzeria Uno in the Richmond area?
2090
2091 Mr. Andreano - There's actually – I have two down in Chesterfield County,
2092 and this would be the first in Henrico.
2093
2094 Mr. Nunnally - Any other questions from the Board? Staff? That concludes
2095 the case. Thank you for coming.
2096
2097 Mr. Andreano - May I just mention, I think there are three suggested
2098 conditions, and we're fine with those. Thank you very much.

2099
2100 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
2101 Dwyer, the Board **granted** application **A-133-2004** for a variance to build a restaurant at
2102 5996 Audubon Drive (Parcel 823-716-1295). The Board granted the variance subject to
2103 the following conditions:

2104
2105 1. This variance applies only to the parking requirement. All other applicable
2106 regulations of the County Code shall remain in force.

2107
2108 2. All conditions on plan of development POD 94-98 shall remain in force.

2109
2110 3. If experience shows that the parking is not sufficient, the owner of the property
2111 will be required to rectify the situation by acquiring additional parking, adjusting the
2112 operation of the property, or other means that alleviate the parking shortage.

2113
2114 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4
2115 Negative: 0
2116 Absent: Wright 1

2117
2118 The Board granted this request, as it found from the evidence presented that, due to the
2119 unique circumstances of the subject property, strict application of the County Code
2120 would produce undue hardship not generally shared by other properties in the area, and
2121 authorizing this variance will neither cause a substantial detriment to adjacent property
2122 nor materially impair the purpose of the zoning regulations.

2123
2124 **A-135-2004** **MINNIELAND CHILD CARE** requests a variance from Section 24-
2125 94 to allow the existing building to remain at 9307 Quioccasin Road
2126 (Sunset Park) (Parcel 749-745-5274), zoned O-2, Office District
2127 (Tuckahoe). The front yard setback is not met. The applicant has
2128 30 feet front yard setback, where the Code requires 40 feet front
2129 yard setback. The applicant requests a variance of 10 feet front
2130 yard setback.

2131
2132 Mr. Nunnally - Does anyone else desire to speak with reference to this
2133 case? Would you raise your right hand and be sworn please?

2134
2135 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2136 truth, the whole truth, and nothing but the truth, so help you God?

2137
2138 Mr. Schuster - Yes I do. My name is Christopher Schuster. I'm General
2139 Counsel with Minnieland Private Day School, Inc. and I represent the corporation and
2140 the owners, Charles and Jacqueline Leopold. Today we are requesting a variance of
2141 ten feet on the front yard setback, to allow the school that's already in existence, to
2142 remain on that location. I'll just give you a little background. The center initially had a
2143 frontage road of Quioccasin Road, because the lot was one whole lot. Subsequently,
2144 the lot was subdivided, and it shifted the frontage road from Quioccasin Road to Shane
2145 Road, and thus we run into our problem with our front yard setback. As we understand
2146 it, the subdivision of the lot was made prior to the purchase by the current owners, and I

2147 also understand that there's a current office building that will be going in on that lot
2148 that's above the lot with the child care center, I think a dental office, I'm not completely
2149 sure.

2150
2151 Ms. Dwyer - So basically when this lot was subdivided, you didn't get
2152 frontage on Quioccasin, even though the building had already been constructed as if it
2153 had frontage on Quioccasin.

2154
2155 Mr. Schuster - It faces Quioccasin, yes. Even with the construction of the
2156 office building, there will still be an entrance, as I understand it, from Quioccasin, that
2157 will go into the shared parking lot, for the childcare center and the office building.

2158
2159 Mr. Kirkland - So you'll have two entrances.

2160
2161 Mr. Schuster - Yes, there's an entrance off of Shane Road, and there will
2162 be an entrance off Quioccasin Road. There will be a joint maintenance agreement for
2163 the parking lot, because the parking lot will be basically shared.

2164
2165 Mr. Kirkland - Did your client own the whole parcel and then subdivide it, or
2166 was this something that happened?

2167
2168 Mr. Schuster - As I understand it, I believe that it was subdivided for
2169 Minnieland, and the Leopolds purchased it, but I'm not completely aware of what
2170 happened. This was, I believe, somewhere around five years ago.

2171
2172 Ms. Dwyer - The staff report says in 1982 it was developed under a POD
2173 that showed it divided, but I'm thinking maybe what's implicit in this statement is that at
2174 the time of the POD, no one really thought about the road frontage issue.

2175
2176 Mr. O'Kelly - I don't recall it being divided with the POD. I think it
2177 happened later on after construction.

2178
2179 Ms. Dwyer - The report says the POD showed two buildings.

2180
2181 Mr. O'Kelly - It did, an office building and the child care center, and the
2182 office building, of course, wasn't constructed. But recently there's been a new POD for
2183 a new office building that has been approved.

2184
2185 Ms. Dwyer - With the original POD, it showed two building, but it was still
2186 one parcel. It was the subdivision that really caused the problem after the fact.

2187
2188 Mr. Schuster - It was divided in this manner, as I understand it, so that they
2189 were roughly equal size lots. That's why it's kind of a strange division. They had to
2190 divide it this way too, because of the playground for the childcare center being on the
2191 side and rear portion of the lot.

2192
2193 Ms. Dwyer - This says the POD showed a new property line.

2194

2195 Mr. O’Kelly - I don’t believe it did, Ms. Dwyer.
2196
2197 Mr. Kirkland - Mr. O’Kelly’s been here a long time.
2198
2199 Ms. Dwyer - And he has a very good memory. In any event, there
2200 appears to have been a subsequent subdivision of the property, either after the POD
2201 was approved, or after the building was built, and it’s that subdivision that created ...
2202

2203 Mr. Schuster -a problem that we weren’t aware of until this summer,
2204 because no one had even given it a second thought, to be honest.
2205

2206 Mr. Nunnally - Any other questions from the Board? Staff? Hearing none,
2207 that concludes the case. Thank you for coming sir.
2208

2209 After an advertised public hearing and on a motion by Mr. Dwyer, seconded by Mr.
2210 Kirkland, the Board **granted** application **A-135-2004** for a variance to allow the existing
2211 building to remain at 9307 Quioccasin Road (Sunset Park) (Parcel 749-745-5274). The
2212 Board granted the variance subject to the following condition:
2213

2214 1. This variance applies only to the front yard setback requirement. All other
2215 applicable regulations of the County Code shall remain in force.
2216

2217 Affirmative:	Dwyer, Harris, Kirkland, Nunnally	4
2218 Negative:		0
2219 Absent:	Wright	1

2220
2221 The Board granted this request, as it found from the evidence presented that, due to the
2222 unique circumstances of the subject property, strict application of the County Code
2223 would produce undue hardship not generally shared by other properties in the area, and
2224 authorizing this variance will neither cause a substantial detriment to adjacent property
2225 nor materially impair the purpose of the zoning regulations.
2226

2227 On a motion by Ms. Dwyer, seconded by Mr. Kirkland, the Board voted to hold
2228 the **approval** of the Minutes of the June 24 and July 22, 2004, Henrico County
2229 Board of Zoning Appeals meeting until the November 18, 2004, meeting.
2230

2231 There being no further business, and on a motion by Ms. Harris, seconded by
2232 Ms. Dwyer, the Board adjourned until **November 18, 2004**, at 9:00 am.
2233

2234
2235 Russell A. Wright, Esq.
2236 Chairman

2237
2238
2239 Benjamin Blankinship, AICP
2240 Secretary