

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**  
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY**  
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**  
4 **COMPLEX, ON THURSDAY, OCTOBER 25, 2007, AT 9:00 A.M., NOTICE**  
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**  
6 **OCTOBER 4, 2007 AND OCTOBER 11, 2007.**

7  
Members Present: Richard Kirkland CBZA, Chairman  
Elizabeth G. Dwyer, Vice-Chairman  
Helen E. Harris  
James W. Nunnally  
R. A. Wright

Also Present: David D. O'Kelly, Assistant Director of Planning  
Benjamin Blankinship, Secretary  
Paul Gidley, County Planner  
Carla Brothers, Recording Secretary

8  
9 Mr. Kirkland - Good morning, ladies and gentlemen, welcome to the  
10 October Board of Zoning Appeals meeting. Before we get started, let's all stand  
11 and say the **Pledge of Allegiance to the Flag of Our Country**. Before we start  
12 the agenda, I have one other thing I'd like to take care of. Mr. Nunnally, join me  
13 at the podium, how about that.

14  
15 Ladies and gentlemen, I've only been on this Board for approximately 10 years,  
16 and Mr. Nunnally was here when I came. He's been on the Board of Zoning  
17 Appeals for 32 years. He was chairman before me for the past two terms. We'd  
18 like to recognize him with a little plaque here, all of us—August 25, 2005 to  
19 August 23, 2007, Chairman of the Board of Zoning Appeals. We'd like to thank  
20 you for all your help.

21  
22 Mr. Nunnally - Thank you, you were a great vice chairman. In fact, I  
23 tried to get in the seat twice today, and he ran me out both times. It has been a  
24 pleasure to serve on this Board for so long. I would like to say that we have  
25 another man on the Board, Mr. Wright, who's on his 35<sup>th</sup> year. I've got a long  
26 way to go to catch him.

27  
28 Mr. Kirkland - Mr. Blankinship, if you would, would you read the  
29 rules of the meeting for us.

30  
31 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,  
32 ladies and gentlemen, the rules for this meeting are as follows. Acting as  
33 Secretary, I will announce each case and while I'm speaking, the applicant  
34 should come down to the podium. We will then ask everyone who intends to  
35 speak on that case to stand and be sworn in. Then the applicant will present

36 their testimony and then anyone else who wishes to speak will be given the  
37 opportunity. After everyone has spoken, the applicant and only the applicant will  
38 have an opportunity for rebuttal. After the Board members have heard all the  
39 testimony and asked any questions, they will take the matter under advisement  
40 and they will render all of their decisions at the end of the meeting. If you wish to  
41 know their decision on a specific case, you can either stay until the end of the  
42 meeting or you can check the Planning Department website this afternoon—we  
43 usually get it updates within about a half an hour of the end of the meeting—or  
44 you can call the Planning Department this afternoon. This meeting is being tape  
45 recorded, so we'll ask everyone who speaks to speak directly into the  
46 microphone on the podium, state your name, and please spell your last name so  
47 that we get it spelled correctly in the record. Finally, out in the foyer, there is a  
48 binder containing the staff report for each case. Particularly on use permit cases,  
49 those staff reports include the suggested conditions and you need to be familiar  
50 with all those conditions.

51

52 Mr. Chairman, we left a note on the desk that two of our cases have been  
53 withdrawn. We have also received one request for a deferral to November 15<sup>th</sup>,  
54 which is the first case on the agenda, Gillies Creek, UP-18-07.

55

56 **UP-018-07** **GILLIES CREEK INDUSTRIAL RECYCLING, LLC**  
57 requests a conditional use permit pursuant to Section 24-88(c) to develop a  
58 wetlands mitigation bank at 5500 White Oak Drive (Parcels 864-704-2093, 860-  
59 709-5622 and 863-706-3470), zoned C-1, Conservation District (Varina).

60

61 Mr. Kirkland - Can I have a motion for the deferral of UP-018-07,  
62 Gillies Creek Industrial Recycling, LLC?

63

64 Mr. Nunnally - I so move. How many times can we defer this, Mr.  
65 Blankinship?

66

67 Mr. Blankinship - At the applicant's request, we can defer it until they're  
68 ready to have it heard.

69

70 Mr. Nunnally - Okay.

71

72 Mr. Blankinship - You can't continue to defer a case that they did not  
73 ask to have deferred.

74

75 Mr. Nunnally - Okay.

76

77 Mr. Wright - Second.

78

79 Mr. Kirkland - Motion by Mr. Nunnally, seconded by Mr. Wright. All  
80 those in favor say aye. All those opposed say no. The ayes have it, the motion  
81 carries. The case is deferred.

82  
83 After an advertised public hearing, **UP-018-07, Gillies Creek Industrial**  
84 **Recycling, LLC** has been **deferred** until the November 15, 2007 meeting at  
85 request of the applicant.  
86  
87 Ms. Dwyer - May I ask staff something about this particular case?  
88 There was no reclamation plan in our packet. Is that because we didn't receive  
89 one? We usually get those.  
90  
91 Mr. Blankinship - It wasn't in the package? Okay.  
92  
93 Ms. Dwyer - Not that I got.  
94  
95 Mr. Blankinship - I'm almost certain we did receive one.  
96  
97 Ms. Dwyer - Okay.  
98  
99 Mr. Blankinship - I'll make sure that that gets to you next month.  
100  
101 Ms. Dwyer - All right.  
102  
103 Ms. Harris - I have a question about this, too. There was constant  
104 referral to wetlands, a mitigation bank, and the development.  
105  
106 Mr. Blankinship - Yes ma'am.  
107  
108 Ms. Harris - Could we have more information on what that entails?  
109  
110 Mr. Blankinship - I think that'll be the heart of their presentation when it  
111 does finally come up.  
112  
113 Ms. Harris - Thank you.  
114  
115 Mr. Kirkland - Okay. We don't need a motion for the withdrawals, I  
116 don't believe.  
117  
118 Mr. Blankinship - No sir.  
119  
120 **UP-015-07** **RON BRUNETTE** requests a conditional use permit  
121 pursuant to Section 24-95(i)(4) to build a detached garage in the side yard at 109  
122 Kanawha Road (Chatham Hills) (Parcel 764-731-5850), zoned R-1, One-family  
123 Residence District (Tuckahoe).  
124  
125 The Board **allowed withdrawal** of the **UP-015-07**, as requested by the applicant.  
126

127 **A-029-07** **LIFELINE FOR JESUS COMMUNITY CHURCH**  
128 requests a variance from Section 24-94 to build additions to a church at 3705  
129 Meadowbridge Road (Highland Gardens) (Parcel 795-737-0236), zoned B-1,  
130 Business District (Fairfield). The front yard setback and rear yard setback are not  
131 met. The applicant proposes 17 feet front yard setback and 8 feet rear yard  
132 setback, where the Code requires 25 feet front yard setback and 40 feet rear  
133 yard setback. The applicant requests a variance of 8 feet front yard setback and  
134 32 feet rear yard setback.

135  
136 The Board **allowed withdrawal** of the **UP-029-07**, as requested by the applicant.

137  
138 Mr. Kirkland - Okay. So noted, because it was advertised in the  
139 paper. All right, call the first one.

140  
141 **A-031-07** **LAMPKIN HOMES, INC** requests a variance from  
142 Section 24-94 to allow a new dwelling to remain at 220 Pondorosa Drive (Parcel  
143 837-719-5933), zoned A-1, Agricultural District (Varina). The front yard setback  
144 and rear yard setback are not met. The applicant has 46 feet front yard setback  
145 and 39 feet rear yard setback where the Code requires 50 feet front yard setback  
146 and 50 feet rear yard setback. The applicant is requesting a variance of 4 feet  
147 front yard setback and 11 feet rear yard setback.

148  
149 Mr. Kirkland - Anyone else wish to speak on this case? All right,  
150 guys, if you'd raise your right hands and be sworn in.

151  
152 Mr. Blankinship - Do you swear the testimony you're about to give is  
153 the truth and nothing but the truth so help you God?

154  
155 Ms. Lampkin - I do.

156  
157 Mr. Kirkland - Would you state your name for the record, please,  
158 and state what you want.

159  
160 Ms. Lampkin - I'm Lilia Lampkin. I am requesting to allow a new  
161 dwelling to remain on the existing property. As read, setbacks are not met and  
162 we need to get a variance in order to allow the new dwelling to remain.

163  
164 Ms. Dwyer - On what basis are you requesting the variance? I  
165 understand the factual basis, but under the law, there are specific reasons for  
166 requesting a variance and so I'm wondering which one you're applying under.

167  
168 Ms. Lampkin - Right. Okay. That the reasonable use of the property  
169 is to allow the property's dwelling to remain.

170  
171 Ms. Dwyer - Okay.

172

173 Ms. Harris - Ms. Lampkin, was there a reason that the rear  
174 setback was 39 feet instead of 50?  
175  
176 Ms. Lampkin - Well, what happened was, the lines got drawn. We  
177 made a very bad mistake on this particular house. We do building. What  
178 happened was, the lot itself is very odd-shaped, as you can see—you have the  
179 same papers I do, I guess—the way it's like a triangle lot. We felt that we had  
180 the lot line correct when it was pulled, and it was not.  
181  
182 Mr. Wright - But it is clear that this house can be put on this lot  
183 within the requirements of the County Code.  
184  
185 Ms. Lampkin - With extensive work, because of it being a brick  
186 foundation built from the ground up.  
187  
188 Mr. Wright - But it can. Is that correct, Mr. Blankinship?  
189  
190 Mr. Blankinship - Yes sir.  
191  
192 Mr. Wright - It's just a matter of an error that they made. I have a  
193 plat that was signed by Michele T. Brightwell. Was personally updated and  
194 verified the setbacks, and takes full responsibility for the changes made.  
195  
196 Ms. Dwyer - The information we have is that the County did not  
197 want to issue the original permit because the surveyor had not submitted  
198 drawings showing and verifying exactly where the location of the house would be  
199 on the lot. The County rejected that and then she signed this document, came  
200 back and said, "I take full responsibility for the location of this house on the lot."  
201 It seems clear that the County gave the builder ample warning that they needed  
202 to get a surveyor to place the house and then the builder didn't do it, and even  
203 signed the plot plan itself saying, "I personally verify that the setbacks are valid  
204 and correct, and I take responsibility for the changes made." So, it seems pretty  
205 clear to me that the mistake was not the County's; the mistake was the builder's,  
206 even after being warned by the County.  
207  
208 Ms. Lampkin - Right. Again, I am the applicant. I am the current  
209 owner.  
210  
211 Ms. Dwyer - Right.  
212  
213 Ms. Lampkin - I had kept Brightwell Construction to do the  
214 construction for us.  
215  
216 Ms. Dwyer - Right.  
217

218 Ms. Lampkin - Therefore, I'm at the County's mercy on being able to  
219 leave the house where it's at and not having a humongous cost in having to  
220 move the house, if that's what the County would request us to do. The criteria  
221 around it, again, it's not like it's in a subdivision and it's encroaching on anyone  
222 else's property. That's not the case. The lot to the left is vacant, the land across,  
223 and it's all wooded. It's not like it's sitting, again, in a subdivision where it's  
224 encroaching on someone else's property that they would be building up against  
225 also. That's what I'm, again, basing my request on, is that we be able to leave  
226 the dwelling as it is.

227  
228 Mr. Blankinship - The authority of the Board to grant a variance is very  
229 narrowly constrained by State law, and a couple years ago, the Virginia Supreme  
230 Court restated that law in a way that was very blunt. Certainly, the detrimental  
231 impact on the neighbors is one of the factors that has to be considered, but that  
232 alone is not sufficient for the Board to have the authority to grant it.

233  
234 Mr. Nunnally - Ms. Lampkin, you sold this to a Mr. Brightwell?  
235  
236 Ms. Lampkin - No, Brightwell sold the property to us and continued  
237 to construct the home for us.

238  
239 Mr. Nunnally - They're going to construct the home.

240  
241 Ms. Lampkin - They have. It's already built.

242  
243 Mr. Nunnally - Built. Already built.

244  
245 Ms. Lampkin - It's ready to be occupied and when I found out that we  
246 had a problem is when I was trying to get the occupancy permit, and I was  
247 advised that the setbacks were not met.

248  
249 Mr. Wright - You bought the home without having a survey made?

250  
251 Ms. Lampkin - I bought the lot back in March of '07. There had been  
252 an original survey done, but not with the house on it at that time, the as-built  
253 survey. We did the as-built at the very end when the house was constructed  
254 because the County requires us to have an as-built survey.

255  
256 Mr. Wright - Who constructed the house for you?

257  
258 Ms. Lampkin - R. S. Brightwell Construction.

259  
260 Mr. Wright - Brightwell.

261  
262 Ms. Lampkin - Mmm-hmm.

263

264 Mr. Wright - So, if you have any claim, it would be against them.  
265  
266 Ms. Lampkin - They're here with me today if you have any questions  
267 for them to address. Again, me being the owner, I felt it was proper that I be the  
268 applicant because I am the owner.  
269  
270 Mr. Wright - That's certainly proper for you to be the applicant.  
271  
272 Mr. Kirkland - Mr. Blankinship, so the County granted the permit  
273 because of the clause that was stated on the plot plan?  
274  
275 Mr. Blankinship - Yes. I would just point out that that's very unusual. I  
276 don't know that I've ever seen one quite like this. It's certainly very unusual that  
277 we would ask an applicant to make a statement of personal responsibility like  
278 that. That member of staff is no longer with us, but speaking with other staff  
279 members in the Permit Center, everyone was pretty confident that there must  
280 have been quite a debate between the plan's reviewer and the applicant; of the  
281 plan's reviewer trying to convince the applicant this is not going to fit in this  
282 location, you need to move it, and the applicant refusing.  
283  
284 Ms. Dwyer - Is someone from Brightwell Construction here.  
285  
286 Ms. Brightwell - I'm Michele Brightwell.  
287  
288 Ms. Dwyer - Okay.  
289  
290 Ms. Brightwell - Who signed the agreement. When I went to the  
291 Permit Center, that's what they asked me to do, was to review it. They made all  
292 of the changes that went through the whole system, and then they brought it  
293 back to me and asked me to sign that I would take full responsibility.  
294  
295 Ms. Dwyer - Did they ask you to get a survey to show where the  
296 building site would be?  
297  
298 Ms. Brightwell - No ma'am. They just asked me to draw it on there.  
299  
300 Mr. Wright - But they did refuse the permit initially, right? That's  
301 what our information says, that they refused to grant the permit because they  
302 thought that the house was in the wrong location.  
303  
304 Ms. Brightwell - They just asked us to change it around and that's  
305 what I did and that's what I signed on for.  
306  
307 Mr. Wright - How many times did you go to the Permit Center?  
308  
309 Ms. Brightwell - Twice.

310  
311 Mr. Wright - Twice?  
312  
313 Ms. Brightwell - And I went to Public Works once and the Health  
314 Department one time.  
315  
316 Mr. Wright - They turned you down the first time in the Permit  
317 Center, right?  
318  
319 Ms. Brightwell - It was a long process. I don't remember exactly if  
320 they did turn it down, but we just had to make the changes, and that's what  
321 [unintelligible].  
322  
323 Mr. Wright - So, you had to sign this paper.  
324  
325 Ms. Brightwell - Right.  
326  
327 Mr. Wright - Right.  
328  
329 Ms. Brightwell - And they made the changes and said as long as it  
330 said that, then it was okay.  
331  
332 Mr. Wright - Did you take anything back after, to show them that  
333 you were going to change it, the location of the house?  
334  
335 Ms. Brightwell - No. The person that I spoke with just asked me to  
336 sign those plans. He made the changes and said, "Sign this. Put on there that  
337 you take full responsibility." And he had asked several people what he was  
338 supposed to do and he came back to the desk and—  
339  
340 Ms. Dwyer - But what—  
341  
342 Ms. Brightwell - And then after that, it went to several more people  
343 and everybody signed off on it.  
344  
345 Ms. Dwyer - The plans do show that the house would have the  
346 proper setbacks.  
347  
348 Ms. Brightwell - Right.  
349  
350 Ms. Dwyer - The plans show a 50-foot setback in the rear and a  
351 60-foot setback in the front.  
352  
353 Ms. Brightwell - And that's what I signed for.  
354  
355 Ms. Dwyer - But that's not what you built.



356  
357 Ms. Brightwell - Yes ma'am.  
358  
359 Ms. Dwyer - Okay.  
360  
361 Ms. Brightwell - Yeah, I didn't do the setback.  
362  
363 Ms. Harris - Did Ms. Lampkin know this when you sold the house  
364 to her, when the company, when the contractor sold it?  
365  
366 Ms. Brightwell - No, we didn't know this until the surveyor came out  
367 and did the final survey for the Certificant of Occupancy.  
368  
369 Ms. Harris - What date?  
370  
371 Ms. Lampkin - August of 2007.  
372  
373 Ms. Brightwell - When we had the foundation and the footing  
374 inspections all done, nobody brought that to our attention then that it was wrong,  
375 because it could have been cleared up, obviously, much quicker at the time, had  
376 they measured, you know, had the inspectors measured then the setbacks of the  
377 footing and the foundation.  
378  
379 Mr. Wright - It's not your policy to have a surveyor come out and  
380 set the foundation for you?  
381  
382 Ms. Brightwell - Well, I was just told by the County. I just did what  
383 they asked me to.  
384  
385 Mr. Wright - That's your responsibility, not the County's. Any  
386 builder ought to have a surveyor come and set the corners for them to ensure  
387 that they meet the County requirements.  
388  
389 Ms. Dwyer - Or that they meet what the builder has represented to  
390 the County.  
391  
392 Ms. Brightwell - Right.  
393  
394 Ms. Dwyer - Represented as the setbacks, as would be required  
395 by Code.  
396  
397 Ms. Brightwell - Right.  
398  
399 Ms. Dwyer - It's your responsibility, obviously, then, to make sure  
400 that that's correct, that you build what you represented you would build.  
401

402 Ms. Brightwell - Right.  
403  
404 Mr. O'Kelly - I have a question for Ms. Lampkin. The major  
405 variance that's being requested is for rear yard setback of 11 feet. Have you,  
406 perhaps, checked with the adjacent property owner to see if you could purchase  
407 a piece of property to meet that setback requirement?  
408  
409 Ms. Lampkin - That parcel of land is owned by the State of Virginia.  
410 The Commonwealth of Virginia owns that land and I'm not sure what would be  
411 involved as far as with it. That would be a subdivision. I mean, that would have  
412 to be maybe just a lot line change. I'm not sure if Zoning could answer that for  
413 me.  
414  
415 Mr. O'Kelly - That may be a possibility. You could check with the  
416 Commonwealth to see if they would be willing to sell you a piece of property.  
417  
418 Mr. Wright - That wouldn't take care of the front yard.  
419  
420 Mr. O'Kelly - No, it wouldn't.  
421  
422 Ms. Lampkin - No, it would not take care of the front.  
423  
424 [Off mike] - [Unintelligible.]  
425  
426 Ms. Lampkin - We do have on this the setback to the house is 51  
427 feet. The front porch is what brings it out further. Again, that's not livable space,  
428 but I know they count that.  
429  
430 Mr. Gidley - Mr. O'Kelly is correct, in that if you did purchase land  
431 at the rear that would solve that. The violation in the front is the size of the  
432 covered front porch. If the size of the covered front porch were reduced to no  
433 larger than 6 by 4, that would resolve your front setback situation, and then you  
434 would be clear.  
435  
436 Mr. Kirkland - Any other questions by Board members?  
437  
438 Ms. Dwyer - I would like to make a statement because the  
439 applicant did mention the Cochran standard, which is the threshold question to  
440 determine whether we even have jurisdiction or the authority to grant a variance,  
441 as to whether there is a reasonable beneficial use of the property. That means  
442 can you use this property to build a house, and the answer to that is yes, you can  
443 use this property to build it. In fact, you can use this property to build the house  
444 that you have built, you just built it in the wrong place. As I understand the State  
445 Code, we don't have the authority to grant this variance because you have  
446 reasonable use of the property.  
447

448 Ms. Lampkin - Well, reasonable, beneficial use with the house  
449 remaining, if I was coming ahead of time and saying I want to scoot the house  
450 down this way or that way for whatever reason. You're saying that I don't meet  
451 the reasonable, beneficial use of the property taken as a whole?  
452

453 Ms. Dwyer - Right. That would be if this were such an unusual  
454 shape that you couldn't fit any kind of a house on it all. Then we might need to  
455 grant a variance. In this case, you have plenty of space for a house. The  
456 variance is not meant to correct builder errors. A variance is meant to prevent an  
457 unconstitutional result, that is, you have a piece of property you can't use at all.  
458 But you do have a use of the property, you just are asking for a variance to  
459 correct builder error, and that's not under—As my understanding of the statute,  
460 that's not a basis for us to have jurisdiction.  
461

462 Ms. Lampkin - Where do I go from here with this existing dwelling on  
463 the property?  
464

465 Mr. Blankinship - Mr. O'Kelly suggested that you go to VDOT and see if  
466 they'll sell you 12 feet of land.  
467

468 Ms. Lampkin - Then does it come back up for a variance?  
469

470 Mr. Blankinship - Wouldn't need to. If the rear line moved to where it's  
471 50 feet from the house, then it would be in compliance.  
472

473 Mr. Wright - And they'd have to cut the porch, the front porch  
474 down.  
475

476 Mr. Blankinship - Right. Then you'd have to do something about the  
477 front porch to bring that into compliance as well.  
478

479 Ms. Harris - Can you uncover the front porch? I know it wouldn't  
480 be very functional. You need to check the statutes.  
481

482 Ms. Lampkin - It is a covered porch.  
483

484 Ms. Harris - I know it is now, but to comply—  
485

486 Ms. Lampkin - Uncover it and just have a stoop, 4 by 6? Is that a  
487 number I heard?  
488

489 Ms. Harris - I'm not sure that that would be functional.  
490

491 Mr. Blankinship - Do we have a photograph of the front there, Paul?  
492

493 Mr. Gidley - They can cover 4 by 6.

494  
495 Mr. Blankinship - There's a photo of the front. Yeah. It looks like the  
496 area behind the stairs is probably about six feet wide. So, from those two center  
497 posts, that portion could remain covered. The entire porch could remain, and  
498 that portion could remain covered.  
499  
500 Ms. Lampkin - Is there a building official here that could tell me more  
501 about that? I mean, we're talking trusses and everything coming out over that  
502 porch.  
503  
504 Mr. Blankinship - We can meet with you, if that's the solution you want  
505 to pursue. They can meet with you or Ms. Brightwell.  
506  
507 Mr. Nunnally - Do you have any idea how much property that VDOT  
508 owns there, Ms. Lampkin?  
509  
510 Mr. Blankinship - If you pull up the aerial photograph, Paul, it's actually  
511 a very large parcel and there is a distribution warehouse on it. That warehouse  
512 is a long way away from this site. At the very top of the page there, you see the  
513 entrance road that goes back to that warehouse.  
514  
515 Mr. Nunnally - Would you like to check with them first?  
516  
517 Ms. Lampkin - I'm taking it you're giving me no choice.  
518  
519 Mr. Nunnally - I don't think you have a choice. You said it was going  
520 to cost a lot of money to—  
521  
522 Ms. Lampkin - Right, to move that house. Water's hooked up to it;  
523 septic is hooked up to it. It's completed. It's 100% complete, ready to go, ready  
524 to be lived in, but we can't occupy it without a CO.  
525  
526 Mr. Kirkland - Have you had a price for how much it would cost to  
527 move it?  
528  
529 Ms. Lampkin - Estimated?  
530  
531 Mr. Kirkland - Yes ma'am.  
532  
533 Ms. Lampkin - \$50,000.  
534  
535 Mr. Kirkland - Any other testimony? Any other questions? Anyone  
536 else wish to speak? That concludes the case.  
537  
538 Ms. Lampkin - Thank you.  
539

540 **DECISION**

541

542 Mr. Kirkland - All right, do I have a motion?

543

544 Mr. Nunnally - I have a motion that we deny it because they have  
545 reasonable use of the property as is. They seem like they're not interested in Mr.  
546 O'Kelly's suggestion about where they can get that extra property. I don't know if  
547 the state would be allowed to sell the right-of-way property or not, but it would  
548 probably be a whole lot more feasible to buy the land than it would to move that  
549 house. So, I move we deny it.

550

551 Ms. Dwyer - Second.

552

553 Mr. Kirkland - Motion made by Mr. Nunnally, seconded by Ms.  
554 Dwyer. All in favor say aye. All opposed say no. The ayes have it, the motion  
555 carries.

556

557 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
558 Ms. Dwyer, the Board **denied** application **A-031-07**, Lampkin Home Inc.'s  
559 request for a variance from Section 24-94 to allow a new dwelling to remain at  
560 220 Pondorosa Drive (Parcel 837-719-5933), zoned A-1, Agricultural District  
561 (Varina).

562

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

566

567

568 **A-032-07** **MARK AND KIM LAYELL** request a variance from  
569 Section 24-94 to build an addition at 2401 Terry Drive (Terry Heights) (Parcel  
570 773-761-3077), zoned R-3, One-family Residence District (Brookland). The rear  
571 yard setback is not met. The applicants propose 31 feet rear yard setback, where  
572 the Code requires 40 feet rear yard setback. The applicants request a variance of  
573 9 feet rear yard setback.

574

575 Mr. Kirkland - Anyone else wish to speak on this case? Please  
576 raise your right hand and be sworn in.

577

578 Mr. Blankinship - Do you swear the testimony you're about to give is  
579 the truth and nothing but the truth so help you God?

580

581 Mr. Layell - Yes sir.

582

583 Mr. Blankinship - Thank you.

584

585 Mr. Layell - Mark Layell. I want the variance on one corner of the  
586 lot. It fits the other corner, but doesn't fit the one corner. That's all I need.  
587  
588 Ms. Dwyer - On what basis are you asking for the variance?  
589  
590 Mr. Layell - My mother and my father are getting old. I'm going to  
591 move them in with me. I don't have the money to put them in a nursing home or  
592 a retirement home or anything.  
593  
594 Mr. Wright - Not a good reason.  
595  
596 Ms. Dwyer - I mean a legal basis.  
597  
598 Mr. Layell - What do you mean legal basis?  
599  
600 Ms. Dwyer - Essentially, when you come to us for a variance,  
601 you're asking for use to eliminate a law, and what the statute says is you have to  
602 have a legal reason for doing that. For example, exceptional narrowness—  
603  
604 Mr. Layell - Narrowness of the 40 foot of the variance line right  
605 there. If my house was sitting square, I wouldn't have any problem at all. I could  
606 have gotten my addition on, no problem. But the way the house is sitting on the  
607 corner, I can't get it. I own the lot right behind it, but I can't do anything with that  
608 because they have a water drainage from five miles up the road draining through  
609 my backyard. The pipe.  
610  
611 Ms. Dwyer - Lot 12, you mean?  
612  
613 Mr. Layell - Yes ma'am. That one corner. It would be only one  
614 corner that it would be hitting. It isn't but nine feet. They said 40 feet.  
615  
616 Mr. Kirkland - You own Lot 12?  
617  
618 Mr. Layell - Yes sir. I own the one behind that one, too. I'm in the  
619 process of trying to buy the next one, too.  
620  
621 Mr. Kirkland - You own Lot 10, too?  
622  
623 Mr. Blankinship - It's 13, I think.  
624  
625 Mr. Kirkland - Oh, you mean 13 behind 12?  
626  
627 Mr. Layell - Yes.  
628  
629 Ms. Dwyer - Could we put the plan on the—  
630

631 Mr. Layell - Lot 12 and 13. I own lot 11 and 12, and I own Lot 13,  
632 too.  
633  
634 Ms. Dwyer - Do you have reasonable beneficial use of the property  
635 as it is now?  
636  
637 Mr. Layell - Yes.  
638  
639 Ms. Dwyer - The problem, I think as I stated in the case before is  
640 that what the Supreme Court has said is that we don't have jurisdiction to  
641 authorize a variance if there's reasonable and beneficial use of the property as it  
642 is.  
643  
644 Mr. Kirkland - Did you read the staff report where the staff  
645 recommended in lieu of the existing 10 by 14—  
646  
647 Mr. Layell - Yeah, but you can't put a shower and all that stuff,  
648 you know, and bedroom into that. That back addition porch right there, sun  
649 porch is coming off.  
650  
651 Mr. Kirkland - So, the 10 by 14, as you call it, the Florida room's  
652 going away anyway.  
653  
654 Mr. Layell - Yes sir.  
655  
656 Mr. Kirkland - So, then you could build a 15 by 20 addition, versus a  
657 20 by 26.  
658  
659 Mr. Layell - Yeah.  
660  
661 Mr. Kirkland - Just said it wouldn't be big enough for what you  
662 needed.  
663  
664 Mr. Layell - Right. Correct.  
665  
666 Mr. Kirkland - But you could build something.  
667  
668 Mr. Layell - The builder's right here. I don't know what he can  
669 arrange to make it—  
670  
671 Builder - There wouldn't be enough area in there for two  
672 people to have a bath area.  
673  
674 Ms. Harris - On the lots that you own, do they have public street  
675 frontage?  
676

677 Mr. Layell - Woodman Road, yes.  
678  
679 Ms. Harris - Can we see the actual drawing, the blueprint?  
680  
681 Mr. Kirkland - You want to see the plot plan?  
682  
683 Ms. Harris - Yes, I think that's what I need to see. I'd like to see  
684 where—  
685  
686 Mr. Blankinship - It's not on the presentations? Oh, we have it in the  
687 package, we just don't have it, apparently, to put up on the—  
688  
689 Ms. Harris - So, you say the lots that you own are lots—  
690  
691 Mr. Layell - Eleven—  
692  
693 Ms. Harris - Lot 10?  
694  
695 Mr. Layell - No, lot 11, 12, 13.  
696  
697 Ms. Harris - All right, 11, 12 and 13.  
698  
699 Mr. Layell - Actually, I wanted to go towards Lot 12, but I can't do  
700 that because the public has their drainage right down behind it.  
701  
702 Ms. Harris - With these additional lots, there's no way you can  
703 construct what you need to construct?  
704  
705 Mr. Layell - No ma'am, because I can't overtop the—They keep  
706 telling me I have to have a 15-foot easement right there where that pipe is.  
707 People have sheds and tool sheds and garages all over it down through there. I  
708 would be just close to it; I wouldn't be nowhere on it.  
709  
710 Mr. Blankinship - We'll let you put up a tool shed—  
711  
712 Mr. Layell - Right.  
713  
714 Mr. Blankinship - —with the understanding that if we take it down, we're  
715 not putting it back.  
716  
717 Mr. Layell - Right.  
718  
719 Mr. Blankinship - With an addition to your house, that's a little different.  
720  
721 Mr. Layell - Have a garage or 25—Yeah, they have garages with  
722 a cement slab on it, too, all down through there.



723  
724 Mr. Blankinship - I don't know if that was approved or not.  
725  
726 Ms. Dwyer - So, there's a pipe running along—  
727  
728 Mr. Layell - Yes ma'am. It's a drainage pipe running from, all the  
729 way from the other side of Blackburn all the way down Terry Drive and behind all  
730 these houses right here, and it comes right through the front of my house right  
731 here. So, I can't build going towards Lot 12. The only thing I could do on Lot 12  
732 right now is put one house for that whole lot. If I bought the ones adjoining that  
733 farm beside me, then I probably could put a cul-de-sac or something in there.  
734  
735 Ms. Harris - You said on Lot 12 you can put a house because you  
736 have 1.251 acres of land.  
737  
738 Mr. Layell - Yeah. But I only got one frontage to get in, right off  
739 Woodman Road.  
740  
741 Mr. Kirkland - Who owns Lot 10?  
742  
743 Mr. Layell - Mr. Kellerhalls.  
744  
745 Mr. Wright - Did you say where your mother and father live now?  
746  
747 Mr. Layell - Mom and Dad, they're living in a house right up the  
748 road.  
749  
750 Mr. Wright - Right up the road?  
751  
752 Mr. Layell - Yeah, from me now. Yeah. See that right there,  
753 that's the back of the lot I got right there. I was first going to come off that side  
754 right there and come towards my other lot, but the pipe was right there and they  
755 said I had to have a 15-foot variance, I mean 15-foot [unintelligible] on the pipe  
756 right there.  
757  
758 Ms. Dwyer - Does it go just along the property line?  
759  
760 Mr. Layell - It goes all the way down that whole property line, up  
761 behind all them houses right there.  
762  
763 Ms. Dwyer - How close is it to the property line.  
764  
765 Builder - The setback line is real close.  
766  
767 Mr. Layell - Yeah.  
768

769 Builder - Maybe six feet.  
770  
771 Mr. Layell - Right.  
772  
773 Ms. Dwyer - Okay. The pipe is six feet off the property.  
774  
775 Mr. Blankinship - The easement. The edge of the easement.  
776  
777 Mr. Layell - The edge of the easement.  
778  
779 Mr. Kirkland - Do you split the line like six on each side of the line?  
780  
781 Mr. Blankinship - It's all along the smaller lots.  
782  
783 Mr. Kirkland - It's all on his #10, 11.  
784  
785 Mr. Layell - Yes. But actually, if you look at it, the pipe is actually  
786 on the other side of that line. Right, right. They just need that for a digging area, I  
787 guess, is what the guy was trying to tell me, to dig that pipe in case it busts or  
788 something. It's draining all the way from Blackburn all the way down behind all  
789 them houses. Drainage. It's only that one corner that I need. If I had that one  
790 corner, I wouldn't have a problem at all. If the house was square like the rest of  
791 the houses, like 10, 9, 8, I wouldn't have a problem.  
792  
793 Ms. Harris - Have you noticed that rod? On the plan, it calls it a  
794 rod. It goes all the way down to Lot 7.  
795  
796 Mr. Layell - The rods [unintelligible], you can see them.  
797  
798 Ms. Harris - You can see the rods?  
799  
800 Mr. Layell - Yes ma'am. I had all that surveyed. I had it all  
801 surveyed when I bought that Lot 12.  
802  
803 Ms. Harris - How long have you had this property?  
804  
805 Mr. Layell - Five years.  
806  
807 Ms. Harris - So you knew about the limitation when you—  
808  
809 Mr. Layell - No. I didn't know about the limitation until I got him to  
810 come build on that end towards this. When I went to get a permit, they said we  
811 couldn't get it.  
812  
813 Ms. Harris - But you could see the rod, you said.  
814

815 Mr. Layell - I figured that was just the property line, property line  
816 rod. I didn't know it was a separate rod.

817  
818 Mr. Kirkland - Any other questions?

819  
820 Mr. Wright - I would suppose that that is an easement of record.  
821 It's recorded and if you did the title when you bought the house, you would find it  
822 was there.

823  
824 Mr. Layell - Right, right.

825  
826 Mr. Kirkland - Do you have anything else you'd like to add?

827  
828 Mr. Layell - No, that's it.

829  
830 Mr. Kirkland - Anyone else wish to speak on this case? Thank you  
831 sir, that concludes the case.

832  
833 Mr. Layell - All right, thank you.

834

835 **DECISION**

836

837 Ms. Dwyer - I move that we deny this case because the applicant  
838 clearly has reasonable beneficial use of the property without the variance. They  
839 have use and enjoyment of an existing home, and so they failed to meet the test  
840 set out in the Cochran case for our standard of review.

841

842 Mr. Wright - Second.

843

844 Mr. Kirkland - Motion made by Ms. Dwyer, seconded by Mr. Wright.  
845 All those in favor say aye. All those opposed say no. The ayes have it, the motion  
846 carries. The case is denied.

847

848 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by  
849 Mr. Wright, the Board **denied** application **A-032-07**, Mark and Kim Layell's  
850 request for a variance from Section 24-94 to build an addition at 2401 Terry Drive  
851 (Terry Heights) (Parcel 773-761-3077), zoned R-3, One-family Residence District  
852 (Brookland). The rear yard setback is not met.

853

854

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

856 Negative: 0

857 Absent: 0

858

859

860 **UP-020-07** **OUR LADY OF LOURDES SCHOOL** requests a  
861 temporary conditional use permit pursuant to Section 24-116(c)(1) to erect a  
862 temporary modular classroom at 8200 Woodman Road (Parcel 776-754-8470),  
863 zoned R-3, One-family Residence District (Brookland).

864  
865 Mr. Kirkland - If you would, sir, raise your right hand and be sworn  
866 in.

867  
868 Mr. Blankinship - Do you swear the testimony you're about to give is  
869 the truth and nothing but the truth so help you God?

870  
871 Mr. Evans - I do. My name is Wade Evans. I represent the  
872 school. This is our third request in 12 years. Each time we do an expansion, we  
873 ask, we've needed classroom space. Last time, there was a one-classroom  
874 modular unit put out there temporarily. We added an eight-classroom addition to  
875 the school.

876  
877 Mr. Blankinship - Excuse me, when was that?

878  
879 Mr. Evans - One was 6 years ago, I believe, and one was 12  
880 years ago.

881  
882 Mr. Blankinship - Okay. I don't believe we had that in the report.

883  
884 Mr. Evans - The 12-year was a four-classroom module. Much  
885 bigger one. I think the last one was the one classroom.

886  
887 Mr. Blankinship - I remember the last one.

888  
889 Mr. Evans - Temporary. I think the one before was not temporary.  
890 I think it was built to be permanent at some point. It only lasted four years and  
891 we took it down, but it was a four-classroom modular unit. This time we're  
892 anticipating building, hopefully building a gymnasium and some office space with  
893 two additional classrooms. Those plans are in the preliminary stages. Now the  
894 general contractors are Century Construction, they did our last three additions  
895 and built our worship space, which was a very large construction project about 10  
896 years ago.

897  
898 Mr. Wright - Mr. Evans, have you seen the conditions, proposed  
899 conditions?

900  
901 Mr. Evans - Yes sir, we have and I have no problem with that. In  
902 fact, we've already talked about landscaping that needs to be done, and the  
903 contractor to install the unit is waiting in the wings.

904

905 Ms. Dwyer - So, you have no use for this trailer on weekends, on  
906 Sundays or?  
907  
908 Mr. Evans - No. It's predominately going to be used for the band  
909 to use. We're not even putting water and bathrooms in it. So, even during the  
910 week, it's probably not going to be used every day.  
911  
912 Ms. Dwyer - Okay.  
913  
914 Mr. Evans - We just need some space right now until we can get  
915 some more expansion done. This will probably be our last expansion.  
916  
917 Ms. Dwyer - The conditions do limit it to Monday through Friday.  
918  
919 Mr. Evans - Yes ma'am.  
920  
921 Ms. Dwyer - So, if you think you're going—  
922  
923 Mr. Evans - There would be use for it on a weekend. It wouldn't  
924 be used for the church anyway. Basically, where it's located, it wouldn't be useful  
925 for them in any way. When they do use the school for different functions, there's  
926 a multipurpose room, which is the large meeting room, and they generally use  
927 that.  
928  
929 Ms. Dwyer - I notice on this section of the building where you plan  
930 to put the trailer, it looks like there are two large HVAC units—is that correct—  
931 fenced in?  
932  
933 Mr. Evans - Yes ma'am.  
934  
935 Ms. Dwyer - How far will the trailer be from those units? It's hard  
936 to tell.  
937  
938 Mr. Evans - The units—And the way they're show on that plat is a  
939 little deceptive because there is a set of double doors there at the end of that  
940 wing.  
941  
942 Ms. Dwyer - Right.  
943  
944 Mr. Evans - That's the upper-class wing. It actually sets off a little  
945 farther than that, than is shows there.  
946  
947 Ms. Dwyer - Than it shows on the drawing?  
948

949 Mr. Evans - Yeah, I believe it does. I'm trying to—I think there  
950 was a photograph. I don't know if you have any photos in there, but I think there  
951 was one that showed.  
952  
953 Mr. Blankinship - Paul, is there a photo that shows that?  
954  
955 Mr. Evans - It may have been in my package but not—Yeah, there  
956 you go. You can see. We're going to put it—That's to left side, as you can see.  
957  
958 Ms. Dwyer - Okay.  
959  
960 Mr. Evans - And we're going to the right. The way the classroom  
961 is construed, there's a door on one side of the classroom and we're going to do  
962 our best to line that door up with the back doors of that wing.  
963  
964 Ms. Dwyer - All right. So, as we're looking at this photo, the HVAC  
965 units are fenced in on the left side of the door, and the trailer will be oriented on  
966 the right side of the door.  
967  
968 Mr. Evans - That's correct.  
969  
970 Ms. Dwyer - How far away will the trailer be from the building, the  
971 existing building?  
972  
973 Mr. Evans - What we're required by Code, I imagine, probably 20  
974 feet or so.  
975  
976 Ms. Dwyer - Okay. There are limitations about how close buildings  
977 can be to each other.  
978  
979 Mr. Evans - Yes.  
980  
981 Ms. Dwyer - —and it's not, the distance is not listed on the plan  
982 provided. I just wanted alert you to that.  
983  
984 Mr. Evans - Okay. We'll make sure that that gets looked at  
985 before—  
986  
987 Ms. Dwyer - [Unintelligible.]  
988  
989 Mr. Evans - I'm getting lessons here this morning.  
990  
991 Ms. Dwyer - Right, right.  
992  
993 Mr. Evans - Yeah. We'll have it surveyed and we'll have that done.  
994 The construction is for footers to place it on. We'll make sure that that's—

995  
996 Mr. Wright - Couldn't that be a condition, Mr. Blankinship? If it's of  
997 that much concern, why shouldn't we have that it should be erected so many feet  
998 from the building  
999  
1000 Mr. Blankinship - We can certainly add that, Mr. Wright.  
1001  
1002 Mr. Wright - What is the required distance under the Code, do you  
1003 know?  
1004  
1005 Mr. Kirkland - Is that a 10?  
1006  
1007 Mr. Blankinship - No sir, I don't know.  
1008  
1009 Mr. Wright - Whatever it is, you could just say the required  
1010 distance is what's required by the Code, if you wanted to.  
1011  
1012 Mr. Evans - Whatever that minimum is, that's fine.  
1013  
1014 Ms. Dwyer - It certainly can't hurt.  
1015  
1016 Mr. Evans - We certainly want to comply with that. We're not  
1017 trying to get it tight to the building.  
1018  
1019 Ms. Dwyer - Right.  
1020  
1021 Mr. Evans - That's not our goal.  
1022  
1023 Ms. Dwyer - Right.  
1024  
1025 Mr. Evans - The kids have to walk out to get out there.  
1026  
1027 Ms. Dwyer - We've just had it come up in a couple of cases, so I  
1028 just thought—  
1029  
1030 Mr. Evans - I'm listening.  
1031  
1032 Ms. Dwyer - Just to make sure we don't have that problem. I had  
1033 another question. Looking at the photograph that's on the screen now, there's a  
1034 brick ranch house in view. That is, by my—Is that a church—  
1035  
1036 Mr. Evans - That's ours, yes. That house is owned by the Diocese  
1037 of Richmond and that's where our priest lives.  
1038  
1039 Ms. Dwyer - Okay.  
1040

1041 Mr. Wright - I don't suppose he has any objection.  
1042  
1043 Mr. Evans - No sir.  
1044  
1045 Ms. Dwyer - If he does, it's not our problem.  
1046  
1047 Mr. Blankinship - I don't know if he was notified, but the application was  
1048 signed by the Bishop, also.  
1049  
1050 Mr. Evans - And that's his boss, also.  
1051  
1052 Ms. Dwyer - So we don't need screening there is what I was going  
1053 to say.  
1054  
1055 Mr. Evans - I understand.  
1056  
1057 Ms. Dwyer - Okay.  
1058  
1059 Ms. Harris - Mr. Evans, currently there are—Are there other  
1060 trailers on the property?  
1061  
1062 Mr. Evans - No ma'am.  
1063  
1064 Ms. Harris - Okay.  
1065  
1066 Mr. Evans - Actually, the last one that's directly down from that  
1067 arrow, there's a little courtyard that's behind the church to the right now. That's  
1068 the multipurpose room to the right. A little more to the right, a little more. Right to  
1069 that. That's a building. In that courtyard right above the arrow, that's where it  
1070 was located before and it's gone now. If you flip on the other side of the school  
1071 up to the top, that's where—to the right of that, right there—the four-classroom  
1072 modular unit was. Now, it may be that that was built at the time to be a  
1073 permanent structure. I'm not sure. That was like 12 years ago or so, I think. But  
1074 it's gone as well.  
1075  
1076 Mr. Kirkland - You see the permit will expire in two years.  
1077  
1078 Mr. Evans - And I see that we have to submit a plan in one year.  
1079  
1080 Mr. Kirkland - Yes. So, you understand that you should have it built  
1081 by the time the permit expires, because you will not get a renewal.  
1082  
1083 Mr. Evans - We understand that.  
1084  
1085 Mr. Kirkland - Okay. Or the band will practice outside.  
1086



1087 Mr. Evans - Become a marching band, I'd say.  
1088  
1089 Mr. Blankinship - Then we'll hear from the neighbors.  
1090  
1091 Mr. Evans - Yeah, then you'll hear from the neighbors.  
1092  
1093 Mr. Kirkland - Any other questions? Anyone else wish to speak to  
1094 this case? Come on down, sir. Are you in opposition or?  
1095  
1096 Mr. Vogel - No.  
1097  
1098 Mr. Kirkland - Okay.  
1099  
1100 Mr. Blankinship - Were you sworn, sir?  
1101  
1102 Mr. Vogel - No.  
1103  
1104 Mr. Kirkland - Raise your right hand and be sworn in.  
1105  
1106 Mr. Blankinship - Do you swear the testimony you're about to give is  
1107 the truth and nothing but the truth so help you God?  
1108  
1109 Mr. Vogel - Yes sir, I do.  
1110  
1111 Mr. Kirkland - State your name for the record.  
1112  
1113 Mr. Vogel - Yes sir. My name is William Vogel.  
1114  
1115 Mr. Kirkland - Okay.  
1116  
1117 Mr. Vogel - I share a property line—for 22 years—with Lady of  
1118 Lourdes School. I live on 8317 Craft Court, which is on the corner of the plat  
1119 right up there. I'm also the block captain for 75 homes, 13 of which share a  
1120 contiguous property line. Just to let you know, I have surveyed the owners on  
1121 that line. They are either all supportive or have no objection. Their only concern,  
1122 for future reference, is how far back that construction might go. Land has been  
1123 cleared, as Mr. Evans knows, and our only concern is we have a neighborhood  
1124 of children, and we also have a neighborhood of dogs and we keep them fenced  
1125 and so on and so forth. We just don't want that to be an attractive place to jump a  
1126 fence or anything like that. That's the only thing. I will tell you that we are very  
1127 supportive and they have been excellent, excellent neighbors over the years.  
1128 That's about all I can add.  
1129  
1130 Mr. Kirkland - Thank you, sir.  
1131  
1132 Mr. Blankinship - Thank you for coming.

1133  
1134  
1135  
1136  
1137  
1138  
1139  
1140  
1141  
1142  
1143  
1144  
1145  
1146  
1147  
1148  
1149  
1150  
1151  
1152  
1153  
1154  
1155  
1156  
1157  
1158  
1159  
1160  
1161  
1162  
1163  
1164  
1165  
1166  
1167  
1168  
1169  
1170  
1171  
1172  
1173  
1174  
1175  
1176  
1177  
1178

Ms. Harris - Mr. Vogel, if the trailer measures 24 by 36 feet, will that encroach upon the neighbors, do you think?

Mr. Vogel - I don't think so. This is the first time I've seen this. I did go to the school to ask to see a plat and I wasn't provided this. I don't think that is. Again, our concern is there was an expression of a gymnasium being built. I don't know what those plans are and that might be a future concern at some point. But no, I think as it exists, I think I can state that the neighbors are not opposed to that. It is an attractive place. When you come through Lourdes Road, there are children who cut through to Woodman Road at 12:00 at night, 1:30, 1:00 at night. The school has put up light, which is very, very good. Just don't want something to become an attractive nuisance. And I would just caution you to put up lights because band equipment's expensive; I've been a band supporter.

Mr. Kirkland - Thank you sir.

Mr. Vogel - I thank you.

Mr. Kirkland - Anyone else? Do you have any other comments, sir?

Mr. Evans - No sir.

Mr. Kirkland - All right. That concludes the case.

Mr. Evans - Thank you.

**DECISION**

Ms. Dwyer - I move we approve the case. This is not a variance, this is, of course, a temporary conditional use permit. My motion includes the suggested conditions in our staff report with the additional condition 9, which states that the trailer must be the required distance from the existing school building to meet the County Code. While it may be redundant of the County Code, we would like to include that to ensure that the builder's attention has been called to that particular issue.

Mr. Wright - Second.

Mr. Kirkland - Motion made by Ms. Dwyer, seconded by Mr. Wright. All those in favor say aye. All those opposed say no. The ayes have it, the motion carries. The case is approved.

After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr. Wright, the Board **approved** application **UP-020-07**, Our Lady of Lourdes

1179 School's request for a temporary conditional use permit pursuant to Section 24-  
1180 116(c)(1) to erect a temporary modular classroom at 8200 Woodman Road  
1181 (Parcel 776-754-8470), zoned R-3, One-family Residence District (Brookland).

1182

1183 1. Only the improvements shown on the plan filed with the application may be  
1184 constructed pursuant to this approval. No substantial changes or additions to the  
1185 layout may be made without the approval of the Board of Zoning Appeals. Any  
1186 additional improvements shall comply with the applicable regulations of the  
1187 County Code.

1188

1189 2. The trailer shall be removed from the site on or before October 27, 2009, at  
1190 which time this permit shall expire. This permit shall not be renewed.

1191

1192 3. On or before October 27, 2008, the applicant shall submit a report to the  
1193 Planning Department outlining plans for permanent classroom space.

1194

1195 4. Approval of this request does not imply that a building permit will be issued.  
1196 Building permit approval is contingent on Health Department requirements.

1197

1198 5. A detailed landscaping and lighting plan shall be submitted to the Planning  
1199 Office with the building permit for review and approval. This shall include  
1200 adequate landscaping along the western side of the trailer to help screen it from  
1201 the neighboring residences.

1202

1203 6. All exterior lighting shall be shielded to direct light away from adjacent  
1204 property and streets.

1205

1206 7. All landscaping shall be maintained in a healthy condition at all times. Dead  
1207 plant materials shall be removed within a reasonable time and replaced during  
1208 the normal planting season.

1209

1210 8. The trailer shall be occupied only during the following hours: 8:00 AM to 5:00  
1211 PM, Monday through Friday.

1212

1213 9. [ADDED] The trailer shall be set back from the building as required by the  
1214 Uniform Statewide Building Code.

1215

1216

1217 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

1218 Negative: 0

1219 Absent: 0

1220

1221

1222 **A-033-07** **MARY CRUICKSHANK** requests a variance from  
1223 Section 24-95(i)(2)c. to build an addition at 7624 Hollins Road (Rollingwood)  
1224 (Parcel 759-740-8351), zoned R-3, One-family Residence District (Tuckahoe).

1225 The accessory structure setback is not met. The applicant proposes 3 feet  
1226 accessory structure setback, where the Code requires 10 feet accessory  
1227 structure setback. The applicant requests a variance of 7 feet accessory  
1228 structure setback.

1229

1230 Mr. Kirkland - Yes ma'am. If you would raise your right hand, and if  
1231 anyone else wishes to speak on this case, be sworn in.

1232

1233 Mr. Blankinship - Do you swear the testimony you're about to give is  
1234 the truth and nothing but the truth so help you God?

1235

1236 Ms. Cruickshank - Yes.

1237

1238 Mr. Kirkland - Would you please state your name for the record.

1239

1240 Ms. Cruickshank - Mary Stewart Brennaman Cruickshank.

1241

1242 Mr. Kirkland - Would you like to tell us what you would like?

1243

1244 Ms. Cruickshank - What's that?

1245

1246 Mr. Kirkland - What would you like us to do for you? State your  
1247 case, in other words.

1248

1249 Ms. Cruickshank - You have all my papers from the contractor and I  
1250 know very little about it. Basically, I have a living room and dining room, and I  
1251 simply want to add a den behind my dining room. It's going to be big enough to  
1252 eventually be a bedroom, if I need it, if I become handicapped. However, at this  
1253 time, it would be a den and a closet. The structure itself is not a problem. The  
1254 problem is that right behind it, is a garage that is, apparently, crooked on the lot  
1255 and therefore it oversteps the boundary. But the garage would be there anyway.  
1256 The garage has been there since I have been there, which is December of 1952.  
1257 The only thing that I have done to the house is enclose a porch. I just want  
1258 permission to build my den/closet.

1259

1260 Ms. Harris - Mr. Cruickshank, can you construct your addition  
1261 three feet shorter to comply with the Code?

1262

1263 Ms. Cruickshank - No I can't.

1264

1265 Ms. Harris - Okay. Why?

1266

1267 Ms. Cruickshank - It would be too close—If I make it three feet shorter, it  
1268 wouldn't be a big enough room to serve as a bedroom eventually.

1269

1270 Ms. Harris - Do you know how close the garage is now to your  
1271 house?

1272  
1273 Ms. Cruickshank - I really don't. All of this is in the papers that the  
1274 contractor gave you. They've come and done a survey and the survey should be  
1275 in there, and a little letter that I wrote to you all about why I wanted to do this. I  
1276 have no measurements, no anything. My contractor told me that everything was  
1277 okay, all the information that you all needed was okay, was over here.

1278  
1279 Ms. Dwyer - We do have drawings and it's a good presentation.  
1280 The problem is, is that the Code requires 10 feet between your addition and the  
1281 garage. The reason for that is fire code. What you're asking us to do is to, in  
1282 effect, is change the law for you, which we can do in some very, very limited  
1283 circumstances. But those circumstances have to be ones in which a person has  
1284 no reasonable use of their property unless we grant the variance, and in this  
1285 case, you do have reasonable use of the property without the variance

1286  
1287 Ms. Cruickshank - At this time. However, I am, what they call it I think, is  
1288 trying to age in place, and I'm preparing for my old age when I might not be able  
1289 to go up and down the stairs as much as I do now, or on a very limited basis. I  
1290 was run over by a truck back about 20 year ago, and I've also fallen and broken  
1291 my hip and I have a hip replacement. It's extremely likely that something would  
1292 happen again and I would not be able to use my house if I did not have this  
1293 room.

1294  
1295 Ms. Dwyer - We're sympathetic. I understand your situation, but  
1296 the question we have to face is whether we legally have the authority to grant this  
1297 variance. According to our interpretation of the law and the Supreme Court,  
1298 there has to be no reasonable beneficial use of the property. While you may not  
1299 have all the space that you want to have, you do have a reasonable beneficial  
1300 use of it.

1301  
1302 Ms. Cruickshank - It's not a case of space. I have plenty of space in the  
1303 house. It's a case of being on the first floor, having a room on the first, space on  
1304 the first floor. I have rooms upstairs that if they were downstairs would suffice. If  
1305 I could move my—There are two rooms upstairs, that if I could move them  
1306 downstairs, that would make a perfect house. Basically, I just want to get some  
1307 of that room downstairs so I'll be on the same floor as the kitchen and the  
1308 bathroom that's down there.

1309  
1310 Ms. Dwyer - I suppose there are some options available, such as  
1311 removing the garage.

1312  
1313 Ms. Cruickshank - No, no. I just built, I just repaired the garage. One of  
1314 the other reasons for the room would be to get more use out of my garage. I  
1315 don't use it because I'm afraid walking back to the house there, I might fall in the

1316 rough terrain. I could have a pathway through to the garage from the house, or  
1317 else I would connect the house to the garage, whichever I can get approved.  
1318  
1319 Ms. Dwyer - You may want to discuss with your builder some other  
1320 options. Mr. Blankinship, if the garage were connected to the home in some way,  
1321 would that be—  
1322  
1323 Mr. O’Kelly - They won’t meet the rear yard setback.  
1324  
1325 Ms. Cruickshank - That would be fine. I would be happy to have it  
1326 connected.  
1327  
1328 Ms. Dwyer - I’m sorry. Apparently, the rear yard setback for the  
1329 garage has not been met. At any rate, I’m not going to speculate about what  
1330 other options there may be, but there may be some others that you could  
1331 explore.  
1332  
1333 Ms. Cruickshank - There really is no other option. You’ve got your  
1334 picture up here now. There is no place that I can build this that would be at all  
1335 handy. I mean, I could have a hall and built it out in the middle of the lot there,  
1336 but that would not be close to the kitchen or to the house that’s already built  
1337 there. And all of this is preexisting. I have lived in this house since 1952 and the  
1338 garage was there at the time.  
1339  
1340 Ms. Fleming - Are you saying that—  
1341  
1342 Mr. Kirkland - What’s your name, ma’am?  
1343  
1344 Ms. Fleming - Oh, my name is Evelyn Carter Cruickshank Fleming.  
1345  
1346 Mr. Kirkland - Okay.  
1347  
1348 Ms. Fleming - I’m her daughter. Are you saying that she could have  
1349 the garage attached to the house?  
1350  
1351 Ms. Dwyer - No, apparently not, because the garage doesn’t meet  
1352 setback requirements. Is that correct?  
1353  
1354 Mr. Blankinship - It meets the setback for a detached structure, but if it  
1355 were attached, there’s a different set of regulations and it would not meet those.  
1356  
1357 Ms. Dwyer - I was trying to help out by coming up with some other  
1358 options you could explore, but, apparently, that’s not one of them.  
1359

1360 Ms. Fleming - When she enclosed the porch, the problem is that  
1361 there's an oil tank and an oil line that runs underneath there next to that small  
1362 addition off to the, I guess it would be the left, as you're looking at the picture.

1363  
1364 Mr. Wright - Do you have an architect that's working on this for  
1365 you?

1366  
1367 Ms. Cruickshank - Not officially. Apparently, the contractor works with his  
1368 brother who draws this. I've got the papers, all the drawings that he's given me  
1369 with me.

1370  
1371 Mr. Wright - Looks like to me what you could do is give him the  
1372 challenge to tell him you want this room—it's gotta be the proper distance from  
1373 the garage—and have him prepare something—

1374  
1375 Ms. Cruickshank - He can't. There's nowhere to do it. I've been thinking  
1376 about this for 30 years now. I've been planning to do this for 30 years. I've had  
1377 three stages and the porch enclosure was one of them. And I've talked to several  
1378 people along the line about it and nobody's ever said there'd be any problem. Not  
1379 that I was asking them to do this. But he can't do it. We have discussed this and  
1380 there's no way to do it so that the house would be useable, so that that room  
1381 would be useable. And I would have this oil tank problem. Quite honestly, I'm  
1382 working on a very limited budget. I have the exact amount—Not the exact  
1383 amount, a little bit more. But what I have to spend—The price he's given me to  
1384 do this, this way, plus a few fixtures and moving some plants that I'll have to  
1385 move, comes exactly to my budget, and I really can't afford anything more  
1386 elaborate. For \$100,000, I could probably do something, but I don't have that, I  
1387 have 40.

1388  
1389 Mr. Kirkland - Any other questions from Board members? Anyone  
1390 else wish to speak on this case? That concludes the case. Thank you, ma'am.

1391  
1392 Ms. Cruickshank - May I make one other addition? Another problem that  
1393 I have is paying the property taxes. If I put \$100,000 on the house, I'd never be  
1394 able to afford to stay there.

1395  
1396 Mr. Kirkland - Yes ma'am. Thank you.

1397  
1398 **DECISION**

1399  
1400 Ms. Dwyer - I'll make a motion on this. This is what makes this job  
1401 difficult, but this is another case in which the applicant has failed to meet the test  
1402 of the Supreme Court case in Cochran. The applicant has reasonable and  
1403 beneficial use of the property. She has a home and a garage on the property,  
1404 which she has lived in, I think, since 1962. While she may not have all of the  
1405 buildings that she would like to have if she could have this addition, that is not the

1406 source of our legal authority in this case. We are, obviously, limited by the  
1407 Cochran case and so there is no jurisdiction to approve the case.

1408  
1409 Mr. Wright - Second.

1410  
1411 Mr. Kirkland - Motion made by Ms. Dwyer, seconded by Mr Wright.  
1412 All those in favor say aye. All those opposed say no. The ayes have it, the  
1413 motion carries. It is denied.

1414  
1415 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by  
1416 Mr. Wright, the Board **denied** application **A-033-07**, Mary Cruickshank's request  
1417 for a variance from Section 24-95(i)(2)c. to build an addition at 7624 Hollins Road  
1418 (Rollingwood) (Parcel 759-740-8351), zoned R-3, One-family Residence District  
1419 (Tuckahoe). The accessory structure setback is not met.

1420  
1421 Affirmative: Dwyer, Harris, Kirkland, Wright 4  
1422 Negative: Nunnally 1  
1423 Absent: 0

1424  
1425

1426 **A -034-07** **CLINTON CARTER** requests a variance from Section  
1427 24-94 to build a one-family dwelling at 2843 Darbytown Road (Parcels 818-697-  
1428 1429 (part) and 3373), zoned A-1, Agricultural District (Varina). The lot width  
1429 requirement is not met. The applicant has 103 feet lot width where the Code  
1430 requires 150 feet lot width. The applicant requests a variance of 47 feet lot width.

1431  
1432 Mr. Kirkland - All right. Anyone else wish to speak on this case? All  
1433 right, sir, if you'd raise your right hand and be sworn in.

1434  
1435 Mr. Blankinship - Do you swear the testimony you're about to give is  
1436 the truth and nothing but the truth so help you God? Your fingers aren't crossed  
1437 inside that cast, are they?

1438  
1439 Mr. Carter - No. I had an accident [unintelligible] antibiotics  
1440 [unintelligible].

1441  
1442 Mr. Kirkland - If you would, state your name for the record.

1443  
1444 Mr. Carter - Clinton Carter.

1445  
1446 Mr. Kirkland - Mr. Carter, what do you want us to do for you?

1447  
1448 Mr. Carter - I own both of these lots. I think it's in the proposed,  
1449 but I have an aerial view here. The seven acres has a house on it. I have a  
1450 picture of that, too, if you want to see it. I don't know how to get this to you, do I  
1451 just put it down here?



1452  
1453 Mr. Blankinship - I'll take care of it.  
1454  
1455 Mr. Carter - I was going to take like five or six acres off this seven  
1456 acres and change my boundary lines. It has a two-room house on it. I don't  
1457 know if you have pictures there, but I have a bunch of pictures of it. It's just—it  
1458 should be—I guess it's called condemned. It's nothing else I can do with it.  
1459 When I talked to the County, they said I could rebuild that two-room place, but it  
1460 doesn't have sewer or water on it.  
1461  
1462 Mr. Kirkland - This is the existing?  
1463  
1464 Mr. Carter - That's the one on the seven acres. I want to change  
1465 that to one acre, and move the other six acres to the other piece of property.  
1466  
1467 Mr. Wright - Do you understand what he's talking about?  
1468  
1469 Mr. Kirkland - No.  
1470  
1471 Ms. Dwyer - It took me a while last night to figure it out, to study it.  
1472 If I understand this correctly—our numbers were different—the lot that's  
1473 designated 2845 and 2849 has about 7-1/2 acres.  
1474  
1475 Mr. Carter - Yes.  
1476  
1477 Ms. Dwyer - And you want to take about six acres from that and  
1478 give it to 2843.  
1479  
1480 Mr. Carter - Yes.  
1481  
1482 Ms. Dwyer - And then 2843 would have a house some distance  
1483 back behind the existing house at 2845/2849.  
1484  
1485 Mr. Carter - Yes ma'am. The house on the right of me—I've got  
1486 pictures. I got wounded two days ago, so I'm not quite all—I have pictures. They  
1487 did the same thing on both sides of me. They have a house sitting back in the  
1488 same area. They had the same, I think, problem with road frontage. It's a legal lot  
1489 there, but it won't work for building on.  
1490  
1491 Mr. Wright - The problem, Mr. Blankinship, is that he doesn't have  
1492 the proper distance at the building line. Isn't that correct?  
1493  
1494 Mr. Blankinship - Right. And although he's changing the lot lines in the  
1495 rear, he doesn't have any flexibility in the front, correct.  
1496

1497 Mr. Wright - He couldn't build on this property anywhere except  
1498 where he's proposing to build a house without getting a variance.  
1499  
1500 Mr. Blankinship - Right. The existing house is now non-conforming.  
1501  
1502 Mr. Wright - Non-conforming, right.  
1503  
1504 Mr. Blankinship - And not to be replaced.  
1505  
1506 Mr. Wright - Yes. He could not build a new house at that location.  
1507  
1508 Mr. Blankinship - Right. Without a variance.  
1509  
1510 Mr. Wright - So, he has no reasonable use of this property without  
1511 the variance.  
1512  
1513 Mr. Blankinship - Right.  
1514  
1515 Mr. Wright - Is that correct?  
1516  
1517 Mr. Blankinship - Yes sir, I think so. That's a judgment call, but I concur  
1518 with that.  
1519  
1520 Mr. Wright - It appears to me that's it. The ordinance requires that  
1521 distance at the building line, which is how far back from the road, 50 feet?  
1522  
1523 Mr. Blankinship - Fifty feet. And the existing house is lawfully non-  
1524 conforming, but it's no longer habitable.  
1525  
1526 Mr. Wright - Right.  
1527  
1528 Ms. Dwyer - You had—Our staff report says in 1996, 2.24 acres  
1529 was split off and consolidated with the adjacent parcel and that's why the existing  
1530 lot is non-conforming. Can you tell us about that?  
1531  
1532 Mr. Carter - I have no idea.  
1533  
1534 Ms. Dwyer - How long have you owned the property?  
1535  
1536 Mr. Carter - A few months.  
1537  
1538 Ms. Dwyer - Okay.  
1539  
1540 Mr. Carter - Like two months.  
1541

1542 Ms. Dwyer - So, Mr. Blankinship, 2841, was that property taken  
1543 from this property to give that one an easement? Is that what's being said?  
1544

1545 Mr. Blankinship - I'm not sure. Mr. Gidley, do you remember that?  
1546

1547 Mr. Gidley - My understanding is the piece that was split off did go  
1548 towards the west so that it would go towards 2841. What they used it for, I'm not  
1549 sure.  
1550

1551 Ms. Dwyer - I think that might be east, but I could be turned  
1552 around.  
1553

1554 Mr. Wright - He has like a straight line up there.  
1555

1556 Mr. Carter - He's got like 20 foot road frontage on that 2841 and it  
1557 goes back, his house is sitting back up in the big part of the lot like I want to do  
1558 with the one on my side.  
1559

1560 Ms. Dwyer - Right. So, maybe 2841 got property from 2843 in  
1561 order to get access.  
1562

1563 Mr. Carter - It looks like. Me and Mr. Gidley looked—I mean, it  
1564 was very confusing, trying to figure out what they did. It was in 1945, a month  
1565 before they changed the front line, is when it took place. I think it was done in  
1566 June of '45 and in July, they changed the law on the lot.  
1567

1568 Ms. Dwyer - Mr. Blankinship, just a thought. I would like to make  
1569 sure that applicants in the future check, at least check a box or something on  
1570 their application to make it clear which basis they're asking, which legal basis  
1571 they're using for their variance request. We can talk about that later, but I've  
1572 been thinking about it, looking at today's cases.  
1573

1574 Mr. Blankinship - On the application form, we actually cite that section  
1575 of Code and try to lead them to answer those questions.  
1576

1577 Ms. Dwyer - We might want to consider an affirmative—I'm  
1578 assuming this would be exceptional narrowness, shallowness, size or shape of  
1579 the property. Of course, that would lead us to the time of the effective date of  
1580 this chapter, which would mean according to the staff report, that this parcel did  
1581 have enough lot width to accommodate a house.  
1582

1583 Mr. Blankinship - Right, in '96 yes ma'am.  
1584

1585 Ms. Dwyer - Prior to '96. We kind of have to guess what exception  
1586 the applicant looking for and then—I think that needs to be the burden of the  
1587 applicant.

1588  
1589 Mr. Carter - Would you like to see this here?  
1590  
1591 Mr. Blankinship - We have that.  
1592  
1593 Mr. Wright - You are a builder, aren't you, Mr. Carter?  
1594  
1595 Mr. Carter - Yes sir.  
1596  
1597 Mr. Wright - That clearly says at the time. That was Cherrystone.  
1598  
1599 Ms. Harris - Mr. Carter, did you indicate how many feet back you  
1600 wanted to construct the new house after you demolish the rundown home?  
1601  
1602 Mr. Carter - I put up approximate. If I got the road frontage  
1603 variance and knew I had that, I was going to have the County come out and  
1604 make sure where I could put the house and make sure all the setbacks are  
1605 properly—I'd make sure all setbacks and all would meet Code, and then I'll apply  
1606 for that. I didn't want to do that until I knew if I could have the road variance.  
1607  
1608 Ms. Harris - What is the setback for 2845, 2849?  
1609  
1610 Mr. Blankinship - What is the actual setback? From the street?  
1611  
1612 Ms. Harris - Yes.  
1613  
1614 Mr. Blankinship - It appears to be about 120 feet, more or less.  
1615  
1616 Ms. Harris - How much does the width vary as it goes back? It  
1617 seems to be just a slight increase.  
1618  
1619 Mr. Blankinship - But then it jumps as you get back beyond the  
1620 boundary of this. That 2845 lot appears to be about 140 feet wide at the point  
1621 where the two lots diverge, and then the total is about 250.  
1622  
1623 Ms. Harris - How would that affect 2843?  
1624  
1625 Mr. Blankinship - Once he does the boundary adjustment that he has in  
1626 mind, 2843 would have that 245, or whatever it is, feet of width at the actual  
1627 building line. But up at the setback line, it won't change.  
1628  
1629 Ms. Dwyer - So, you're a builder. Are you planning on subdividing  
1630 this lot anymore?  
1631

1632 Mr. Carter - No ma'am. The houses on both sides of me did the  
1633 exact same thing. I called about that and they talked about dividing. I wasn't  
1634 going to do that. It's just going be like six or seven acres with one house on it.  
1635

1636 Ms. Dwyer - Our staff report says you're taking five acres from  
1637 2845 and giving it to 2843, and you're saying you're taking about six or over six  
1638 acres.  
1639

1640 Mr. Carter - I just had an approximate because I wanted to—I can  
1641 divide it however I need to. I'll have at least an acre there, but I want to make  
1642 sure that the drainfields and all work. Whatever I had to give, I was going to do.  
1643

1644 Ms. Dwyer - So, you were just allowing yourself some flexibility.  
1645

1646 Mr. Carter - Yes ma'am.  
1647

1648 Mr. Kirkland - Any other questions by Board members? Anyone  
1649 else wish to speak? Okay, sir, that concludes the case.  
1650

## 1651 **DECISION**

1652

1653 Mr. Nunnally - I move we approve it for the reason that it probably  
1654 has no reasonable value to it at this time without this variance and it will certainly  
1655 benefit the neighborhood by doing away with the eyesore they have now.  
1656

1657 Mr. Wright - Second.  
1658

1659 Mr. Kirkland - Motion made by Mr. Nunnally, seconded by Mr.  
1660 Wright. All those in favor say aye. All those opposed say no. The ayes have it,  
1661 the motion passes.  
1662

1663 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
1664 Mr. Wright, the Board **approved** application **A-034-07**, Clinton Carter's request  
1665 for a variance from Section 24-94 to build a one-family dwelling at 2843  
1666 Darbytown Road (Parcels 818-697-1429 (part) and 3373), zoned A-1,  
1667 Agricultural District (Varina). The lot width requirement is not met.  
1668

1669 1. This variance applies only to the lot width requirement for one dwelling only.  
1670 All other applicable regulations of the County Code shall remain in force.  
1671

1672 2. Only the improvements shown on the plot plan and building design filed with  
1673 the application may be constructed pursuant to this approval. Any additional  
1674 improvements shall comply with the applicable regulations of the County Code.  
1675 Any substantial changes or additions to the design or location of the  
1676 improvements may require a new variance.  
1677

1678 3. Approval of this request does not imply that a building permit will be issued.  
1679 Building permit approval is contingent on Health Department requirements,  
1680 including, but not limited to, soil evaluation for a septic drainfield and reserve  
1681 area, and approval of a well location.  
1682

1683 4. At the time of building permit application, the applicant shall submit the  
1684 necessary information to the Department of Public Works to ensure compliance  
1685 with the requirements of the Chesapeake Bay Preservation Act and the code  
1686 requirements for water quality standards.  
1687

1688  
1689 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1690 Negative: 0  
1691 Absent: 0  
1692

1693  
1694 **UP-021-07 DUNKUM, INC.** requests a conditional use permit  
1695 pursuant to Section 24-95(i)(4) to allow a pool and pool house in the side yard at  
1696 210 Overlook Road (Westham) (Parcel 758-731-2606), zoned R-1, One-family  
1697 Residence District (Tuckahoe).  
1698

1699 Mr. Kirkland - Would you raise your right hand and be sworn in?  
1700

1701 Mr. Blankinship - Do you swear the testimony you're about to give is  
1702 the truth and nothing but the truth so help you God?  
1703

1704 Mr. Dunkum - I do.  
1705

1706 Mr. Kirkland - Does anyone else wish to speak? I'm sorry. I guess  
1707 not.  
1708

1709 Mr. Dunkum - My name is Jim Dunkum.  
1710

1711 Mr. Wright - That's incorrect.  
1712

1713 Mr. Blankinship - I apologize. I don't know how we got that wrong.  
1714

1715 Mr. Dunkum - That's all right.  
1716

1717 Mr. Kirkland - What would you like for us to do for you, sir?  
1718

1719 Mr. Dunkum - After sitting here for about an hour—  
1720

1721 Ms. Dwyer - But you're not asking for a variance.  
1722

1723 Mr. Dunkum - I'm not sure what I'm doing. What I'd like to do is  
1724 present the case I had planned to, and then I guess ask you the question. I  
1725 understand you don't really want reasons, you want a legal reason, but I'd like to  
1726 at least explain why I'm asking for the variance.  
1727

1728 Ms. Dwyer - This is not a variance request.  
1729

1730 Mr. Kirkland - This is a use permit.  
1731

1732 Ms. Dwyer - Use permit.  
1733

1734 Mr. Blankinship - Conditional use permit.  
1735

1736 Mr. Kirkland - You're in a whole different game plan.  
1737

1738 Mr. Dunkum - Okay. Well, let me tell you what I'd like.  
1739

1740 Mr. Kirkland - Just tell us what you want.  
1741

1742 Mr. Dunkum - Okay. I'm the general contractor building this house  
1743 for the Schwarzschild's. There was an existing pool and pool house in the rear  
1744 yard. In the process of demolishing the existing house and building a new house  
1745 in its place, because of the added size of the house, the pool house became in  
1746 the side yard setback, therefore not meeting the side yard setback. The two  
1747 options would be to build a breezeway, which would bring it into compliance, or to  
1748 get this conditional use permit. The breezeway, because of the structure of the  
1749 existing pool house, would be extremely difficult to construct. The backside of the  
1750 pool house, which is actually is the side that faces the street, is only about four  
1751 feet tall. It's almost non-visible from even the property itself. So, adding a  
1752 breezeway there would be very difficult.  
1753

1754 Ms. Dwyer - Are you making any changes to the pool house, or  
1755 are you leaving—  
1756

1757 Mr. Dunkum - We're not touching the pool house at all.  
1758

1759 Ms. Dwyer - Okay.  
1760

1761 Mr. Dunkum - And we'd like to keep it that way, that's why I don't  
1762 want to add a breezeway to it. There will be a staircase going from the main level  
1763 down to the backyard level between the new house and pool house. I take that  
1764 back, we're painting the pool house. We're not changing the structure, but we  
1765 are painting it.  
1766

1767 Ms. Dwyer - It's built sort of into the hill.  
1768

1769 Mr. Blankinship - There's a picture that shows that pretty well.  
1770  
1771 Mr. Dunkum - The very last picture that I have. Yeah. Can you go  
1772 back one more picture? There, that one.  
1773  
1774 Ms. Harris - Yes, that shows it.  
1775  
1776 Mr. Dunkum - You can see that we're, at that point, building the  
1777 basement, which was taken recently. The backside of that pool house, which is  
1778 the side that you're looking at, is four feet or less in height. The staircase that I  
1779 described would go in between the pool house and the back of that foundation.  
1780 In addition to that, which I don't know—if you could flip back one more  
1781 photograph. You can't quite see it, but to the left of that screen where those  
1782 bushes are, there is about a 100-year-old oak tree, and the same thing on the  
1783 opposite side of the house, which is why we didn't want to push the house  
1784 forward the distance that it would take to come into compliance, because we'd be  
1785 tearing down two 100-year-old trees. That was part of it as well. I know that's not  
1786 a legal reason, but I thought it was a compelling reason to keep it like that.  
1787  
1788 Ms. Dwyer - There are two houses under construction at the end  
1789 of the cul-de-sac now. The house next to this one, was that formally a  
1790 Schwarzschild lot that was broken off or?  
1791  
1792 Mr. Dunkum - No. The lot that's on the screen there, that's  
1793 highlighted, consists of three lots that are combined for one. The house that's to  
1794 the right of that, which is 208, is actually the house that's—That house was torn  
1795 down and they're in the process of rebuilding that as well.  
1796  
1797 Ms. Dwyer - Okay.  
1798  
1799 Mr. Dunkum - Currently.  
1800  
1801 Ms. Dwyer - I thought there was something—Our staff report says,  
1802 "The applicant has discussed the possibility of conveying one of the lots  
1803 separately."  
1804  
1805 Mr. Dunkum - If you look at the same photograph where that tennis  
1806 court is?  
1807  
1808 Ms. Dwyer - Yes.  
1809  
1810 Mr. Dunkum - That tennis court is on what would be one of the three  
1811 lots that comprised the three total, and he is considering selling that lot, which  
1812 actually the access would be to Westham Station Road.  
1813



1814 Mr. Blankinship - I spoke to Mr. Schwarzschild about that yesterday,  
1815 and what he's looking at in the short term is just financing it separately. He  
1816 wants the financing for the house to be on the two lots to the west there. He  
1817 doesn't want to tie up that other lot for financing. That was why he wanted—  
1818

1819 Mr. Dunkum - There is no immediate plan to sell it.  
1820

1821 Mr. O'Kelly - I think he's also looking into a lot line adjustment,  
1822 because the tennis court encroaches on one of the lots.  
1823

1824 Mr. Blankinship - Yes. It crossed that lot, so he is going to adjust it.  
1825

1826 Mr. Dunkum - As it stands right now—That tennis court is hard to  
1827 see from that photograph, but when we dug the basement for the new house, we  
1828 filled that tennis court in. So, that doesn't exist anymore.  
1829

1830 Mr. Blankinship - Oh, I was wondering what happened to it. It's odd  
1831 that we couldn't see it from where we were.  
1832

1833 Mr. Dunkum - Because of the new design, it didn't really make  
1834 sense to have it in that location. So, he'd like to think about, in the future, putting  
1835 it more in the back yard of the new house. So, that's now filled in.  
1836

1837 Mr. Blankinship - Doesn't really need to adjust the lot line, then.  
1838

1839 Ms. Harris - What is the third lot line of demarcation?  
1840

1841 Mr. Blankinship - Do you see where the notch is? Right there. Just  
1842 continue straight up to the straight segments right there.  
1843

1844 Ms. Harris - That's one.  
1845

1846 Mr. Blankinship - And then the other two go from roughly that point—  
1847 There's another little notch. It's because right-of-way has been dedicated in some  
1848 places, but not others. Now come back to where you just were and then go due-  
1849 west. You see there's another little notch right there. He has to cross that lot in  
1850 order to get to the house, so those two really ought to stay together.  
1851

1852 Ms. Harris - Where was the former residence before you started  
1853 construction of this new residence?  
1854

1855 Mr. Dunkum - It was actually in the exact same spot. It was just a  
1856 small house. Therefore, building the larger house is what creates—  
1857

1858 Ms. Harris - Creates a problem.  
1859

1860 Mr. Dunkum - Creates the problems.  
1861  
1862 Mr. Blankinship - What you're looking at here is the former residence.  
1863  
1864 Mr. Dunkum - Right. That paved driveway, in fact, is still there. That  
1865 might show up on one of the other photographs.  
1866  
1867 Mr. Blankinship - No, I don't think it does. I think we took them all in the  
1868 rear yard.  
1869  
1870 Mr. Kirkland - Any other questions? So, the tennis court has been  
1871 filled in, correct?  
1872  
1873 Mr. Dunkum - The tennis court has been filled in.  
1874  
1875 Mr. Kirkland - Anyone else have any questions? Anyone else wish  
1876 to speak?  
1877  
1878 Ms. Harris - Are you familiar with the accessory structure ruling?  
1879 This has come up before on other properties. Are you familiar with—  
1880  
1881 Mr. Dunkum - No I'm not.  
1882  
1883 Ms. Harris - If you remember, we had someone else who wanted  
1884 to put a swimming pool in the side yard.  
1885  
1886 Ms. Dwyer - They're allowed to do it now. It's a special exception.  
1887  
1888 Mr. Blankinship - That's what he's applied under.  
1889  
1890 Ms. Harris - Yes.  
1891  
1892 Mr. Blankinship - Which is why he has a very different burden of proof  
1893 from all those variance cases.  
1894  
1895 Mr. Dunkum - Good.  
1896  
1897 Mr. Kirkland - Anyone else wish to speak? Would you like to speak,  
1898 sir? If you would, state your name for the record. You need to be sworn in, too,  
1899 because you just walked in.  
1900  
1901 Mr. Blankinship - Do you swear the testimony you're about to give is  
1902 the truth and nothing but the truth so help you God?  
1903  
1904 Mr. Schwarzschild - I do. Thank you. Ladies and gentlemen, I'm William  
1905 H. Schwarzschild, III, owner of the property in question. I am sorry I didn't get

1906 here earlier, but I did want to ask that you favorably consider this application, and  
1907 I'm here to answer any questions you may have.

1908  
1909 Mr. Kirkland - Well, the gentleman you sent did a pretty good job.

1910  
1911 Mr. Dunkum - Thank you.

1912  
1913 Mr. Kirkland - Anyone else? That concludes the case.

1914  
1915 Ms. Dwyer - This, again, is a conditional use permit and not a  
1916 variance, and so I move that this be approved with the conditions stated in our  
1917 staff report. My finding includes the requirements of such a motion for approval in  
1918 24-116(3), specifically this remaining pool house will not have a detrimental  
1919 impact on adjacent uses. In fact, it's invisible from adjacent uses and from the  
1920 roadways. It will not impair the character of the development and will not  
1921 adversely affect the health, safety, and welfare of persons on the premises or in  
1922 the neighborhood.

1923  
1924 Ms. Harris - I second.

1925  
1926 Mr. Kirkland - Motion made by Ms. Dwyer, seconded by Ms. Harris.  
1927 All those in favor say aye. All those opposed say no. The ayes have it, the motion  
1928 carries. The case is approved.

1929  
1930 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by  
1931 Ms. Harris, the Board **approved** application **UP-021-07**, Dunkum, Inc.'s request  
1932 for a conditional use permit pursuant to Section 24-95(i)(4) to allow a pool and  
1933 pool house in the side yard at 210 Overlook Road (Westham) (Parcel 758-731-  
1934 2606), zoned R-1, One-family Residence District (Tuckahoe).

1935  
1936 1. Only the improvements shown on the plot plan and building design filed with  
1937 the application may be constructed pursuant to this approval. Any additional  
1938 improvements shall comply with the applicable regulations of the County Code.  
1939 Any substantial changes or additions to the design or location of the  
1940 improvements may require a new use permit.

1941  
1942  
1943 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1944 Negative: 0  
1945 Absent: 0

1946  
1947  
1948 Mr. Kirkland - All right. I think we have some minutes. Do we have  
1949 any corrections?

1950

1951 Mr. Wright - I had one. I don't believe I said that, but I don't  
1952 understand how it could be. On page—Let me get it here.  
1953  
1954 Ms. Dwyer - Is it unintelligible?  
1955  
1956 Mr. Wright - Page 36, line 1634. Could I have said, "It makes a  
1957 difference and it didn't make any difference"? I don't see how that makes any  
1958 sense.  
1959  
1960 Ms. Dwyer - Well, maybe you misspoke and corrected yourself.  
1961  
1962 Mr. Wright - I don't know.  
1963  
1964 Mr. Blankinship - Which one would you like to have said?  
1965  
1966 Mr. Wright - Let's see. Does it make a difference that it's closed  
1967 in? I think, "It doesn't make any difference." "It didn't make any difference," is  
1968 the problem.  
1969  
1970 Mr. Blankinship - Okay.  
1971  
1972 Mr. Wright - That's true, because it's a carport. Whether it's closed  
1973 in or not is immaterial.  
1974  
1975 Mr. Kirkland - Did you get that, Mr. Blankinship?  
1976  
1977 Mr. Blankinship - Yes sir.  
1978  
1979 Ms. Dwyer - I'd just like to say if I said anything unintelligible, I  
1980 apologize.  
1981  
1982 Ms. Harris - I move the minutes be approved as corrected.  
1983  
1984 Ms. Dwyer - Second.  
1985  
1986 Mr. Kirkland - Motion made by Ms. Harris, seconded by Ms. Dwyer.  
1987 All those in favor say aye. All those opposed say no. The ayes have it, the motion  
1988 carries. **The minutes are approved as corrected.**  
1989  
1990 Mr. Kirkland - Any other business that needs to come before this  
1991 Board? Anybody got anything?  
1992  
1993 Mr. Wright - The only thing I'd like to say is we wrote a letter to the  
1994 Board of Supervisors back, what, two or three months ago?  
1995  
1996 Mr. Blankinship - Yes sir.

1997  
1998  
1999  
2000  
2001  
2002  
2003  
2004  
2005  
2006  
2007  
2008  
2009  
2010  
2011  
2012  
2013  
2014  
2015  
2016  
2017  
2018  
2019  
2020  
2021  
2022  
2023  
2024  
2025  
2026  
2027  
2028  
2029  
2030  
2031  
2032  
2033  
2034  
2035  
2036  
2037  
2038  
2039  
2040  
2041

Mr. Wright - About this dilemma with these variances. Have we had any response to the letter, or indication that they are willing to talk with us or talk to somebody to see if they could do something about that?

Mr. Blankinship - Do you want to address that, Dave, or should I?

Mr. O’Kelly - There is a committee pretty much appointed by the Director of Planning that is looking at the issues that the Board brought to the Chairman of the Board of Supervisors’ attention. We’ve had one meeting to discuss the matter and couldn’t reach consensus on which direction we should be headed. But we are studying it. It’s on our work program and we hope to bring something back to the Board in the next few months.

Mr. Wright - There’s one case we had today, the one about the distance between the garage and the house. I don’t think there was much we could do about that. That’s a fire code situation. But that other one where he was right up against that easement, if we had some discretion to consider the impact on other properties around, because he owned the next lot and so forth, I believe we could have found a way to approve that. I agree with our decision because I don’t think we had the discretion, but that’s my point. We ought to be given some discretion in some of these cases to consider the impact on surrounding properties, etcetera, to enable us to give some people some relief.

Mr. O’Kelly - That may be a matter for the General Assembly.

Mr. Wright - What I was hoping that maybe—

Mr. O’Kelly - The Board’s request to the Board of Supervisors was how to deal with road frontage variances.

Mr. Wright - Well, that’s the same idea. Variances in general, it doesn’t take an Einstein to see that we’re pretty well strapped here now. And in the Cochran case, the Court did say that there was leeway—if the legislature wanted to do it—to grant some discretion with respect to non-constitutional matters. It would be the way that they would draft the statute. I think the statute could be drafted in such a way that it could give some relief. Basically, all we can do now is grant use permits. It’s rare that we have a case, I think, that we can grant a variance for. It’s very rare. I don’t know whether that’s so good. People want to use their property, and as long as that use doesn’t cause some difficulty with other properties, surrounding properties, etcetera—Like a use permit. In some cases, some legislation could be drafted to give us some sort of prerogative, like we have in use permits, to consider the impact on surrounding properties. That’s my only point.

2042 Ms. Dwyer - Does anybody want to comment on that, because I  
2043 have a different topic. I wanted to mention what I'd spoke to Ben about during  
2044 the meeting. When I was rereading the Cherrystone case, one of the statements  
2045 that the Court made was there are basically three reasons under the statute for  
2046 asking for a variance. "Exceptional narrowness" is one, "exceptional topographic  
2047 features" is another, and "demonstrable hardship" is another. And then there's  
2048 some other language. It's a very confusing statute.

2049  
2050 Mr. Blankinship - It really is.

2051  
2052 Ms. Dwyer - Very poorly written.

2053  
2054 Mr. Wright - It is very poorly written.

2055  
2056 Ms. Dwyer - Nonetheless, the Court hung its hat on the fact that  
2057 they'd only made one of those arguments, they'd only said one of those three  
2058 statutory arguments applied. We don't require our applicants to even state what  
2059 exception under the law is the basis for their variance request. It might take  
2060 some doing, you know, to create an intelligible checklist, giving how convoluted  
2061 the statute is. But it seems to me we ought to have them at least check a box  
2062 that says we want a variance because the lot's exceptionally narrow, or it has an  
2063 undue hardship, or something, so that when they come up, they don't just say,  
2064 "Well, I want to build a porch," they say, "I want a variance because of one of the  
2065 reasons listed in the statute." Then, I think, that will put us in good stead if we  
2066 get appealed to Circuit Court. The Circuit Court will know what was the request  
2067 based on, and then what was the Board of Zoning Appeals' ruling on that  
2068 particular case. As it is now, we have to guess. Gee, I wonder which exception  
2069 their request falls under. We were sitting here today trying to think, well, it could  
2070 be A, or it could be C.

2071  
2072 Mr. Wright - The problem with that is, unless these people get an  
2073 attorney, they don't anything about any of this stuff. All they know is, "I want to do  
2074 this, I want to build onto my house." They're sort of at our mercy and we have to  
2075 try to determine where they fit or they don't fit. I think they would be very  
2076 confused about that.

2077  
2078 Ms. Dwyer - I'm concerned because it puts us in bad spot if we get  
2079 appealed. I think if I were a Circuit Court judge, I'd say I don't even know what  
2080 the basis of the request was under the law. I don't know that you'd necessarily  
2081 have to have an attorney to file a variance, maybe we could work with the legal  
2082 department and try to develop a checklist that would be in language that people  
2083 could understand. I think they do have an obligation to come to us and say why  
2084 they want the variance, other than, "I just want it."

2085  
2086 Mr. Wright - But in this case, they would then be putting the staff in  
2087 a position of trying to help them decide what they wanted.

2088  
2089 Mr. Blankinship - Well, we do that anyway.  
2090  
2091 Mr. Wright - I bet you do. These people, they don't know anything  
2092 about the ordinance or the law.  
2093  
2094 Ms. Dwyer - That doesn't mean they get to petition, "just 'because  
2095 I want it."  
2096  
2097 Mr. Wright - They're supposed to come in and prove.  
2098  
2099 Mr. Blankinship - I take pride in this, because I rewrote this after I got  
2100 here for exactly that reason. Here's the first page with the name and address  
2101 and what they're requesting and all that.  
2102  
2103 Ms. Dwyer - And then we have the Cochran page.  
2104  
2105 Mr. Blankinship - Right.  
2106  
2107 Ms. Dwyer - Which everyone ignores.  
2108  
2109 Mr. Blankinship - Right. They sign it and ignore it. What we did is  
2110 actually cite the Code and then ask them how does this prohibit or unreasonably  
2111 restrict. If not, do not continue. That was changed after Cochran to try to get  
2112 that point across. But then, what is the problem with the size, shape, and  
2113 topography, and has does this affect other property, why can't you make other  
2114 arrangements. We ask those questions to kind of lead them in that direction.  
2115  
2116 Ms. Dwyer - I guess what I'm suggesting—And this may not be a  
2117 good idea. You all may not agree with it. But I'm just suggesting that there be a  
2118 checkbox. Maybe a checkbox and an explanation. What is the unusual shape, if  
2119 you checked the "unusual shape" box? That way, you could even put in the staff  
2120 report what their reason is under the ordinance so we would know they're asking  
2121 for this because they have a weirdly-shaped lot, and not because we have to sit  
2122 here and look at the statute and guess.  
2123  
2124 Mr. Wright - I think you should ask the County Attorney to come up  
2125 with something.  
2126  
2127 Mr. Blankinship - Come up with something?  
2128  
2129 Mr. Wright - Yes, to check a box.  
2130  
2131 Ms. Harris - Can I have a copy of this?  
2132

2133 Mr. Blankinship - Would you like to have the whole application in the  
2134 packet? I've never been quite sure why we don't send you the whole application.  
2135  
2136 Ms. Dwyer - That would be interesting information to have. It may  
2137 be that if we have that, we wouldn't need to redo it; I don't know.  
2138  
2139 Mr. Wright - I think you're onto something and I think if the County  
2140 Attorney could give some study to this, we would, in effect, be applying the law.  
2141 Check off where you fit. That would help.  
2142  
2143 Ms. Harris - Do the applicants get a copy of the blue form to take  
2144 with them after they sign?  
2145  
2146 Mr. Wright - Trying to do that's going to be fun. I've been reading  
2147 this statute for 30 years.  
2148  
2149 Ms. Dwyer - I read it before every meeting.  
2150  
2151 Mr. Wright - I do, too.  
2152  
2153 Ms. Harris - We don't want to use that to beat them over the head  
2154 with it: "You checked this and now you're changing your case up here," you  
2155 know. We can use it to refer, and if they don't say all that we think they should  
2156 say under a specific category, they're denied or whatever. They're not attorney's  
2157 and—  
2158  
2159 Mr. Wright - We're trying to help these folks.  
2160  
2161 Ms. Harris - Yes, we want to help them.  
2162  
2163 Mr. Blankinship - The only time I beat them over the head is when they  
2164 say, "Not Applicable." When we say, "What is the hardship," and they say, "Not  
2165 Applicable."  
2166  
2167 Ms. Dwyer - All I'm saying is it's their obligation to come to us—  
2168  
2169 Mr. Blankinship - Right.  
2170  
2171 Ms. Dwyer - —and explain why they—  
2172  
2173 Mr. Wright - They're supposed to prove their case.  
2174  
2175 Ms. Dwyer - You can't prove your case by saying, "I want to do it."  
2176 That's not justification.  
2177



2178 Mr. Kirkland - The woman you were talking about where the garage  
2179 and house were too close, she said, "You have all the papers."  
2180  
2181 Mr. Wright - I was tempted to say, "But madam, you have the  
2182 obligation to present your case." But I didn't want to hurt her.  
2183  
2184 Ms. Dwyer - She was elderly and we were being nice.  
2185  
2186 Mr. Kirkland - That's a bad situation to be in, especially if you go to  
2187 Circuit Court and appeal  
2188  
2189 Ms. Dwyer - Yes. And the Court has said in cases that they  
2190 review—For example, there was no finding under the statute. One reason  
2191 there's no finding is because we don't know why they were asking for the  
2192 variance.  
2193  
2194 Ms. Harris - If you and Mr. Wright, Elizabeth, had a problem  
2195 deciding which category this would fall under, what about the average person?  
2196  
2197 Mr. Wright - That's what I'm saying. They don't understand.  
2198  
2199 Ms. Harris - They would have a mammoth of a job trying to  
2200 determine that.  
2201  
2202 Ms. Dwyer - It's not that I couldn't, it's that I didn't have the  
2203 information from them to know what they wanted, so I had to guess.  
2204  
2205 Mr. Wright - It's hard for us to know. This is not straight stuff.  
2206 Although Cochran did eliminate a lot of things I used to think we could do.  
2207  
2208 Ms. Dwyer - That's why I'm thinking if we had a checklist, that  
2209 would help them understand. We're not saying present us your full case. I think  
2210 having the checklist and spelling it out is a way of helping the average person.  
2211  
2212 Mr. Wright - I might get them to begin to think about this ahead of  
2213 time.  
2214  
2215 Ms. Harris - Give them a copy of it so they'll know when they  
2216 come before us what they checked.  
2217  
2218 Mr. Blankinship - Yes, that's a good idea.  
2219  
2220 Mr. Kirkland - Remember what you did a month ago?  
2221  
2222 Ms. Harris - No.  
2223

2224 Mr. Kirkland - Any other information to be brought up? All right, I  
2225 move we adjourn.

2226

2227 There being no further business, the Board adjourned until the **November 15,**  
2228 **2007** meeting at 10:31 a.m.

2229

2230

2231

Richard Kirkland, CBZA  
Chairman

2232

2233

2234

2235

2236

2237

2238

Benjamin Blankinship, AICP  
Secretary

2239