

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
2 **HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**
3 **HENRICO COUNTY GOVERNMENT COMPLEX, ON THURSDAY, AUGUST 28, 2003,**
4 **AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
5 **DISPATCH ON AUGUST 7 AND 14, 2003.**
6

Members Present: Daniel Balfour, Chairman
R. A. Wright, Vice Chairman
Richard Kirkland
Gene L. McKinney, C.P.C., C.B.Z.A.
James W. Nunnally

Also Present: Benjamin Blankinship, Secretary
Lee J. Tyson, County Planner
Priscilla M. Parker, Recording Secretary

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

12 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies
13 and gentlemen. The rules for this meeting are as follows. As Secretary, I will call each
14 case. Then at that time the applicant should come down to the podium. I will ask
15 everyone who intends to speak on that case, in favor or in opposition, to stand and be
16 sworn in. The applicants will then present their testimony. After the applicant has
17 spoken, the Board will ask them questions, and then anyone else who wishes to speak
18 will be given the opportunity. After everyone has spoken, the applicant, and only the
19 applicant, will have an opportunity for rebuttal. After hearing the case, and asking
20 questions, the Board will take the matter under advisement. They will render all of their
21 decisions at the end of the meeting. If you wish to know their decision on a specific
22 case, you can either stay until the end of the meeting, or you can call the Planning
23 Office later this afternoon. This meeting is being tape recorded, so we will ask everyone
24 who speaks, to speak directly into the microphone on the podium, to state your name,
25 and to spell your last name please. And finally, out in the foyer, there are two binders,
26 containing the staff report for each case, including the conditions that have been
27 recommended by the staff. Mr. Chairman, I am not aware of any deferrals or
28 withdrawals.
29

30 ***Beginning at 9:00***

31
32 **New Applications**

33
34 **UP- 19-2003 WEST BROAD HONDA** requests a temporary conditional use

35 permit pursuant to Section 24-116(c)(1) of Chapter 24 of the
36 County Code to use a temporary office trailer at 7014 West Broad
37 Street (Parcel 767-747-2250), zoned B-3, Business District
38 (Brookland).
39

40 Mr. Balfour - Do we have any others who intend to testify in this matter?
41 Would you raise your right hand and be sworn please?
42

43 Mr. Blankinship - Do you swear that the testimony you are about to give is the
44 truth, the whole truth, and nothing but the truth, so help you God? What is the correct
45 pronunciation of your name?
46

47 Mr. Moody - I do. I am David Moody. I need to keep the trailer I have in
48 place until November 15. We have under construction at West Broad Honda,
49 expansion of the sales area, and we got delayed for various reasons, from the builder.
50 We've complied with everything so far with the County, as far as parking and that sort of
51 thing.
52

53 Mr. Balfour - Roughly 90 more days.
54

55 Mr. Moody - At the most.
56

57 Mr. Kirkland - Is that going to be enough?
58

59 Mr. Moody - Yes. He's telling me September 15, so that means to me
60 probably the beginning of October.
61

62 Mr. Nunnally - What is this, Mr. Blankinship, a one-year commitment?
63

64 Mr. Blankinship - It was originally about three or four months, I think, a very
65 short term, so they're still well within their two years. Is there a reason this trailer was
66 not skirted when it was installed?
67

68 Mr. Moody - I don't think it was requested. We would have done it, and
69 we will do it if necessary.
70

71 Mr. Kirkland - You have a lot of little tents in the lot, I see. That's not taking
72 up any parking spaces that are needed?
73

74 Mr. Moody - No, if you look at the trailer at the first, it's really helped our
75 parking, because right there where you see that one car, that's where I have used car
76 inventory. Now it's left open, and I'm taking all the used cars and putting them out back,
77 so it's really increased the parking.
78

79 Mr. Balfour - Any other questions? Thank you.
80

81 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
82 Nunnally, the Board **granted** application **UP-19-2003** for a temporary conditional use
83 permit to use a temporary office trailer at 7014 West Broad Street (Parcel 767-747-
84 2250). The Board granted the use permit subject to the following conditions:

85
86 1. Only the improvements shown on the plan filed with the application may be
87 constructed pursuant to this approval. No substantial changes or additions to the layout
88 may be made without the approval of the Board of Zoning Appeals. Any additional
89 improvements shall comply with the applicable regulations of the County Code.

90
91 2. The temporary sales trailer will be removed from the site prior to the issuance of
92 a Certificate of Occupancy for the remodeled sales area.

93
94 3. The parking lot, driveways, and loading areas shall be subject to the
95 requirements of Section 24-98 of Chapter 24 of the County Code.

96
97 4. The temporary building shall be removed by November 15, 2003.

98
99 5. Sufficient effectively usable parking spaces shall be provided for customers and
100 employees.

101
102 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
103 Negative: 0
104 Absent: 0

105
106 The Board granted the request because it found the proposed use will be in
107 substantial accordance with the general purpose and objectives of Chapter 24 of
108 the County Code.

109
110 **UP- 20-2003** **NEW BRIDGE BAPTIST CHURCH** requests a temporary
111 conditional use permit pursuant to Section 24-116(c)(1) of Chapter
112 24 of the County Code to place a temporary classroom trailer at
113 5803 Nine Mile Road (Parcel 817-725-4598), zoned R-2A, One-
114 family Residence District (Varina).

115
116 Mr. Balfour - Do we have any others who intend to testify in this matter?
117 Would you raise your right hand and be sworn please?

118
119 Mr. Blankinship - Do you swear that the testimony you are about to give is the
120 truth, the whole truth, and nothing but the truth, so help you God? What is the correct
121 pronunciation of your name?

122
123 Ms. Muse - I do. Good morning. I am Mrs. Sheila Muse. New Bridge
124 Baptist Church Child Care Center has been in existence since September of 1997.
125 We're now certified to take 65 children. The big New Bridge that was on the corner has
126 moved. We're finding that we need to make room for more children. In order to do this,

127 we're asking that we have the classroom trailer for two years. If you would like, I have
128 one of our Planning Commission and trustees of the church with me, to show that the
129 church is in a building mode, and hopefully within a two-year period they will have the
130 educational building up, and we can move out of the trailer with the older kids and into
131 the church.

132
133 Mr. Blankinship - Would you like to display those plans?
134

135 Mr. Nunnally - Ms. Muse, how many children do you have in there now?
136

137 Ms. Muse - Right now I have 66, and applications on hold. This trailer
138 would allow me to have forty more children.
139

140 Mr. Nunnally - You must be getting some all of New Bridge now?
141

142 Ms. Muse - Yes, they've moved now, and our enrollment has doubled
143 since they moved, which is a blessing for us.
144

145 Mr. Balfour - Have you read the restrictions suggested?
146

147 Ms. Muse - Yes, I've read everything you sent me, yes sir.
148

149 Mr. Balfour - And you understand when it says the permit cannot be
150 renewed and runs out two years from now?
151

152 Ms. Muse - Yes sir. Would you like for Mr. Duncannfield to come up?
153 He's on our Planning Commission and one of the church trustees?
154

155 Mr. Kirkland - Ms. Muse, is this trailer going to have bathroom facilities in
156 it?
157

158 Ms. Muse - Yes it does. We've seen them already sir.
159

160 Mr. Kirkland - We need to have a condition; I don't see a condition about
161 hooking the water or sewer.
162

163 Mr. Blankinship - Do you know whether that would be self-contained or
164 whether it will be hooked to the water and sewer?
165

166 Ms. Muse - It will be hooked to the water and sewer. We've already had
167 Vepco out already to find out what the procedure is, as far as the lighting and everything
168 else. We're just waiting for a go-ahead.
169

170 Mr. Kirkland - So you wouldn't have any objections if we had a suggested
171 condition saying that you had to hook to the water.
172

173 Ms. Muse - No sir. We would have to because of the bathrooms. The
174 County also requires that we have one bathroom per every 50 children, so we need to
175 do that.

176
177 Mr. Balfour - Are there any other questions? Thank you.

178
179 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
180 Kirkland, the Board **granted** application **UP-20-2003** for a temporary conditional use
181 permit to to place a temporary classroom trailer at 5803 Nine Mile Road (Parcel 817-
182 725-4598). The Board granted the use permit subject to the following conditions:

183
184 1. On or before August 28, 2004, the applicant shall submit a report to the Planning
185 Office describing their plans for permanent space.

186
187 2. The trailer shall be removed from the property on or before August 28, 2005, at
188 which time this permit shall expire. This permit shall not be renewed.

189
190 3. The property shall be developed in substantial conformance with the plan filed
191 with the application. No substantial changes or additions to the layout may be made
192 without the approval of the Board of Zoning Appeals.

193
194 4. A detailed landscaping and lighting plan shall be submitted to the Planning Office
195 with the building permit for review and approval.

196
197 5. All landscaping shall be maintained in a healthy condition at all times. Dead
198 plant materials shall be removed within a reasonable time and replaced during the
199 normal planting season.

200
201 6. [Amended] The trailer shall be connected to public water and sewer.

202
203 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
204 Negative: 0
205 Absent: 0

206
207 The Board granted the request because it found the proposed use will be in substantial
208 accordance with the general purpose and objectives of Chapter 24 of the County Code.

209
210 **A - 92-2003** **REZA ALIPANAH** requests a variance from Section 24-94 of
211 Chapter 24 of the County Code to build an addition at 13625
212 Swanhollow Drive (Foxhall) (Parcel 729-762-8633), zoned R-2AC,
213 One-family Residence District (Conditional) (Three Chopt). The
214 rear yard setback is not met. The applicant proposes 37 feet rear
215 yard setback, where the Code requires 45 feet rear yard setback.
216 The applicant requests a variance of 8 feet rear yard setback.

217

218 Mr. Balfour - Do we have any others who intend to testify in this matter?
219 Would you raise your right hand and be sworn please?
220
221 Mr. Blankinship - Do you swear that the testimony you are about to give is the
222 truth, the whole truth, and nothing but the truth, so help you God? What is the correct
223 pronunciation of your name?
224
225 Mr. Alipanah - I do. You pronounced it correctly. I'm building a Florida
226 room, and I'm requesting a variance of eight feet rear yard setback.
227
228 Mr. Wright - What's the purpose and need for this room?
229
230 Mr. Alipanah - My wife wants the Florida room.
231
232 Mr. Wright - What's the size of your family?
233
234 Mr. Alipanah - Four.
235
236 Mr. Wright - You have two children at home?
237
238 Mr. Alipanah - Yes.
239
240 Mr. Balfour - It looks like your lot is not quite a square lot.
241
242 Mr. Alipanah - There is a sixteen-foot easement at the end of the lot.
243
244 Mr. Wright - Do you have any screening across the rear of your property,
245 to screen this from your neighbor to the rear?
246
247 Mr. Alipanah - Yes, there are all trees.
248
249 Mr. Balfour - This is going where we see the deck in the picture?
250
251 Mr. Alipanah - That's correct.
252
253 Mr. Blankinship - Next to it.
254
255 Mr. Wright - So the deck will be removed?
256
257 Mr. Alipanah - Part of the deck will be removed. It will be actually next to
258 the deck.
259
260 Mr. Balfour - I see. Are there other questions?
261
262 Mr. Wright - It looks like the house to the rear of you faces on
263 Swanhollow Court, so this would be, your property looks to the side of that house, is

264 that correct, almost to the rear of it?

265

266 Mr. Alipanah - The rear is yes, to the side of the garage of the house in the
267 back. As I said, you can hardly see the house in the back, because it's covered with
268 trees.

269

270 Mr. Balfour - You're facing Swanhollow Circle. Are there any other
271 questions? Thank you. Nobody stood up in opposition.

272

273 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
274 McKinney, the Board **granted** application **A-92-2003** for a variance to build an addition
275 at 13625 Swanhollow Drive (Foxhall) (Parcel 729-762-8633). The Board granted the
276 variance subject to the following conditions:

277

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

282

283 2. The new construction shall match the existing dwelling as nearly as
284 practical.

285

286 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

287 Negative: 0

288 Absent: 0

289

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

295

296 **A - 93-2003** **ROB AND SARA PARTLOW** request a variance from Section 24-
297 94 of Chapter 24 of the County Code to build an addition and a
298 deck at 9017 Tarrytown Drive (Deer Lodge) (Parcel 746-736-7690),
299 zoned R-2, One-family Residence District (Tuckahoe). The
300 minimum side yard setback and total side yard setback are not met.
301 The applicants propose 12 feet minimum side yard setback and 32
302 feet total side yard setback, where the Code requires 15 feet
303 minimum side yard setback and 35 feet total side yard setback.
304 The applicants request a variance of 3 feet total side yard setback.

305

306 Mr. Blankinship - Mr. Chairman, Ms. Partlow called me this morning and said
307 that she would be here, but she would not be here at 9:00 o'clock.

308

309 Mr. Balfour - All right, we'll pass that one on by. Next case.

310 ***(Case is called again at end of agenda)***

311
312 Mr. Balfour - Do we have any others who intend to testify in this matter?
313 Would you raise your right hand and be sworn please?

314
315 Mr. Blankinship - Do you swear that the testimony you are about to give is the
316 truth, the whole truth, and nothing but the truth, so help you God?

317
318 Ms. Partlow - I do. I'm Sara Partlow. We would like to extend off of our
319 existing sunroom, a room that would be used for my three young children to put all of
320 their toys. Our house is about 16-17 years old, so at the same time we put on this
321 addition, we would re-do our deck and wrap it around the addition as well, and we would
322 also on our existing sunroom, be replacing the windows that are rotting and replacing
323 the masonite siding with cement hardboard that wouldn't rot. We're not meeting the
324 side yard setback.

325
326 Mr. Balfour - If your deck were going back, it would be okay; it's the side
327 that's the problem, three feet.

328
329 Ms. Partlow - It's the actual addition itself, but obviously bring the deck
330 around would affect that too, but I think we're going two or three feet over in the side
331 yard. We have a screening on that side of the house, of existing red tip photinias, as
332 you can see, coming along, so I don't think it's going to impact our neighbors' view at
333 all.

334
335 Mr. Balfour - It looks like a lot of screening towards the rear of your yard.

336
337 Ms. Partlow - Yes, this whole side is red tips, and one of our red tips died
338 due to a fungus, and we have one replanted there, and that's where that gap space is,
339 but it's growing.

340
341 Mr. Balfour - What are they, red tip photinias. They grow up tall, and all
342 across the side, there's red tips, and you can see there's a gap there, and we had one
343 that died about a year ago, and we've replanted that.

344
345 Mr. Wright - It appears from our drawing here, that this addition would
346 sort of face to the rear of the property on that side, the 9015 location, is that correct.

347
348 Ms. Partlow - If you were facing my house, it would face to the rear of my
349 neighbors to the left, yes the 9015.

350
351 Mr. Wright - It would not impact the side of his dwelling?

352
353 Mr. Partlow - It would be right to the side of his dwelling. Their house is
354 set back a little bit further than our house.

355

356 Mr. Balfour - Are there any other questions of Ms. Partlow?
357

358 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
359 McKinney, the Board **granted** application **A-93-2003** for a variance to build an addition
360 and a deck at 9017 Tarrytown Drive (Deer Lodge) (Parcel 746-736-7690). The Board
361 granted the variance subject to the following conditions:
362

363 1. Only the improvements shown on the plan filed with the application may be
364 constructed pursuant to this approval. No substantial changes or additions to the layout
365 may be made without the approval of the Board of Zoning Appeals. Any additional
366 improvements shall comply with the applicable regulations of the County Code.
367

368 2. The new construction shall match the existing dwelling as nearly as practical.
369

370 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

371 Negative: 0

372 Absent: 0
373

374 The Board granted this request, as it found from the evidence presented that, due to the
375 unique circumstances of the subject property, strict application of the County Code
376 would produce undue hardship not generally shared by other properties in the area, and
377 authorizing this variance will neither cause a substantial detriment to adjacent property
378 nor materially impair the purpose of the zoning regulations.
379

380 **UP- 21-2003** **CAROL STREAM AMUSEMENTS** requests a temporary
381 conditional use permit pursuant to Section 24-116(c)(1) of Chapter
382 24 of the County Code to hold a carnival at 10101 Brook Road
383 (Parcel 785-771-0111), zoned B-3C, Business District (Conditional)
384 (Fairfield).
385

386 Mr. Balfour - Do we have any others who intend to testify in this matter?
387 Would you raise your right hand and be sworn please?
388

389 Mr. Sweeney - We have Melody Braithwaite from the Mall here if there are
390 any other questions.
391

392 Mr. Balfour - Why don't both of you stand and be sworn in then.
393

394 Mr. Blankinship - Do you swear that the testimony you are about to give is the
395 truth, the whole truth, and nothing but the truth, so help you God? What is the correct
396 pronunciation of your name?
397

398 Mr. Swaney - I do. My name is Robert Swaney. We're proposing to hold a
399 family funfest in conjunction with the Virginia Center Commons, from the 5th through the
400 14th of September. We call it a Family Fun Fest. We'll have a wide variety of carnival-
401 type rides and games of skill and food treats, about 20 rides, 15 games, and we're

402 looking at three food operations. We're a family operation, family owned. Our owners
403 have kids of their own, so safety, security, and cleanliness are paramount in their minds.
404
405 Mr. Balfour - You've read the conditions?
406
407 Mr. Swaney - I have not seen the conditions; I've discussed them with
408 staff, but I was not aware there were written conditions.
409
410 Mr. Balfour - Mr. Blankinship will show them to you.
411
412 Mr. Blankinship - Look carefully at the date. I believe what you said just now
413 was different from what was on the application.
414
415 Mr. Swaney - We're showing the 5th through the 14th, is that right?
416
417 Mr. Blankinship - We have the 4th, so I guess that's inclusive.
418
419 Mr. Swaney - We have made application to the Henrico County Police
420 Division, and we've got officers who will be there throughout the entire event. In fact, on
421 Saturday night, we will have two officers there from 6:00 to 11:00.
422
423 Mr. Blankinship - Which nights?
424
425 Mr. Swaney - Saturday nights.
426
427 Mr. Blankinship - What about Friday?
428
429 Mr. Swaney - One officer for both of the Fridays.
430
431 Mr. Blankinship - I received a note from the Division of Police yesterday
432 afternoon, requesting two officers on duty both Friday and Saturday nights.
433
434 Mr. Swaney - Okay.
435
436 Mr. Balfour - Is that already in the conditions?
437
438 Mr. Blankinship - What's in the conditions is that they have to please the
439 Division of Police.
440
441 Mr. Kirkland - We can put that as a condition.
442
443 Mr. Blankinship - Good idea to state it explicitly.
444
445 Mr. Swaney - So the additional condition would be, "in addition to two on
446 Saturday nights, two on Friday nights from 6:00 to 11:00."
447

448 Mr. Balfour - We'll amend the conditions to say that. Any other
449 questions? You saw that the music stops at 10:00 pm.

450
451 Mr. Swaney - We can stop it at 10:00 if you want them to.

452
453 Mr. Balfour - Take a second and read your conditions.

454
455 Mr. Swaney - Yes, we can turn the music off at 10:00 o'clock.

456
457 Mr. Balfour - Any other questions? Apparently not. Thank you sir.

458
459 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
460 Wright, the Board **granted** application **UP-21-2003** for a temporary conditional use
461 permit to hold a carnival at 10101 Brook Road (Parcel 785-771-0111)). The Board granted
462 the use permit subject to the following conditions:

463
464 1. This approval is only for a carnival at the shopping center September 4 to September 14,
465 2003

466
467 2. [Amended] The applicant shall satisfy all requirements of the Henrico County Division of
468 Police concerning the security of the site and the patrons of the event. There shall be two
469 security officers on site Friday and Saturday evenings.

470
471 3. The applicant shall satisfy all requirements of the Henrico County Department of Health
472 and the Henrico County Department of Building Inspections.

473
474 4. Hours of operation shall be limited to 5:00 PM to 11:00 PM Monday through Thursday
475 and 12:00 Noon to 12:00 Midnight Friday through Sunday. Amplified music shall not be played
476 after 10:00 PM.

477
478 5. All tents and accessory structures shall be removed from the site by September 20,
479 2003, at which time this permit shall expire.

480
481 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

482 Negative: 0

483 Absent: 0

484
485 The Board granted the request because it found the proposed use will be in substantial
486 accordance with the general purpose and objectives of Chapter 24 of the County Code.

487
488 **A - 94-2003** **MIRSAD SALIHOVIC** requests a variance from Section 24-95(c)(4)
489 of Chapter 24 of the County Code to build a covered front porch at
490 4906 Adair Avenue (Greendale Manor) (Parcel 770-746-2883),
491 zoned R-4, One-family Residence District (Brookland). The front
492 yard setback is not met. The applicant proposes 29 feet front yard
493 setback, where the Code requires 35 feet front yard setback. The
494 applicant requests a variance of 6 feet front yard setback.

495

496 Mr. Balfour - Do we have any others who intend to testify in this matter?
497 Would you raise your right hand and be sworn please?

498
499 Mr. Blankinship - Do you swear that the testimony you are about to give is the
500 truth, the whole truth, and nothing but the truth, so help you God? What is the correct
501 pronunciation of your name?

502
503 Mr. Krak - Yes I do. I'm Abid Krak. I represent Mr. Mirsad Salihovic,
504 regarding this case. Mr. Salihovic came to this country from Bosnia about two years
505 ago. He already purchased this house in November last year. Like we all do, we buy
506 houses here, and we want to fix them up and have a nice place to live from then on.
507 Mr. Salihovic came in here speaking no English at all. He didn't contact me, because I
508 represent every Bosnian here, people come and need some help. He didn't contact me
509 to expand his front brick stoop, build a bigger front brick stoop with a roof up above.
510 After the inspector gave him a note or something, I got involved and drew the little
511 sketch on it how it's going to be after I finished. At this stage, half is done, just some
512 roof needs to be removed and put a new roof in, with a railing and everything. This
513 picture is what is on now. If you allow him to finish this like a front brick stoop, covered,
514 we're going to have a nice railing and everything and nice columns. What he
515 understood, he can build, the main reason was an understanding, he can build up to
516 150 square feet without a building permit. He didn't get any information where, front
517 yard, back yard, whatever. We all need some help and some time to understand what
518 we can do, what we cannot do. I got involved too late to help him out. Right now it's
519 too late, but he requested a variance to have that front brick stoop a little bigger than the
520 rest of it. Also, Mr. Salihovic saw in the neighborhood a lot of houses that have the front
521 brick stoop, covered and everything. He's already built it; what he requests is for you to
522 give him a chance to finish that front brick stoop as that original plan called for. I'm
523 going to finish it for him; I'm going to help him out.

524
525 Mr. Balfour - Any questions by Board members?

526
527 Mr. Kirkland - Mr. Krak, what's there is going to stay there, and you're just
528 going to finish it up. You're not going to remove the roof that's been added? You're not
529 going to beef it up or anything?

530
531 Mr. Krak - Let's go back to the original picture here.

532
533 Mr. Kirkland - I went out there and looked at the site, so I'm familiar with
534 what it looks like.

535
536 Mr. Krak - We're going to fit it with columns and everything, and that
537 little roof going down, we're going to remove that and build a new one, with new
538 columns, new railing and everything. That little existing roof right there.

539
540 Mr. Kirkland - That's going to stay.

541

542 Mr. Krak - That's going to stay, with new columns and gutters and
543 railing; we're going to put the railing around here and have a nice front brick stoop,
544 covered, with little lights, with one light in the middle of the ceiling, with the ceiling
545 border on it.

546
547 Mr. Kirkland - I rode down the block, and I saw there were some, a few
548 covered ones. I didn't see one this big. I didn't see one this big.

549
550 Mr. Krak - There are a lot of them. I drove by, actually; there are a lot
551 of Bosnians living there. I drive by every day down there, and couple of rows down.

552
553 Mr. Balfour - You must have built some of them. You say you've built all
554 of them for the people.

555
556 Mr. Krak - I didn't build this one here. I got involved after he got the
557 notice from the County.

558
559 Mr. Balfour - You fix them up and do them right. Are there any other
560 questions?

561
562 Mr. Kirkland - Thank you sir.

563
564 Mr. Krak - A lot of them

565
566 Mr. Balfour - Are there any other questions by Board members? Thank
567 you sir.

568
569 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
570 Nunnally, the Board **granted** application **A-94-2003** for a variance to build a covered
571 front porch at 4906 Adair Avenue (Greendale Manor) (Parcel 770-746-2883). The
572 Board granted the variance subject to the following conditions:

573
574 1. Only the improvements shown on the plan filed with the application may be
575 constructed pursuant to this approval. No substantial changes or additions to the layout
576 may be made without the approval of the Board of Zoning Appeals. Any additional
577 improvements shall comply with the applicable regulations of the County Code.

578
579 2. The new construction shall match the existing dwelling as nearly as practical.

580
581 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
582 Negative: 0
583 Absent: 0

584
585 The Board granted this request, as it found from the evidence presented that, due to the
586 unique circumstances of the subject property, strict application of the County Code
587 would produce undue hardship not generally shared by other properties in the area, and

588 authorizing this variance will neither cause a substantial detriment to adjacent property
589 nor materially impair the purpose of the zoning regulations.

590
591 **A - 95-2003** **CATHY CHILDREY** requests a variance from Section 24-30.1(a) of
592 Chapter 24 of the County Code to build a sunroom at 9444 Willow
593 Ridge Drive (Hungary Ridge) (Parcel 766-759-1748), zoned R-5C,
594 General Residence District (Conditional) (Brookland). The total
595 side yard setback is not met. The applicant proposes 18 feet total
596 side yard setback, where the Code requires 20 feet total side yard
597 setback. The applicant requests a variance of 2 feet total side yard
598 setback.
599

600 Mr. Balfour - Do we have any others who intend to testify in this matter?
601 Would you raise your right hand and be sworn please?
602

603 Mr. Blankinship - Do you swear that the testimony you are about to give is the
604 truth, the whole truth, and nothing but the truth, so help you God
605

606 Mr. Britt - I do. I'm George Britt, with Melani Bros., the builder for the
607 applicant.
608

609 Mr. Balfour - You want a two-foot variance, is that right?
610

611 Mr. Britt - That's correct sir. They wish to build a nine-foot projection
612 from the side of this house, by twelve, sunroom, located on the side of the house. The
613 problem that we have is the way that the property line cuts back towards the back of the
614 house. It's not an even property line going back there, and this is going to infringe
615 slightly on the setback requirements there.
616

617 Mr. Balfour - It seems to come in a little bit on you towards the back, is
618 that right?
619

620 Mr. Britt - Yes, and when we designed it, we tried to anticipate the best
621 that we could by not going any further out. If you notice, there's a little chimney area
622 right there. We tried to keep it consistent with the way the house existed there. They
623 do wish this to be on the side of the house. You've got pictures there, but they've got
624 sliding doors that just make it the natural place to add one of these additions. We're just
625 requesting the two feet so they can enjoy a sunroom.
626

627 Mr. Blankinship - What is the roofline going to look like?
628

629 Mr. Britt - It's what we call a studio roof. It will pitch forwards. In other
630 words, there's no pitch away from the side of the house. What we're actually going to
631 do there is remove the overhang to create more back wall height, so we can get more of
632 a pitch, so that the pitch can properly come down.
633

634 Mr. Wright - Is there a house located next door, on the side that the
635 proposed sunroom will go on?
636

637 Mr. Britt - Yes, you can see that there's a house with the picture that
638 they have up here.
639

640 Mr. Wright - There must be a lot of trees, because I don't see a house.
641

642 Mr. Kirkland - On the right.
643

644 Mr. Wright - Okay, I was looking at this picture here.
645

646 Mr. Britt - There's no windows over on that house, so they can't see
647 anybody.
648

649 Mr. Kirkland - One window. What is the use of this, other than a sunroom?
650 Is this something they want?
651

652 Mr. Britt - Yes, that is correct, just to enjoy the outside. Their back
653 yard isn't really conducive to the normal back yard that many homes have. They want
654 to be able to enjoy a little bit of the feeling of being outside without the wind, the bugs,
655 the rain, and the snow.
656

657 Mr. Kirkland - I see in the staff report that this home was recently
658 purchased in April, and I'm really concerned that we get a lot of these requests, that
659 people don't do a little homework when they buy a home to find out that they can't add
660 an addition like this, that it's in violation most of the time. I wish the applicant was here,
661 because I'd like to hear what a real estate agent told her when she purchased the
662 property.
663

664 Mr. Britt - That would be interesting, and it seems that they built it with
665 the idea that obviously something would go there.
666

667 Mr. Kirkland - Evidently the builder found out that something couldn't go
668 there, so that's why he stopped.
669

670 Mr. Britt - That's a possibility, yes sir.
671

672 Mr. Wright - Mr. Blankinship, how much of this proposed addition is really
673 in the side yard that causes the problem.
674

675 Mr. Blankinship - It's a two-foot variance from the total side yard requirement,
676 so actually it meets the minimum side yard, eight feet, but the sum of the two side yards
677 has to be at least twenty feet, and because it's only eight and a quarter on the opposite
678 end, they run into the problem.
679

680 Mr. Wright - My question is, the way that the property line goes back, the
681 entire proposed construction does not violate that total side yard, does it?

682
683 Mr. Blankinship - No sir, just eyeballing it here, it looks like it would come
684 pretty close to the front corner, as if the front corner, where the arrow, "proposed 9' x 12'
685 sunroom," that arrow points to a corner, looks like that would probably comply.

686
687 Mr. Wright - That's what I'm saying, it's just a slice, just the rear corner of
688 the building violates it.

689
690 Mr. Balfour - Any other comments or questions? Thank you.

691
692 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
693 Nunnally, the Board **granted** application **A-95-2003** for a variance to build a sunroom at
694 9444 Willow Ridge Drive (Hungary Ridge) (Parcel 766-759-1748). The Board granted
695 the variance subject to the following conditions:

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

701
702 2. The new construction shall match the existing dwelling as nearly as
703 practical.

704 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
705 Negative: 0
706 Absent: 0

707
708 The Board granted this request, as it found from the evidence presented that, due to the
709 unique circumstances of the subject property, strict application of the County Code
710 would produce undue hardship not generally shared by other properties in the area, and
711 authorizing this variance will neither cause a substantial detriment to adjacent property
712 nor materially impair the purpose of the zoning regulations.

713
714 **UP- 22-2003 VULCAN CONSTRUCTION MATERIALS, LLC** requests a
715 conditional use permit pursuant to Sections 24-103 and 24-52(d) of
716 Chapter 24 of the County Code to extract materials from the earth
717 at 4721 Curles Neck Road (Parcel 836-667-5251), zoned A-1,
718 Agricultural District (Varina).

719
720 Mr. Balfour - Do we have any others who intend to testify in this matter?
721 Would you raise your right hand and be sworn please?

722
723 Mr. Blankinship - Do you swear that the testimony you are about to give is the
724 truth, the whole truth, and nothing but the truth, so help you God? What is the correct
725 pronunciation of your name?

726
727 Mr. Lewis - I do. My name is Monte Lewis. I'm with Lewis and
728 Associates, representing the applicant on this case. These are all active mining areas.
729 One you had approved, one on the northwest you just approved a month or two ago.
730 The idea with this application, we had to renew two of the other areas, so we wanted to
731 combine all three into one application to make it simpler for us, the applicant, and for the
732 County, hoping that we will not have to renew Area F, that this will carry it through to
733 restoration. There might be one more renewal of Strawberry West that will be coming
734 before you next year. I would like to leave with you a map of the areas that we are
735 renewing because it's a little confusing since we've added so many different areas to
736 Area F, as to actually what we are renewing at this time.

737
738 Mr. Balfour - Have you read the conditions on this? They're the same as
739 the one we just renewed?

740
741 Mr. Lewis - Yes sir. Yes sir. The area that you see crosshatched is
742 what we're asking for renewal on. This will combine three use permits into one.

743
744 Mr. Balfour - Any questions? Thank you.

745
746 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
747 Kirkland, the Board **granted** application **UP-22-2003** for a conditional use permit to
748 extract materials from the earth at 4721 Curles Neck Road (Parcel 836-667-5251). The
749 Board granted the use permit subject to the following conditions:

750
751 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of
752 the County Code.

753
754 2. Before beginning any work, the applicant shall provide a financial guaranty in an
755 amount of \$2,000.00 per acre for each acre of land to be disturbed, for a total of
756 \$543,220.00 (which represents the combined surety for UP-24-2001, Addition 3 to UP-
757 23-2002, and Addition 4 to UP-10-2003), guaranteeing that the land will be restored to a
758 reasonably level and drainable condition. This permit does not become valid until the
759 financial guaranty has been approved by the County Attorney. The financial guaranty
760 may provide for termination after 90 days notice in writing to the County. In the event of
761 termination, this permit shall be void, and work incident thereto shall cease. Within the
762 next 90 days the applicant shall restore the land as provided for under the conditions of
763 this use permit. Termination of such financial guaranty shall not relieve the applicant
764 from its obligation to indemnify the County of Henrico for any breach of the conditions of
765 this use permit. If this condition is not satisfied within 90 days of approval, the use
766 permit shall be void.

767
768 3. Before beginning any work, the applicant shall submit erosion control plans to the
769 Department of Public Works for review and approval. Throughout the life of the
770 operation, the applicant shall continuously satisfy the Department of Public Works that
771 erosion control procedures are properly maintained, and shall furnish plans and bonds

772 that the department deems necessary. The applicant shall provide certification from a
773 licensed professional engineer that dams, embankments and sediment control
774 structures meet the approved design criteria as set forth by the State. If this condition is
775 not satisfied within 90 days of approval, the use permit shall be void.

776
777 4. Before beginning any work, the applicant shall obtain a mine license from the
778 Virginia Department of Mines, Minerals and Energy. If this condition is not satisfied
779 within 90 days of approval, the use permit shall be void.

780
781 5. Before beginning any work, the areas approved for mining under this permit shall
782 be delineated on the ground by five-foot-high metal posts at least five inches in diameter
783 and painted in alternate one foot stripes of red and white. These posts shall be so
784 located as to clearly define the area in which the mining is permitted. They shall be
785 located, and their location certified, by a certified land surveyor. If this condition is not
786 satisfied within 90 days of approval, the use permit shall be void.

787
788 6. In the event that the Board's approval of this use permit is appealed, all
789 conditions requiring action within 90 days will be deemed satisfied if the required actions
790 are taken within 90 days of final action on the appeal.

791
792 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all
793 state and local regulations administered under such act applicable to the property, and
794 shall furnish to the Planning Office copies of all reports required by such act or
795 regulations.

796
797 8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight Savings
798 Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.

799
800 9. No operations of any kind are to be conducted at the site on Sundays or national
801 holidays.

802
803 10. Routes of ingress and egress shall be over the applicant's rights of way to the
804 loading area at the James River as outlined on the map filed with the application.

805
806 11. The applicant shall post and maintain a sign at the entrance to the mining site
807 stating the name of the operator, the use permit number, the mine license number, and
808 the telephone number of the operator. The sign shall be 12 square feet in area and the
809 letters shall be three inches high.

810
811 12. The applicant shall post and maintain "No Trespassing" signs every 250 feet
812 along the perimeter of the property. The letters shall be three inches high. The
813 applicant shall furnish the Chief of Police a letter authorizing the Division of Police to
814 enforce the "No Trespassing" regulations, and agreeing to send a representative to
815 testify in court as required or requested by the Division of Police.

816

- 817 13. All roads used in connection with this use permit shall be effectively treated with
818 calcium chloride or other wetting agents to eliminate any dust nuisance.
819
- 820 14. The applicant shall maintain the property, fences, and roads in a safe and secure
821 condition indefinitely, or convert the property to some other safe use.
822
- 823 15. If, in the course of its preliminary investigation or operations, the applicant
824 discovers evidence of cultural or historical resources, or an endangered species, or a
825 significant habitat, it shall notify appropriate authorities and provide them with an
826 opportunity to investigate the site. The applicant shall report the results of any such
827 investigation to the Planning Office.
828
- 829 16. If water wells located on surrounding properties are adversely affected, and the
830 extraction operations on this site are suspected as the cause, the effected property
831 owners may present to the Board evidence that the extraction operation is a contributing
832 factor. After a hearing by the Board, this use permit may be revoked or suspended, and
833 the operator may be required to correct the problem.
834
- 835 17. Open and vertical excavations having a depth of 10 feet or more, for a period of
836 more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect the
837 public safety.
838
- 839 18. Topsoil shall not be removed from any part of the property outside of the area in
840 which mining is authorized. Sufficient topsoil shall be stockpiled on the property for
841 respreading in a layer with five inches of minimum depth. All topsoil shall be stockpiled
842 within the authorized mining area and provided with adequate erosion control
843 protection. If the site does not yield sufficient topsoil, additional topsoil shall be brought
844 to the site to provide the required five-inch layer of cover. All topsoil shall be treated
845 with a mixture of seed, fertilizer, and lime as recommended by the County after soil
846 tests have been provided to the County.
847
- 848 19. No offsite-generated materials shall be deposited on the mining site without prior
849 written approval of the Director of Planning. To obtain such approval, the operator shall
850 submit a request stating the origin, nature and quantity of material to be deposited, and
851 certifying that no contaminated or hazardous material will be included. The material to
852 be deposited on the site shall be limited to imperishable materials such as stone, bricks,
853 tile, sand, gravel, soil, asphalt, concrete and like materials, and shall not include any
854 hazardous materials as defined by the Virginia Hazardous Waste Management
855 Regulations.
856
- 857 20. A superintendent, who shall be personally familiar with all the terms and
858 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the terms
859 and conditions of this use permit, shall be present at the beginning and conclusion of
860 operations each work day to see that all the conditions of the Code and this use permit
861 are observed.
862

863 21. A progress report shall be submitted to the Board on June 30, 2004. This
864 progress report must contain information concerning how much property has been
865 mined to date of the report, the amount of land left to be mined, how much rehabilitation
866 has been performed, when and how the remaining amount of land will be rehabilitated,
867 and any other pertinent information about the operation that would be helpful to the
868 Board.

869
870 22. Excavation shall be discontinued by August 31, 2006, and restoration
871 accomplished by not later than August 31, 2007, unless a new permit is granted by the
872 Board of Zoning Appeals.

873
874 23. The rehabilitation of the property shall take place simultaneously with the mining
875 process. Rehabilitation shall not be considered completed until the mined area is
876 covered completely with permanent vegetation.

877
878 24. All drainage and erosion and sediment control measures shall conform to the
879 standards and specifications of the Mineral Mining Manual Drainage Handbook. Any
880 drainage structures in place prior to October 14, 1992, and which do not conform to the
881 Mineral Mining Manual Drainage Handbook, may remain in place until such time as any
882 reconstruction is required, at which time said structures shall be brought into
883 conformance with the Mineral Mining Manual Drainage Handbook.

884
885 25. Failure to comply with any of the foregoing conditions shall automatically void this
886 permit.

887
888 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
889 Negative: 0
890 Absent: 0

891
892 The Board granted the request because it found the proposed use will be in substantial
893 accordance with the general purpose and objectives of Chapter 24 of the County Code.

894
895 **A - 96-2003 SCOTT D. SLEEME** requests a variance from Section 24-95(c)(1)
896 of Chapter 24 of the County Code to allow the existing dwelling to
897 remain at 1214 Elmhurst Drive (Ridgeway Farms) (Parcel 756-742-
898 4737), zoned R-3, One-family Residence District (Tuckahoe). The
899 minimum side yard setback and total side yard setback are not met.
900 The applicant has 10 feet minimum side yard setback and 22 feet
901 total side yard setback, where the Code requires 15 feet minimum
902 side yard setback and 22.5 feet total side yard setback. The
903 applicant requests a variance of 5 feet minimum side yard setback
904 and 0.5 feet total side yard setback.

905
906 Mr. Balfour - Do we have any others who intend to testify in this matter?
907 Would you raise your right hand and be sworn please?
908

909 Mr. Blankinship - Do you swear that the testimony you are about to give is the
910 truth, the whole truth, and nothing but the truth, so help you God? What is the correct
911 pronunciation of your name?
912

913 Ms. Lareau - I do. My name is Kathryn Lareau. I'm with Kaufman &
914 Canoles, and I'm here representing the current property owner, Scott Sleeme. Mr.
915 Sleeme purchased the property earlier this year, and right before they went to closing,
916 he got a copy of the survey and realized that a portion of the property does not meet the
917 minimum side yard and total side yard requirements. As you can see from the plat
918 that's up there, it's based upon an addition that was put on the house by a prior property
919 owner, back in 1971. Mr. Sleeme is the first property owner who apparently is trying to
920 correct this existing problem.
921

922 Mr. Balfour - Are there any questions?
923

924 Mr. Wright - Would you describe the shape of this lot.
925

926 Ms. Lareau - As you can see, it's sort of an odd-shaped lot. As the staff
927 report noted, it's almost hard to figure out where the side yard turns into the front yard,
928 and the area in question, the den addition that was put on 30 years ago, abuts Elmhurst
929 Drive, so you're not really right next door to it. It's that part that's showing up on the
930 picture there, so you're not really right up against someone else's property, and we're
931 not aware of anyone having any objections to it, for as long as it has existed in the past
932 30 or so odd years.
933

934 Mr. Wright - How did he come to this idea that he needed to do this?
935

936 Ms. Lareau - I think he just wants, because he raised it as an issue right
937 before he purchased the property, and obviously, by the time they realized it, it was too
938 late to get a variance before he bought it. He just wants to have it corrected so that
939 when he goes to sell the house, five or ten years from now, the next purchaser can't
940 raise an issue. We're just trying to correct something that's been in violation.
941

942 Mr. Balfour - Did I hear you say it was a survey mistake at the beginning?
943

944 Ms. Lareau - No, when the survey was done by the current owner, that's
945 when they discovered it. As I'm sure you are all aware, this stuff often comes to the
946 lawyer's attention the day before the closing is supposed to happen, at which point it's
947 too late for us to go to get it corrected and still have everybody close on the property
948 when they want to close.
949

950 Mr. Wright - So you closed the sale?
951

952 Ms. Lareau - Yes, the sale has been closed. It's just the current owner
953 who's trying to correct an existing problem.
954

955 Mr. Balfour - Are there any other questions of this six-inch request?
956 Apparently not. Thank you.

957
958 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
959 McKinney, the Board **granted** application **A-96-2003** for a variance to allow the existing
960 dwelling to remain at 1214 Elmhurst Drive (Ridgeway Farms) (Parcel 756-742-4737).
961 The Board granted the variance subject to the following condition:

962
963 1. This variance applies only to the existing dwelling. All other applicable
964 regulations of the County Code shall remain in force.

965
966 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
967 Negative: 0
968 Absent: 0

969
970 The Board granted this request, as it found from the evidence presented that, due to the
971 unique circumstances of the subject property, strict application of the County Code
972 would produce undue hardship not generally shared by other properties in the area, and
973 authorizing this variance will neither cause a substantial detriment to adjacent

974
975 **A - 97-2003** **GREGORY JONES** requests a variance from Section 24-9 of
976 Chapter 24 of the County Code to build a one-family dwelling at
977 618 Fountain Lane (Parcel 755-739-1733), zoned R-3, One-family
978 Residence District (Tuckahoe). The public street frontage
979 requirement is not met. The applicant has 0 feet public street
980 frontage, where the Code requires 50 feet public street frontage.
981 The applicant requests a variance of 50 feet public street frontage.

982
983 Mr. Balfour - Do we have any others who intend to testify in this matter?
984 Would you both raise your right hands and be sworn please?

985
986 Mr. Blankinship - Do you swear that the testimony you are about to give is the
987 truth, the whole truth, and nothing but the truth, so help you God? What is the correct
988 pronunciation of your name?

989
990 Mr. Moore - I do. My name is Glenn Moore; I'm an attorney, here this
991 morning on behalf of Mr. and Mrs. Gregory Jones, the owners of the lot. Mr. and Mrs.
992 Jones are here with me, and Mr. Jones will only be testifying in the event that I'm not
993 able to answer a question that the Board members may have. If you look at the plat, if
994 you can make that picture smaller so that you can see the entire subdivision, is that
995 possible, Mr. Blankinship? This property is fully one of six lots that were created back
996 before the zoning ordinance was enacted in 1960. The front lots further to the south,
997 front on Ridge Road and do not have the problem of no frontage on a public right-of-
998 way. The lot immediately south of the lot that the Jones own, and the lot across from a
999 private right-of-way, neither of them have There, that probably shows it better,
1000 you can see Ridge Road to the south; then there are two lots on either side of what's

1001 called Fountain Lane there, and those two lots front on Ridge Road; they have frontage
1002 on a public right-of-way. The two houses further north on either side of Fountain Lane,
1003 neither of them have frontage on a public right-of-way, but they were both built in the
1004 latter 1950's.

1005
1006 Mr. Balfour - They have a driveway up to their house. Is there a driveway
1007 up to this lot too?

1008
1009 Mr. Moore - The driveway would have to be extended. I have some
1010 photographs. Let me pass these photographs that kind of show the character of the
1011 property and the access drive.

1012
1013 Mr. Balfour - I'm familiar with where this is; it's not too far from me.

1014
1015 Mr. Moore - Mr. and Mrs. Jones acquired their lot in May of 2002. I think
1016 they really didn't look into the issue of whether or not they could build on that right-of-
1017 way, assuming that since their neighbors, adjoining property owners, could do so, that
1018 they also could do so. It's interesting that this was created as a family subdivision in the
1019 '50's, and it's still all family members that live in that area. It's a long time for a family
1020 subdivision to remain intact. In any event, they talked to Bruce Hulcher about the
1021 possibility of building their house on this property, and Bruce identified the problem and
1022 approached the County Public Works and Planning about the possibility of extending a
1023 public right-of-way back to serve this property and the property that is immediately to
1024 the east. Neither Public Works nor Planning would support the extension of a public
1025 right-of-way there, primarily because allowing a public right-of-way to be extended back
1026 to that area, you would create nonconforming situations with the existing homes that are
1027 on the two lots just to the south. They are then faced with the situation that they are not
1028 able to obtain a variance to allow this private road within the fifteen-foot right-of-way to
1029 be extended back to serve this lot and the lot to the east. This variance request only
1030 relates to their lot, the other would have to come back, but if it's not extended to serve
1031 their lot, then they're left with a lot that they can't in effect use, which I think would
1032 create a hardship for them, an unreasonable hardship.

1033
1034 Mr. Balfour - I think Mr. Fountain is the refuse management collector in
1035 that area too, isn't he? I think he is, he's in the refuse business, and I want my refuse
1036 picked up.

1037
1038 Mr. Moore - Interestingly, that lot is assessed by the County, I checked
1039 on that, the County assesses that lot at \$25,000, as if it's a buildable lot. That's not
1040 binding on you, obviously, but it's interesting that the County does feel that it's a
1041 buildable lot. I think you have an unusual situation here, that if the Jones are not
1042 allowed a variance to build their home on this property, they've effectively got a situation
1043 where they cannot use the property. There's no other reasonable use for it; as you can
1044 see, it's a wooded site. They do intend to leave as many of the trees as possible,
1045 consistent with developing the site with a home. I've got a plan, if you'd like to see it, of
1046 the home they plan to build. It's over 3,000 square feet on the first floor; it a

1047 predominantly brick home. I'd be glad to share that with you if you want to see it.
1048
1049 Mr. Balfour - No. You've read the conditions?
1050
1051 Mr. Moore - The conditions are entirely acceptable.
1052
1053 Mr. Balfour - Public water and sewer and all.
1054
1055 Mr. McKinney - Mr. Moore, I tried to buy a lot in the west end about six
1056 months ago, and the cheapest one I could find was \$90,000. Maybe the County doesn't
1057 think this is a buildable lot.
1058
1059 Mr. Moore - I bet Mr. Jones would sell you his for \$90,000, Mr.
1060 McKinney. It's assessed at \$25,000; I would certainly say that at \$25,000, it's a nice-
1061 sized lot; it's about 8/10 of an acre. I have to admit that that's pretty low for a lot that
1062 size.
1063
1064 Mr. Balfour - It was already part of a subdivision prior to 1960 anyway.
1065
1066 Mr. Moore - Yes sir, this is not a newly created lot.
1067
1068 Mr. Balfour - Are there any other questions? Thank you. Mr. Jones, did
1069 you want to speak?
1070
1071 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
1072 McKinney, the Board **granted** application **A-97-2003** for a variance to build a one-family
1073 dwelling at 618 Fountain Lane (Parcel 755-739-1733). The Board granted the variance
1074 subject to the following conditions:
1075
1076 1. This variance applies only to the public street frontage requirement. All other
1077 applicable regulations of the County Code shall remain in force.
1078
1079 2. At the time of building permit application, the applicant shall submit the
1080 necessary information to the Department of Public Works to ensure compliance with the
1081 requirements of the Chesapeake Bay Preservation Act and the code requirements for
1082 water quality standards.
1083
1084 3. Connections shall be made to public water and sewer.
1085
1086 4. The applicant shall present proof with the building permit application that a legal
1087 access to the property has been obtained.
1088
1089 5. The owners of the property, and their heirs or assigns, shall accept responsibility
1090 for maintaining access to the property until such a time as the access is improved to
1091 County standards and accepted into the County road system for maintenance.
1092

1093 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
 1094 Negative: 0
 1095 Absent: 0

1096
 1097 The Board granted this request, as it found from the evidence presented that, due to the
 1098 unique circumstances of the subject property, strict application of the County Code
 1099 would produce undue hardship not generally shared by other properties in the area, and
 1100 authorizing this variance will neither cause a substantial detriment to adjacent property
 1101 nor materially impair the purpose of the zoning regulations.

1102
 1103 **UP- 23-2003** **COKESBURY BOOKSTORE** requests a temporary conditional use
 1104 permit pursuant to Section 24-116(c)(1) of Chapter 24 of the
 1105 County Code to hold a tent sale at 3700 West End Drive (Parcel
 1106 759-757-0604), zoned B-2, Business District (Brookland).

1107
 1108 Mr. Balfour - Do we have any others who intend to testify in this matter?
 1109 Would you raise your right hand and be sworn please?

1110
 1111 Mr. Blankinship - Do you swear that the testimony you are about to give is the
 1112 truth, the whole truth, and nothing but the truth, so help you God?

1113
 1114 Ms. Thompson - I do. I am Ellen Thompson. Cokesbury Bookstore requests
 1115 permission to hold our mostly annual tent sale September 30 to October 4. This would
 1116 require a tent to be installed on the front parking lot of the property, from September 28
 1117 until it's removal no later than October 6. The tent will be less than 900 square feet and
 1118 installed by a properly licensed vendor. The tent will cover four parking spaces in the
 1119 upper lot and reduce access to the remaining spaces, which will be then reserved for
 1120 our handicapped customers. The area will be clearly marked. In previous years, we
 1121 have used adjoining parking at Tuckernuck Shopping Center for overflow parking. The
 1122 property has changed hands, and I am making all efforts to contact the property
 1123 manager for an updated permission to continue to do so. While we'd like to think that
 1124 we could cause as much sensation as the Guitar Center Grand Opening, unfortunately
 1125 that's never happened, and we usually don't have any obstructions to public access or
 1126 public roadways.

1127
 1128 Mr. Balfour - I think I recall your being here before with the same request.
 1129 You've read the conditions?

1130
 1131 Ms. Thompson - We plan to meet all conditions.

1132
 1133 Mr. Balfour - Any other questions? Thank you.

1134
 1135 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
 1136 Nunnally, the Board **granted** application **UP-23-2003** for a temporary conditional use
 1137 permit to hold a tent sale at 3700 West End Drive (Parcel 759-757-0604). The Board
 1138 granted the use permit subject to the following conditions:

- 1139
 1140 1. Only the improvements shown on the plan filed with the application may be
 1141 constructed pursuant to this approval. No substantial changes or additions to the layout
 1142 may be made without the approval of the Board of Zoning Appeals. Any additional
 1143 improvements shall comply with the applicable regulations of the County Code.
 1144
 1145 2. The tent shall be removed from the property on or before October 6, 2003, at
 1146 which time this permit shall expire.
 1147
 1148 3. Hours of operation at the tent shall be limited to 9:00 am to 6:00 pm.
 1149
 1150 4. The portion of the parking lot used for the tent site and associated activities shall
 1151 be barricaded or otherwise adequately marked to prevent vehicular traffic from entering
 1152 the secured area. Sufficient, useable parking spaces shall be maintained on the site.
 1153
 1154 5. The tent shall be secured with water barrels or some other measure that does
 1155 not require cutting or damaging the pavement.
 1156

1157 Affirmative:	Balfour, Kirkland, McKinney, Nunnally, Wright	5
1158 Negative:		0
1159 Absent:		0

1160
 1161 The Board granted the request because it found the proposed use will be in substantial
 1162 accordance with the general purpose and objectives of Chapter 24 of the County Code.
 1163

1164 **A - 98-2003** **E. L. BOWDEN, JR.** requests a variance from Section 24-95(i)(2)
 1165 of Chapter 24 of the County Code to keep a stable at 9490
 1166 Osborne Turnpike (Parcel 806-673-1937), zoned A-1, Agricultural
 1167 District (Varina). The accessory structure location requirement is
 1168 not met. The applicant has an accessory structure in the front yard,
 1169 where the Code allows accessory structures in the rear yard. The
 1170 applicant requests a variance of accessory structure location
 1171 requirement.
 1172

1173 Mr. Balfour - Do we have any others who intend to testify in this matter?
 1174 Even if you're not sure, go ahead and stand up. Would you raise your right hand and
 1175 be sworn please?
 1176

1177 Mr. Blankinship - Do you swear that the testimony you are about to give is the
 1178 truth, the whole truth, and nothing but the truth, so help you God? Thank you. You can
 1179 all be seated. Would you please state your name?
 1180

1181 Mr. V. Bowden - I do. My name is Vaughan Bowden.
 1182

1183 Mr. Balfour - Let me take a second here. Mr. Bowden, you're the
 1184 applicant.

1185
1186 Mr. V. Bowden - I'm the brother of the E. L. Bowden builder.
1187
1188 Mr. Balfour - You go first, and then the others in the audience, if you
1189 happen to be opposed, you'll have your chance to speak, and Mr. Bowden, you'll have a
1190 chance to respond to them. That's the procedure, just to refresh your memory. If any
1191 of you who may be testifying who are opposed, keep in mind that we don't need to hear
1192 the same comments four or five times. Divide up which points you're going to discuss,
1193 or if you want to present them uniquely, differently, that's fine, but don't just stand up
1194 and say "me too," "me too," "me too."
1195
1196 Mr. V. Bowden - Would it be possible that if there is an issue on rebuttal, if
1197 there are any issues that need to be clarified further, that the witnesses were able to
1198 provide additional input on the rebuttal time?
1199
1200 Mr. Balfour - You mean by them? That, we'll have to decide at the time, if
1201 we think that there's some issue we're not clear on.
1202
1203 Mr. V. Bowden - We're basically here today to right a wrong that was created
1204 by miscommunication and a misunderstanding between Mr. Bowden and the County,
1205 when he went to apply for the permit to build the barn. Essentially, the barn is a dream
1206 of his daughter and himself to have a horse barn on the property. The property is in
1207 Varina, and it's on A-1, and it's on approximately 8.3 acres. Looking at the picture, you
1208 can notice that the lot is an irregular-shaped lot, and basically from the guideline, that
1209 the County is now saying, that it's impossible to put any structures on the property.
1210
1211 If you look at the issue, it is essentially an issue with front yard vs. back yard. The
1212 property, because it's on the river, essentially the front of the house is facing towards
1213 the river. However, because Osborne Turnpike is the address of the property, the
1214 County's rules call that the front of the house. Because of that being called the front of
1215 the house, it's impossible to meet the guidelines to have structures. You can't have any
1216 structures in the front yard. However, how we got to this point is, Mr. Bowden called the
1217 County and said, "I want to build a pole barn to put horses in for my daughter." When
1218 he called the County, the County took down his information, the location, and asked a
1219 lot of questions about what he was going to do with the property, location, etc. When
1220 Mr. Bowden asked at that time, they told him they would get back with him, and they
1221 called him back. After the County had a chance to look at the plot and whatever other
1222 information they needed, they called him back, and they said, "There's no problem; you
1223 do not need a building permit, but it needs to be 200 feet from the nearest residence,
1224 and three feet from the property line. Based on that information, Mr. Bowden ordered
1225 the materials and built the horse barn.
1226
1227 What happened when he built the horse barn was, during the construction phase, when
1228 the poles were in the air, at the very early stages of the production, the construction, we
1229 had an issue that came up. One of the neighbors called Mr. Bowden and asked what
1230 he was building. He explained he was building a horse barn for his daughter, and one

1231 of the neighbors asked, "Have you talked to Gary, the next-door neighbor?" He said,
1232 "No," he basically didn't think he had a problem because he had called the County and
1233 got the information from the County. The County told him how to build it, and he was
1234 building it per the County's specifications. He called Gary, and Gary and he discussed
1235 the issue of the pole barn. Gary told him he didn't have a problem with it; it was his
1236 property, and he should be able to build on it whatever he wants, and he told him he did
1237 not oppose it. If a variance was needed, he told him there is a process for getting a
1238 variance. So at this stage, we basically have some poles in the air; we don't have any
1239 roof or sides on; we basically have just the beginning of a skeleton at this point, early on
1240 in the stage, and the next-door neighbor tells us he doesn't have a problem. We also
1241 contacted the other adjacent neighbor, and he's also with us here today. Both of the
1242 people who perhaps would have an issue told us that they didn't have a problem.
1243

1244 Based on that, we tried to figure out who was complaining and what the issue was, and
1245 we concluded that there were basically a couple of ladies in the neighborhood, or a
1246 couple of miles away, who complained about a lot of issues, so we essentially thought
1247 that that was kind of a non-issue, you know, somebody calling from quite a distance
1248 away.
1249

1250 So we continued construction. Basically, at this point, we've got the trusses up, but no
1251 roof on and no sides on. At this point the County has actually come out, and they've left
1252 business cards on the doorstep, so we immediately called the County. We got
1253 notification from both the Zoning Department and the Building Department. We called
1254 both departments. The Building Department again confirmed the same thing they had
1255 told us the first time, that there was no issue; because it's a pole barn, a building
1256 permit's not required. And the Zoning Department didn't tell us we had a problem, didn't
1257 tell us to stop construction, but basically asked us a lot of questions about what were we
1258 going to use the barn for. They asked questions about how it was going to be used,
1259 whether we were going to keep tractors in it, etc. Mr. Bowden explained that he was
1260 simply going to keep one to two horses and a tack room, that it was built for his
1261 daughter. There was still this confusion about whether we had an issue or not. We
1262 were unclear. We've never had a situation where the County got involved with
1263 potentially an issue and didn't tell us to stop. So we continued to work with the County
1264 official, but didn't come to any resolution.
1265

1266 One of the things we did was, the County was asking us whether this was a "working
1267 farm." We actually went down to the County. At this time Mr. Bowden actually was in
1268 an accident, and he couldn't walk. So he sent Tom Wash down. Tom went down there,
1269 met with the County official; the County official helped him obtain the paperwork to get a
1270 business license to show this as a working farm, because he thought essentially this
1271 was the issue. All the questions were surrounding that -- was this a working farm?
1272 Once he went down there and got the paperwork, with the County official helping him;
1273 he at that time told him that it really wasn't necessary to get a business license, that it
1274 really didn't matter whether he had a business license or not, but he continued to ask
1275 questions about whether it was a working farm. Specifically, he wanted pictures of the
1276 cut hay. This property has basically been pasture area for the last fifty years, and he

1277 wanted pictures of the cut hay or any crops that we would have on the farm. At this
1278 point the County's not giving us an issue, telling us to stop.

1279
1280 We also contacted the neighbors again. This time, same issue, we talked to Gary Price,
1281 the next-door neighbor; we talked to Carl Posenau, who's also here today, and is here
1282 to answer any questions you may have. Both adjacent property owners are here.
1283 When we talked to him at that point, Gary again confirmed that he does not have a
1284 problem, so again, we continued construction. In the winter, when the weather's right,
1285 with all the rain we've had this year, we continued construction. So we went from the
1286 point that all we had was poles and trusses; we added sides, we added sheathing on
1287 the top and completed that, and we added the roof. At this point, we're basically at the
1288 50% mark. At this point, we are ready to finish the barn. Essentially, we need to add
1289 the vinyl siding and put the oak doors that enclose the barn, and we're finished, so
1290 we're basically at 80% at this point.

1291
1292 At this time, we called down the County one more time, to make sure there's no issue,
1293 and when we called down this time, Mr. Peay was not available, so we escalated it up,
1294 and we got Mr. Blankinship. Mr. Blankinship told us that we have a serious problem,
1295 that it was impossible to have an accessory structure in the front yard. We were
1296 appalled; we were shocked. We just couldn't understand how the County could have
1297 come out, investigated this property, and not tell us we have a problem, and then all of a
1298 sudden, we are faced with a situation that is very obvious, that you cannot have a
1299 structure in the front yard. We discussed it at length with Ben. He was very helpful in
1300 explaining rules; I looked up the ordinance on the web, tried to understand. At one point
1301 we actually thought it wasn't an issue because it was a horse barn, and it had special
1302 regulations, and Mr. Blankinship pointed out, that basically, you can't have any
1303 structures in the front yard. By discussing it with him, we explained that it was
1304 impossible to have any structures on this entire lot. What this would say, would be that
1305 we can't have any structures, no horse barns, not even a doghouse, in an entire 8.3-
1306 acre lot in Varina. We feel that's very unfair.

1307
1308 We also investigated other properties, both in the neighborhood, and around the
1309 surrounding areas, to see if there were other properties that had accessory structures in
1310 the front yard. We found lots of them. In fact, our next-door neighbor has the same
1311 issue. He has a barn that's a garage in his front yard as well. We see many examples
1312 of people who actually have accessory structures in the front yard, that are against the
1313 same regulation that we're asking you to rule upon today.

1314
1315 Mr. Balfour - Any questions by Board members?

1316
1317 Mr. McKinney - Mr. Blankinship, there's no other place on that property? It
1318 can't be put in the rear yard toward the river?

1319
1320 Mr. Blankinship - The problem is that the land slopes very steeply. You see
1321 where it says flood plain line? That's kind of hand-drawn, and I'm not sure how
1322 accurate that is. You can't see exactly; that's a proposed house site there, so I don't

1323 know how much distance there is between the house and the flood plain line, but the
1324 requirement is, as you know, is that accessory structures have to be in the rear yard,
1325 which would be between the house and the river, and there is a steep slope falling off
1326 from there.
1327
1328 Mr. McKinney - How far behind the house does the slope start? I know Mr.
1329 Zehler's got one in his back yard up the road.
1330
1331 Mr. Blankinship - One of the exhibits that Mr. Bowden actually submitted
1332 shows the topography. It shows you the steep slope almost immediately behind the
1333 house.
1334
1335 Mr. McKinney - But that doesn't go to the rear; I saw that.
1336
1337 Mr. V. Bowden - One of your GIS maps has the topography.
1338
1339 Mr. Blankinship - Which of those is the flood plain line, I don't know.
1340
1341 Mr. McKinney - I see where the barn is on 300 feet, and if you go toward the
1342 center of the yard, it drops to 200 feet. That's where the barn is.
1343
1344 Mr. V. Bowden - In the back it precipitously drops off.
1345
1346 Mr. McKinney - I'm saying, where the barn is, if you look at the adjacent
1347 properties, looking at the barn, if you go a little ways, the property drops down in the
1348 front yard of your property. So if this barn had been put further away, it would have
1349 never been seen. It would have been put down in that kind of ravine, where the tree
1350 line is.
1351
1352 Mr. Blankinship - Or up where the driveway is, where it enters toward the
1353 house. If it were over there, it wouldn't have been in anybody's direct view. I want to
1354 make sure this gets into the record. There's also a requirement specific to stables, for a
1355 stable for up to three horses, that it has to be at least 200 feet from the nearest
1356 residence, and this one is 175, so that matter is also before you.
1357
1358 Mr. McKinney - Is that for odors?
1359
1360 Mr. Blankinship - Just general impacts, the idea being, I guess, that the farther
1361 away the animals are, the less impact they have.
1362
1363 Mr. Balfour - So the 200-foot designation is not applicable, it should be
1364 175?
1365
1366 Mr. McKinney - It is 175.
1367
1368 Mr. Blankinship - Right, that's an approximation, and staff went out and

1369 measured it and came up with 175. Again, that's not a survey line, but that's what the
1370 staff found, that it's 175 feet from the neighbor's residence.

1371
1372 Mr. McKinney - When they applied for this permit, were they told that?
1373

1374 Mr. Blankinship - Again, they never actually submitted a building permit.
1375 Building Inspections said it's a farm building; it doesn't require a building permit.
1376

1377 Mr. McKinney - Even a farm building still has to be 200 feet, doesn't it?
1378

1379 Mr. Blankinship - It does have to meet the zoning requirements, but it does not
1380 require a building permit.
1381

1382 Mr. V. Bowden - The way it was explained to us, because it's a pole barn,
1383 there's no building permit required. We tried to apply for a building permit; that's the
1384 first step we took.
1385

1386 Mr. Blankinship - They apparently were not told by the Building Inspections
1387 staff that they had to meet the zoning requirements, and in fairness to that staff, I had a
1388 very difficult time. I'm still having a little trouble determining exactly which set of rules
1389 apply to this building. It's unusual to have a stable as an accessory to a residence
1390 that's not on a farm, in the front yard. This is the first one I've seen.
1391

1392 Mr. Nunnally - Mr. Bowden, you did say that you'd talked to your neighbor
1393 before you even started on it, and he agreed that it was all right to put it in that location?
1394

1395 Mr. V. Bowden - No, not before we started on it. There were about four
1396 phases of construction, if you will. The first phase, when we just put the poles up, there
1397 was no roof on, no trusses on, no sides on. It was at that time when we first talked to
1398 Mr. Price, and Mr. Price told us he didn't have any problem. During the whole process,
1399 he actually told us about the variance, and he told me specifically that during the
1400 variance, that the County would send out letters to people on both sides of the road and
1401 four houses on the left and four houses on the right, so based on that, when I talked to
1402 him, he gave me the understanding, or he told me specifically, that he did not have any
1403 problem with the barn. He told me specifically that he could not see it from his front
1404 yard, and he did not have a problem. I was talking to him in his front entrance foyer,
1405 right outside the house, on the front stoop of the porch, and I was amazed, because I
1406 turned around, and you cannot see it from the front entrance. However, because it's a
1407 big lot, at different angles you can see it from other parts.
1408

1409 Mr. Nunnally - I was down there the other day, and I could see it from his
1410 house. I could see it from the window in front of his house. Why did your brother pick
1411 that location right there in front of Mr. Price?
1412

1413 Mr. V. Bowden - Because the County told us it had to be 200 feet from the
1414 nearest residence.

1415
1416 Mr. Nunnally - But couldn't you put it further down on your brother's
1417 property? It would have been 200 feet away from on the other side.
1418

1419 Mr. V. Bowden - I think, clearly, in hindsight, we could do a lot of things. In
1420 fact, when the poles were up, when we talked to Gary about that, if Gary had said at
1421 that point when just the poles were in the air, "I don't want it there," well, we could have
1422 moved it elsewhere. But at the time we asked the County, they told us 200 feet. We
1423 went to his property, and we measured 200 feet from his property. We staked the pole
1424 at 200 feet. The barn is in fact, 200 feet from his property; however, it's counter-intuitive
1425 that one corner of the barn, we tried to make the barn be as far away as possible, so we
1426 had one stake at 200 feet, and we put the barn in the direction away from his house.
1427 We put it in the direction closer to our house, and we put it in the direction that was
1428 mostly shaded, because there are trees there. The trees happen to end; that's why you
1429 can see part of it, because the trees end right at the edge. We tried to build it such that
1430 it would be farthest hidden away, and also still meet the County's guidelines. It turns
1431 out, because of the way the land slopes, and the way that his house is angled, that the
1432 other side of his house is actually the closer point by a couple of feet, and the other side
1433 of his house actually touches that part of the barn that we thought was farther away,
1434 and it turns out to be closer. So it's 175 feet from that point; however, the other point is
1435 more than 200 feet. Also, the opening of the barn is on the other side, so that's clearly
1436 further than the 200 feet. A lot of the barn is in fact outside the 200-foot issue. It's
1437 certainly a mistake that we're embarrassed about, that we made with the 200 feet, but
1438 we tried to do the 200 feet, and we tried to put it at a point specifically where the County
1439 told us to put it. You would look at it, and you would say, "Why didn't you put it closer to
1440 your residence?" We actually would have preferred it closer to our residence, but if we
1441 did, then it doesn't meet that 200-foot test.
1442

1443 Mr. McKinney - Mr. Blankinship, is the County off 23 feet?
1444

1445 Mr. Blankinship - Neither measurement was taken by a surveyor using a
1446 transit; we had an inspector out there with a 100-foot tape, which is not going to give
1447 you an absolutely accurate reading.
1448

1449 Mr. McKinney - It wouldn't be off 25 feet, though, would it?
1450

1451 Mr. Blankinship - I wouldn't think so.
1452

1453 Mr. V. Bowden - If you look at how it's situated, it's not showing from that one,
1454 but the other drawing shows the kind of angle, you can see because of the angle, that's
1455 why one part of the barn is inside the 200-foot rule, and the other one is not. One thing
1456 I would like to point out, that the County came down three times; they never noticed the
1457 200 feet. It's a very long way away, and because of the slope of the land, from a
1458 practical standpoint, it's 200 feet away, and it's certainly not an issue with odors,
1459 especially with horses. You certainly can't tell the difference in 175 feet vs. 200 feet
1460 from a horse issue. We have as part of our support here today, an expert on horses.

1461 He's built lots of horse barns, and there are other horse barns just down the street, that
1462 are inside 200 feet, that have them right next to the house as well. Clearly, lots of barns
1463 in Varina are a lot closer to the residence than 175 feet, or 200 feet, in this case. The
1464 point I'm making is that, after we'd actually applied for the variance, we went back and
1465 measured one more time, and because I wanted to make sure that we had absolutely
1466 everything, that everything I could tell you was honest. Once we found out that we had
1467 this issue, I called Ben up; we pointed this out; we wanted to be open with you. We
1468 wanted you to have all the information in front of you. This would have been something
1469 that nobody would have noticed, because if you look at this, it's a long way away. You
1470 look at how much grass we have to cut, and how much grass Mr. Price has to cut, it is a
1471 very long way away. If you're looking at the horse barn, you absolutely cannot see the
1472 residence.

1473

1474 Mr. McKinney - Can you pull up a picture showing the front of Mr. Bowden's
1475 house, looking out towards the barn? Looking at this barn, and I'm presuming this is an
1476 eight by eight salt-treated, is that how it's built, is that correct? So if you take the barn
1477 and move it to the right in this picture, down that hill toward the tree line, you would
1478 eliminate the impact on the adjacent property owner, and you would have met the 200-
1479 foot setback.

1480

1481 Mr. V. Bowden - Yes sir. Again, we thought we had reached the 200-foot
1482 setback to begin with. Actually, to move it down that way actually gets you more in
1483 trouble with the 200 feet, because of the way, if you look at the overall plot.

1484

1485 Mr. McKinney - Mr. Bowden, I went down and looked at it. It doesn't get you
1486 into more trouble. It gets you further away.

1487

1488 Mr. Blankinship - Go to the first photo, please, Lee.

1489

1490 Mr. V. Bowden - Actually, if you show the plat, I can show you my point on
1491 that.

1492

1493 Mr. McKinney - See the tree line behind that barn? If it went down toward
1494 that tree line, down the hill

1495

1496 Mr. Blankinship - If you just came toward the gate

1497

1498 Mr. V. Bowden - Yes, if we go toward the gate, we would be further away.
1499 We wouldn't have to come but a couple of feet, and we'd be further away, but we're still
1500 in front of his house. The issue of being in front of his house is because that's the way
1501 that our land wraps around his, just the same way that his land wraps around the next-
1502 door neighbor's, and the neighbor to the north of us, his land wraps around us. These
1503 plots were laid out this way. We bought the property knowing that. They are all like
1504 that; that's the way they were laid out. In fact, Mr. Bob Canfield, a respected member of
1505 the community, helped cut up these lots, signed a petition, and he asked me to let you
1506 know today that he's in support of the horse barn.

1507
1508 Mr. McKinney - Can he see the barn from his house?
1509
1510 Mr. V. Bowden - Yes, again, not from his house, but if you go to certain parts
1511 on his property

1512
1513 Mr. McKinney - Property, yes, but not from his front window. He doesn't look
1514 out his front window and look at the back of the barn.
1515

1516 Mr. V. Bowden - He may be able to see it from his front. I wouldn't say for
1517 sure. For example, on ours, for example, we can look out our front window and see his
1518 barn that's in his front yard. And likewise the next-door neighbor, barring the trees, the
1519 next-door neighbor can look out their front window and see his barn that is in his front
1520 yard as well. So it is normal, and there are other examples of these barns being in the
1521 front yards in this neighborhood, where people can't see them from the front yard, and
1522 people can't see them from the front door.
1523

1524 Mr. Wright - Mr. Bowden, in so far as each of them being able to see it
1525 from their neighbor's house, could you put some tall cedar bushes behind the barn and
1526 extend them all the way down, and that would obscure the barn from his house?
1527

1528 Mr. V. Bowden - Absolutely. We think that's the most practical thing to do
1529 here. In fact, Mr. Price called me yesterday, and we actually had an agreement
1530 yesterday, that if we put trees up there, that would be acceptable to him, and he
1531 wouldn't oppose it.
1532

1533 Mr. Wright - That could be handled very easily by putting some tall
1534 cedars down there, all the way down, as far as you need to go.
1535

1536 Mr. V. Bowden - We would agree to pt them to the west side, as well as to the
1537 south side, to fully enclose it. You can make pictures do anything you want. There was
1538 quite an example of them in the package. It shows that from the front of his house,
1539 other than being way down to the left of his house, you can't see it because of those big
1540 trees; you would never know it was there. And you can't see it from the roadside
1541 because of the trees. So clearly if you added some more trees to this side, then you
1542 wouldn't be able to see it either.
1543

1544 Mr. Nunnally - You said you talked to Mr. Price yesterday, and he was
1545 agreeable to that?
1546

1547 Mr. V. Bowden - This has kind of gone back and forth on this. Up until
1548 yesterday, he's told us all along that he didn't have a problem. Yesterday he called me
1549 and told me that he was going to oppose it. So we discussed different things, and we
1550 ended up with, he would agree to not oppose it if we put additional trees up. But when
1551 we get together last night and discuss it further with his brother, and we got together last
1552 night, and we discussed, the story changed somewhat again. His brother wanted us to

1553 move it closer to our house. I guess Mr. Price will tell you what he feels today, but as of
1554 last night, he hadn't made a decision whether he would honor the agreement we had
1555 last night, or when we talked about 11:00 o'clock yesterday morning when he called me.
1556 The facts are, he called me about 11:00 o'clock yesterday morning, and after we
1557 discussed it, our agreement was, after we added some trees along the property line
1558 there, he would not oppose it and not have a problem.

1559
1560 Mr. Nunnally - Does his brother live on that property with him?

1561
1562 Mr. V. Bowden - At first he told he his brother owned half the property. Last
1563 night he told us that at some time in the future, his brother may want to buy the
1564 property. We feel like, in this case, this is a bad situation. We got information from the
1565 County to build it, but we could have moved it when it was just poles in the air, when Mr.
1566 Price told us he didn't have a problem. We could have moved it when there was just
1567 the truss up and no roof, when Mr. Price told us and other witnesses that we have here
1568 today, he told us that he absolutely did not have a problem and would not oppose it. In
1569 fact he told us that he would sign the variance.

1570
1571 Mr. McKinney - You say Mr. Price is here, right?

1572
1573 Mr. V. Bowden - Yes he is. I'm just saying that all along the way, Mr. Price
1574 has told us he didn't have a problem, up until yesterday at 11:00 o'clock. We hope that
1575 we can come to agreement with this. We went to a lot of expense; we went to a lot of
1576 trouble to get here today. We brought people here from work. It's a difficult situation.
1577 It's not a complicated issue.

1578
1579 Mr. Balfour - We need to hear from some other people.

1580
1581 Mr. Wright - Let me ask a question. Do you have any provision to keep
1582 this stable clean?

1583
1584 Mr. V. Bowden - Absolutely. Absolutely. Clearly, this is in our front property
1585 as well. That is certainly the goal. The role here is, Elizabeth, the 12-year-old, her
1586 objective, as she's been taking riding lessons, she actually lives in the city with her
1587 mom. She comes down and visits her dad on the weekends, and she also goes to Four
1588 Mile Creek down in Varina. At that age, it's kind of boring in Varina. Their dream is to
1589 have this horse barn so that she can have horses and continue to take riding lessons,
1590 and she will learn the caring and feeding for a horse. This is really a great bonding
1591 agent for her dad and herself, to spend more time in Varina, and actually develop those
1592 things that I developed when I lived in Henrico County. I was very fortunate to live in an
1593 area that we had an opportunity to have horses. We're really excited about the
1594 opportunity for her to learn the responsibility of keeping horses.

1595
1596 Mr. Balfour - Any other questions?

1597
1598 Mr. McKinney - In your handout you gave us, you've got an expensive

1599 hardship of tearing down the over-\$7,000 structure would be incurred? If you moved it,
1600 would you have to tear it down?

1601
1602 Mr. V. Bowden - Yes sir. My brother can tell you more of the technical details
1603 of that, but it's a pole barn, it's banded at the top. It would be very difficult, and it's nail-
1604 gunned together.

1605
1606 Mr. McKinney - You couldn't band it at the bottom, cut it off at the bottom,
1607 and then move it?

1608
1609 Mr. V. Bowden - I'll let him comment on that.

1610
1611 Mr. Balfour - If someone else is in favor and would like to speak at this
1612 point? You'll get your chance, Mr. Bowden, to respond, but do others who are in favor
1613 of this want to speak? You were sworn earlier?

1614
1615 Mr. Wash - Yes sir. I'm Tom Wash. I don't know anything about codes
1616 or about the restrictions, but what I know is that I met E. L.'s daughter. I built some
1617 barns and some fencing for Mr. Marcy. We set his fencing up within 20 feet of his front
1618 door of his home, right down the street. Elizabeth came down and started riding, and I
1619 gave her lessons, and she got real excited about horses. She took a great interest in
1620 taking care of horses, grooming and cleaning. She came down and helped me clean
1621 stalls, so her dad asked me to come down and help him, and I'll buy the horse that you
1622 have up at Joe's place, because she fell in love with it. He said if I got her into 4-H and
1623 really enthused with horses, he thought she'd really like spending the time down here.
1624 She's been really tickled. In fact, back when we first started, we told her it was a
1625 garage. We didn't want to let her know that it was going to be a barn and she was
1626 going to get the horse that she wanted so badly. As far as any problems that I can see,
1627 and I've been with horses 45 years; I've been with the quarter horse association 45
1628 years. I've trained horses, I've ridden horses, I've shown horses, and I'd much rather
1629 be with a horse than a chicken or a goat or a cow. Smell-wise, I can personally
1630 guarantee, I'm in the area, I'm going to be there working with the child – the barn will be
1631 taken care of like it's supposed to be. Mr. Bowden was going to put aluminum siding, to
1632 make it look really nice. He was particular about the tack room so that Elizabeth could
1633 have her things in there. I've been carrying her to some shows. She's going to get
1634 involved with 4-H and ride. To me, she's right now at a point that she's really upset
1635 about it, and I know that you have to go by codes. I don't know the codes; I just know
1636 that if the barn is finished, it will be taken care of, and the horses will be taken care of.

1637
1638 Mr. Balfour - Any questions? Thank you sir. Does someone else want to
1639 speak in favor? Were you sworn in earlier?

1640
1641 Mr. E. L. Bowden, Jr. - Yes I was. My name is Edward L. Bowden, Jr. I live at 9490
1642 Osborne Turnpike, which is the proposed issue here today. I think my brother was
1643 pretty explicit. He's more articulate than I am, so that's the reason he's speaking. I
1644 don't want to address the issue of moving the barn, because I know that's been brought

1645 up. This whole thing, I've been a builder all my life, and I always thought you had to
1646 have a building permits. To get building permits, you go through zoning. When I was
1647 drawing the drawings for this barn, I knew I should call the County to see what I needed
1648 – a site plan – what am I going to need for a pole barn? I called and gave them my
1649 address, and they couldn't give me an answer, and they had to call me back. I was kind
1650 of surprised when they said no, I didn't need a permit, but 200 or 300 feet, so I went and
1651 laid the barn out. I did it with tape and I did it with my next-door neighbor. When you're
1652 down here, this is really an optical illusion on this property, because no one has actually
1653 come out to that barn and stood around that barn and walked around that barn and tried
1654 to see. First of all, those trees are there, and when you run a tape, you can't see the
1655 guy at the other end of the tape. I held the smart end, so I know what it was, and I
1656 assume the end was at the house. I had a 200-foot tape, but the lay of the land and all,
1657 and to go over fences and around these trees. I've walked through those cedar trees,
1658 to try to get my tape straight. When I set the rear corner, that was supposed to have
1659 been, actually they've moved it up. This thing coming down, this is a heck of a ravine
1660 here. If we'd have moved it down and possibly moved it out to the road, I don't care
1661 what I do. At some point, and you asked about the other neighbors, even down to the
1662 Canfields, and it goes on down, they can go out in their yards, and they can see this,
1663 because of the topography of their properties. We're up on a crown that probably does
1664 all kinds of funny stuff. If you stand at that barn and run a tape, it's tough to get there,
1665 it's tough to try to figure out exactly to the foot what it is, but I was trying to stay within
1666 ten foot out of the 200-foot range, but somehow or other, I got hurt, and the guys who
1667 laid it out must have moved it up some, because I know I set the rear corner where I set
1668 the rear corner. I wasn't there when it was laid out. I was there when the poles went
1669 up, but I wasn't there when the holes were dug. This barn is in, I know that my people
1670 told me that each pole is in the ground a minimum of four feet, so they would have to be
1671 whacked off. All the poles are still on a slope; so all the poles are different heights, this
1672 and that, all the way around where the barn is constructed. Anything can be moved;
1673 you can move the Empire State Building, but you've got to have the money to do it. You
1674 all know something about construction. This thing is gun-nailed; this is OSB board.
1675 You don't just take a hammer and knock gun nails out of it, or you can't draw them out.
1676 All the sheeting would just about have to be destroyed, and then you've got the shingles
1677 on the roof – that would have to come off. And then the sheeting on the roof, and there
1678 isn't any way you can salvage that; you'd have to just tear that off. And the trusses – I
1679 don't know if they put the hurricane clips on like I told them; I really didn't see that, but
1680 the trusses could come off, I guess. Anything's possible. The smell I don't think is a
1681 problem. I know that when I'm standing there and we were doing it, we couldn't see his
1682 house. I'm sensitive too; I've got a big investment here, big. I don't know if you've seen
1683 my house, but look at your tax records, and that's big money you've got on my lot. I've
1684 got the smallest lot in square miles, 8.6. The next one goes to 12, and then it goes on
1685 up. Paid a lot of money for that piece of dirt, and I can't do anything with it. I don't
1686 want to cut grass out there. I'm from the city; if anybody looks, I've got a huge front
1687 yard, I call it my front yard; I call this my pasture. What this has always been for, and
1688 they cut my other part of my pasture yesterday. I let them cut it for the hay. They cut
1689 that yesterday, and they were cutting this for the hay. It's just been a hay field. We
1690 haven't manicured it; it hasn't been a lawn or anything. I agree now, next door he loves

1691 to cut grass. He'd have cut on over to Nelson's farm if we let him. He just cuts grass
1692 there, so you can call that a front yard all the way to the road, technically yes. But in my
1693 heart it wasn't that way.

1694
1695 Mr. Balfour - Are there any questions of Mr. Bowden?
1696

1697 Mr. McKinney - Question again, Mr. Bowden. Your brother, Vaughan, said
1698 he didn't have any problem, and Mr. Wright brought up the screening of the cedar trees.
1699 If it came down to it, do you have any problem screening this end side and the back
1700 side with cedar trees?
1701

1702 Mr. E. L. Bowden, Jr. - I don't know about the end side. The back side I may.
1703

1704 Mr. McKinney - In one of these pictures, when you come into the driveway,
1705 from the adjacent property, you look right beside this.
1706

1707 Mr. E. L. Bowden, Jr. If you come out of his driveway, I don't think you can stop
1708 from seeing it anywhere.
1709

1710 Mr. McKinney - These cedar trees are on the back side.
1711

1712 Mr. E. L. Bowden, Jr. - That's correct, but they are up on a crown there too, and
1713 that's where this thing is backed up to. It starts, the swale goes in right past this barn,
1714 and then it goes on up the road. It's probably 500-600 feet. I don't know how many
1715 trees you'd have to plant. The rest of the property is encompassed.
1716

1717 Mr. McKinney - So you're saying you would not plant any trees?
1718

1719 Mr. E. L. Bowden, Jr. - Oh, I would do anything reasonable, yes sir. I'm not against
1720 anything. We can discuss, like we've said before, I've talked to the neighbors. I got
1721 blindsided here, blindsided, after I spent a ton of money.
1722

1723 Mr. McKinney - We'll see what your neighbor has to say.
1724

1725 Mr. E. L. Bowden, Jr. - I'm sure. Thank you.
1726

1727 Mr. Balfour - Anyone else wish to speak in favor?
1728

1729 Mr. Vaughan Bowden - If I could just clarify one point. This is the adjacent property
1730 owner's driveway, so this is the worst shot, if you will.
1731

1732 Mr. Balfour - That's his grass, that he cuts all the time.
1733

1734 Mr. Vaughan Bowden - Yes. So if you're asking would we shade that, and that's
1735 what we agreed that we would, we'd shade this backside that you can see from right
1736 here, as well as the right-hand side of the barn as well. We would agree to put trees on

1737 both sides of that, so that would completely shade all of the visibility, if you will, from Mr.
1738 Price's property.
1739
1740 Mr. Kirkland - Have you got enough room to get trees between the
1741 property line and the barn?
1742
1743 Mr. Vaughan Bowden - I think that's a great question, because I don't think you'd
1744 want to put them too close. We're about three feet from the property line, I think. If
1745 that's acceptable to Mr. Price, it would probably be better to put them on his property.
1746 That's the prudent thing to do, I think, from the trees' perspective, but whichever way,
1747 we would go to the expense of doing that.
1748
1749 Mr. Balfour - Okay. Okay, Mr. Price. You were sworn in earlier?
1750
1751 Mr. Price - Yes. I'm Gary L. Price. My main concern is the resale of the
1752 property. It is an investment. One day I will resell it and retire somewhere in Florida, or
1753 whatever. I'm looking at the property value issue of it. It is in front of my house.
1754
1755 Mr. Balfour - Have you had an appraiser comment as to what effect, if
1756 any, he thinks it would have?
1757
1758 Mr. Price - I hadn't asked anyone, but I deal with a lot of real estate, and
1759 I usually know the value right well.
1760
1761 Mr. McKinney - Mr. Price, did you tell them it was okay to put the barn there?
1762
1763 Mr. Price - They had asked me a few times, but I didn't really know,
1764 probably, the issues, like I do now.
1765
1766 Mr. McKinney - But did you tell them it was okay with you?
1767
1768 Mr. Price - At first I did, but I didn't know what the County was going to
1769 send me in the mail.
1770
1771 Mr. McKinney - If they were agreeable to screen that barn with the cedar
1772 trees like you've got, to where it's not visible, would that satisfy you?
1773
1774 Mr. Price - Sure. That's fine if I can't see it from my property.
1775
1776 Mr. Kirkland - Would you have any problem if they put the trees on your
1777 property?
1778
1779 Mr. Price - I'd rather not put them on my property.
1780
1781 Mr. Blankinship - The barn is only three feet off the property line; they can't
1782 really plant anything between the barn and the property line.

1783
1784 Mr. Price - I'd rather it would be further back away, but I really don't
1785 want to cause a great deal of problem for them either. I would like to make the value of
1786 the house stay.
1787
1788 Mr. Balfour - Do we understand you to say that 1) you're concerned about
1789 the value of your house, not particularly about the view,

1790
1791 Mr. Price - The view is bad.
1792
1793 Mr. Balfour - Right. But are you saying, though, in answer to Mr.
1794 McKinney's question, that if trees were planted as a buffer and make it so you couldn't
1795 see the barn, that would be satisfactory or not?
1796
1797 Mr. Price - If I couldn't see it at all, that would be okay.
1798
1799 Mr. Balfour - It might take some big trees.
1800
1801 Mr. McKinney - There's not enough room. **(Multiple voices, saying**
1802 **approximately the same thing)**
1803
1804 Mr. Kirkland - There's only three feet of property line between the barn and
1805 the property, and there's not enough room to get a tall tree in three feet.
1806
1807 Mr. McKinney - You don't want him putting them on your property, the trees?
1808
1809 Mr. Price - Not really.
1810
1811 Mr. McKinney - That would satisfy the concern that you have as far as
1812 seeing the barn, wouldn't it?
1813
1814 Mr. Price - Right. It depends on how many trees it would probably take.
1815 How many trees? I guess it could be really close to the barn.
1816
1817 Mr. McKinney - What they're saying is, there's only three feet from the barn
1818 to the property line, so there's not enough room to put the trees to screen the barn from
1819 your property, in three feet.
1820
1821 Mr. Balfour - It may need to take four or five feet of your property to put
1822 the trees on.
1823
1824 Mr. McKinney - But they would be your trees when they were put in.
1825
1826 Mr. Price - Right.
1827
1828 Mr. Wright - Those trees that we see here are on your property, is that

1829 not correct?
1830
1831 Mr. Price - That's correct.
1832
1833 Mr. Wright - It would be a matter of just extending those on down beyond
1834 the barn.
1835
1836 Mr. Blankinship - And then there would also be some trees on Mr. Bowden's
1837 property, on the ends.
1838
1839 Mr. Price - As long as I couldn't see it, and the view wouldn't be
1840 obstructed, that I could see, I wouldn't mind.
1841
1842 Mr. Nunnally - Have you got a barn on your property?
1843
1844 Mr. Price - No.
1845
1846 Mr. Nunnally - How about your neighbor on the other side – does he have
1847 one?
1848
1849 Mr. Price - Not that I'm aware of.
1850
1851 Mr. Balfour - Are there other questions of Mr. Price? Apparently not, Mr.
1852 Price – is there anything else you'd like to say?
1853
1854 Mr. Price - That's all.
1855
1856 Mr. Balfour - Okay, thank you. Does Mr. Bowden, the brother, want to
1857 say something? Talk to us about those trees.
1858
1859 Mr. Vaughan Bowden - Yes sir. We'd be happy to do that. Again, we think that's the
1860 prudent thing to do, and I believe, if you look at those other pictures that we provided as
1861 part of the package, again, that completely screens the barn so you can't see it at all.
1862
1863 Mr. Balfour - And you understand that they'd be his trees if you put them
1864 on his property?
1865
1866 Mr. V. Bowden - That's correct.
1867
1868 Mr. McKinney - What kind of trees would you put on there, Mr. Bowden, to
1869 screen your barn?
1870
1871 Mr. V. Bowden - Gary mentioned pine trees when we discussed it last night, I
1872 mean yesterday.
1873
1874 Mr. McKinney - I don't think pine trees would do your screening. I think

1875 cedars.
1876
1877 Mr. Kirkland - Cypress of some sort, maybe.
1878
1879 Mr. Wright - Like he's got right there.
1880
1881 Mr. Balfour - These are like firs or cedars maybe already there.
1882
1883 Mr. V. Bowden - Again, through this whole process, we're trying to be honest
1884 and open and cooperative. So if we're talking about one tree variety vs. another, we're
1885 certainly willing to meet half-way, and do anything that's reasonable to get us beyond
1886 this hump that we're on.
1887
1888 Mr. McKinney - If you continue the same type of tree that's there on the side
1889 that's visible from his property and this end that's coming in to the driveway, a tree line,
1890 you wouldn't see it. Match the trees that are there.
1891
1892 Mr. V. Bowden - Yes sir, we'll do that.
1893
1894 Mr. Balfour - All right. Any other questions? That does it then.
1895
1896 Mr. V. Bowden - I just wanted to point out that there was a statement that he
1897 doesn't have a barn, but he does have a garage, and if you show that other picture, the
1898 topo picture

1899
1900 Mr. Blankinship - Put up the site map. It's just to the right of the red arrow
1901 there.
1902
1903 Mr. V. Bowden - If you look at the red arrow, that's the garage that he has,
1904 and that's clearly in the front yard as well.
1905
1906 Mr. Balfour - Is that his house to the right, or is there another neighbor?
1907
1908 Mr. V. Bowden - That's another neighbor to the right.
1909
1910 Mr. McKinney - What are you speaking of now?
1911
1912 Mr. V. Bowden - See where the red line is?
1913
1914 Mr. McKinney - See that little marker down there?
1915
1916 Mr. Balfour - The little building in the center.
1917
1918 Mr. McKinney - Right. Now where is his house? That's his house there?
1919 Why is it he has it more in his side yard than it is his front yard?
1920

1921 Mr. Blankinship - Well, it's required to be in the rear.
1922
1923 Mr. McKinney - I understand that. This is irrelevant here; this is something
1924 that's existing. If it comes up later, it comes up later. You're not looking from a front
1925 window into this. I don't know what this is even relevant to this.
1926
1927 Mr. V. Bowden - The point I was making was, that from our front window,
1928 from the office window, from the front of the house, we can look out there and see that
1929 garage, just like he can look out of his front window and see ours. Clearly, this one is
1930 farther away, and it's not as far front forward, but the same technical issue. It is in the
1931 front yard, and it's violating the same ordinance that ours is.
1932
1933 Mr. McKinney - So if you look out your front window, you see his house too?
1934
1935 Mr. V. Bowden - Actually, you can't see his front house because of a little
1936 elevation, and it's harder to see his house, but yes you can.
1937
1938 Mr. Balfour - Any other questions? All right sir, thank you.
1939
1940
1940 **(Discussion prior to vote)**
1941
1942 Mr. Nunnally - I move that we approve it with the screening of the same
1943 type of trees that they have on his property now.
1944
1945 Mr. Kirkland - Mr. Nunnally, do you want to start off with some sort of
1946 amendment on tree size, so we don't start with a one-foot tree.
1947
1948 Mr. McKinney - I thought he agreed that he would screen it so that it couldn't
1949 be seen, so whatever that takes.
1950
1951 Mr. Balfour - With a condition to be that it be screened **(multiple voices)**
1952 with the same trees where the barn will be completely hidden from his property, along
1953 the rear and the sides facing Osborne Turnpike.
1954
1955 Mr. McKinney - How about a condition on the cleaning of the barn? That the
1956 barn will be kept clean.
1957
1958 Mr. Wright - Will be kept clean.
1959
1960 Mr. Balfour - Is there a second to that amendment?
1961
1962 Mr. Nunnally - That the barn will be kept clean. That's in the conditions; I
1963 think it's in one of those conditions.
1964
1965 Mr. Kirkland - That the trees planted on the backside of the barn will have
1966 to have permission by the landowner adjacent

1967

1968 **(Multiple voices)** - He already agreed to that.

1969

1970 Mr. V. Bowden - You're not suggesting that we have to plant 30-foot trees,
1971 are you?

1972

1973 Mr. Blankinship - We'll state that in the condition. It's not appropriate.

1974

1975 Mr. V. Bowden - You're not suggesting that we try to plant 100-foot trees?
1976

1977 Mr. Balfour - High enough so it can't be seen. The barn's not 100 feet up,
1978 is it?

1979

1980 Mr. Blankinship - Nursery stock. We'll be talking about nursery stock.

1981

1982 Mr. Balfour - Any other discussion? Subject to amended conditions.
1983

1984 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
1985 Kirkland, the Board **granted** application **A-98-2003** for a variance to keep a stable at
1986 9490 Osborne Turnpike (Parcel 806-673-1937). The Board granted the variance
1987 subject to the following conditions:
1988

1989 1. This approval applies only to the existing stable on the property. No substantial
1990 changes or additions may be made without the approval of the Board of Zoning
1991 Appeals. Any additional improvements shall comply with the applicable regulations of
1992 the County Code.
1993

1994 2. [Added] The applicant shall plant a buffer of trees to screen the stables from view
1995 from 9500 Osborne Turnpike: four along the southwest side of the barn and two along
1996 the southeast side. The trees shall be either Leyland cypress or Virginia cedar, and
1997 shall be 8 feet tall when planted. The applicant shall work with the owner of the
1998 property at 9500 Osborne Turnpike to plant the trees in a mutually acceptable location.
1999 This condition shall be completed by December 1, 2003.
2000

2001 3. [Added] The stables and surrounding area shall be maintained in a clean and
2002 sanitary condition, to eliminate or mitigate any impact from odors, vermin or insects.
2003

2004 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
2005 Negative: 0
2006 Absent: 0
2007

2008 The Board granted this request, as it found from the evidence presented that, due to the
2009 unique circumstances of the subject property, strict application of the County Code
2010 would produce undue hardship not generally shared by other properties in the area, and
2011 authorizing this variance will neither cause a substantial detriment to adjacent property
2012 nor materially impair the purpose of the zoning regulations.

2013
2014 **A - 99-2003** **CONLEY BOOTH** requests a variance from Section 24-65(c) of
2015 Chapter 24 of the County Code to build a lube shop at 3118
2016 Williamsburg Road (Gilbert Gardens) (Parcel 810-714-3440), zoned
2017 B-3, Business District (Varina). The minimum side yard setback is
2018 not met. The applicant proposes 29 feet minimum side yard
2019 setback, where the Code requires 50 feet minimum side yard
2020 setback. The applicant requests a variance of 21 feet minimum
2021 side yard setback.
2022

2023 Mr. Balfour - Do we have any others who intend to testify in this matter?
2024 Would you raise your right hand and be sworn please?
2025

2026 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2027 truth, the whole truth, and nothing but the truth, so help you God? What is the correct
2028 pronunciation of your name?
2029

2030 Ms. Isaac - I do. I'm Lorraine Isaac. To give you a little history on this
2031 site, we had submitted a preliminary plan to the Planning Office, just to see what we
2032 could do, what we couldn't do. We knew that the existing building was nonconforming.
2033 The staff recommended that this plan be reviewed by the Commercial Assistance
2034 Team, and that is a new group of heads of department and assistant directors, to waive
2035 requirements in these older commercial areas where maybe they're unproductive,
2036 under-productive, nonconforming. We have several areas of the County where we have
2037 these old subdivisions, narrow lots, so this plan went to the Commercial Assistance
2038 Team. The plan that we submitted shows some of the things that were approved. One
2039 was that there was no curb and gutter along Cambrai, and the requirement for that was
2040 waived, but we did have to put in a new entrance toward the northern end where the
2041 landscape island, curb and gutter, form an entrance into the lube shop. The transitional
2042 buffer requirement on the east side of the building could not be met, so we are providing
2043 landscaping along this new addition in order to help screen. What you see before you is
2044 what this committee has approved. The only thing that could not be approved was any
2045 ordinance requirements, and that's why we're here before you today. We cannot meet
2046 the side yard setback. I would like to point out that the house across Cambrai is owned
2047 by Mr. Conley Booth, so that if he would sell it in the future, and this addition were there,
2048 the buyer would already know it's there.
2049

2050 Mr. Nunnally - You say your client owns the house across the street?
2051

2052 Ms. Isaac - Yes, across Cambrai.
2053

2054 Mr. McKinney - Ms. Isaac, do you intend to do anything with the existing
2055 building as far as dressing it up?
2056

2057 Ms. Isaac - I've heard nothing to that effect.
2058

2059 Mr. McKinney - Are you going to put a new building or different business on
2060 the back of it? You going to leave that as is? You can't make this building like that
2061 one?
2062
2063 Ms. Isaac - Basically, they are going to be two different buildings.
2064
2065 Mr. McKinney - Where's the entrance for the customers?
2066
2067 Ms. Isaac - There's going to be an entrance, if you look at the elevation
2068 that I gave you, the south elevation, there's a door.
2069
2070 Mr. McKinney - In that little cutout? Right beside the last parking space,
2071 towards Williamsburg Road?
2072
2073 Ms. Isaac - Yes, there's a sidewalk, and that will go into it, yes. That will
2074 be the public entrance.
2075
2076 Mr. McKinney - So you have parking spaces for three cars? Is that correct,
2077 for this new building?
2078
2079 Ms. Isaac - The entire parking will serve both. The parking is based
2080 upon what's needed for both uses.
2081
2082 Mr. McKinney - You say the entire parking – are you talking about the
2083 parking down at the other?
2084
2085 Ms. Isaac - The parking requirements reflect the needs for the entire
2086 site.
2087
2088 Mr. McKinney - The square footage for the whole lot? Will that be repaved
2089 or gravel or what's that going to be?
2090
2091 Ms. Isaac - All that parking is existing right now. It's a paved, existing
2092 parking lot, asphalt paving. In construction, if anything needs repair, then that will be
2093 done, but yes, that's all existing.
2094
2095 Mr. Nunnally - Is the same person going to be the owner of both these
2096 businesses?
2097
2098 Ms. Isaac - Yes, the entire site is owned by Mr. Booth.
2099
2100 Mr. McKinney - He'll lease this out?
2101
2102 Ms. Isaac - Right.
2103
2104 Mr. Nunnally - If he's going to lease it out, then it won't be the same person

2105 running both businesses?
2106
2107 Ms. Isaac - Right, there will be two different people running the
2108 businesses, but he will own the entire site.
2109
2110 Mr. Nunnally - He'll have to designate the parking spaces for them, I guess,
2111 right?
2112 Ms. Isaac - We just have to provide enough parking for both uses.
2113
2114 Mr. McKinney - For the B-3.
2115
2116 Ms. Isaac - Right. For the retail and the lube, so it doesn't matter. You
2117 don't really have to designate spaces; you just have to provide them.
2118
2119 Mr. McKinney - The proposed masonry, is that block or brick?
2120
2121 Ms. Isaac - Block.
2122
2123 Mr. McKinney - Painted or unfinished?
2124
2125 **(Voice from audience)**
2126
2127 Ms. Isaac - Prepainted. Split block.
2128
2129 Mr. McKinney - He can't speak unless he comes down and is sworn in.
2130
2131 Ms. Isaac - That's why I'm repeating what he's saying.
2132
2133 Mr. Balfour - Did you stand and be sworn in a little while ago?
2134
2135 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2136 truth, the whole truth, and nothing but the truth, so help you God? What is the correct
2137 pronunciation of your name?
2138
2139 Mr. Booth - I do. Conley Booth. To clear up one issue there, what we
2140 might do with the lube shop, my intent is for me to operate the lube shop. The other
2141 issue, about the block, we're going to put in a split-face type block on the new addition.
2142
2143 Mr. McKinney - So that's not going to match the other, the existing building
2144 you have now?
2145
2146 Mr. Booth - No, but if you'd prefer it, we can go with the plain block.
2147
2148 Mr. McKinney - It would probably be cheaper. I was just thinking that if you
2149 could dress up the building you've got, to make it look like the new building.
2150

2151 Mr. Blankinship - Were these issues addressed by the CAT Team?
2152

2153 Mr. Booth - No, they weren't. It's probably the best-looking building
2154 there is along there anyway. I mean, basically, we can paint it, or we can do some
2155 colors if that's necessary, to adjust to the new block as far as the color, but other than
2156 this being on the same property, they're not going to be that much related.
2157

2158 Mr. Kirkland - The split block you're using, it will be a colored split, right,
2159 like that pale cream color, so you wouldn't have any objections if you painted this other
2160 building the same color to match?
2161

2162 Mr. Booth - No sir.
2163

2164 Mr. Balfour - Are there other questions?
2165

2166 Mr. Wright - Yes, there's a question raised by the staff about the
2167 overhead doors on the north side of the building.
2168

2169 Ms. Isaac - I'd like to address that. We cannot put the overhead doors
2170 on the east side of the building because we're required to have a transitional buffer
2171 strip, which we've provided, even though it's not as deep as ordinance may require, this
2172 is one of the things that came out of the Community Assistance Team. So we have to
2173 have the doors on the north side. One of the conditions of approval is saying that we
2174 either have to move the doors or provide landscaping. The only place to provide
2175 landscaping is on property he doesn't own. So if you would look at this page that was in
2176 the packet, Mr. Gay owns the land between him and the residential property. It's 67
2177 feet. He had a building permit to put an accessory building on his property, and with
2178 that, he was required to put in a double row of trees to buffer the residential. Those
2179 trees are pretty much dead. So the County hasn't enforced him having to maintain that
2180 landscaping strip, and now the County wants Mr. Booth to go back on Mr. Gay's
2181 property and put in a landscaping strip. He's willing to do that, but he can't do it without
2182 Mr. Gay's approval, so I would like any condition to reflect that he's going to have to
2183 have Mr. Gay's approval to do anything on his property.
2184

2185 Mr. Wright - So you're saying there's a strip of land between this property
2186 and those residential properties to the rear.
2187

2188 Ms. Isaac - Yes. It would be 67 feet.
2189

2190 Mr. Blankinship - When and how was he required to provide that landscaping?
2191 Was that on a POD?
2192

2193 Ms. Isaac - I'm not sure, but I know that there is a double row of, I
2194 believe it's pine, that were put in, and they were put in when his accessories were put
2195 in.
2196

2197 Mr. Blankinship - I wouldn't worry about it. If we can require him to maintain
2198 what he's already been required to install, that may solve the problem, and he wouldn't
2199 need it.

2200
2201 Ms. Isaac - And if it's not adequate, then it should go on to him. He's B-
2202 3 against Residential. We're B-3 against B-3.

2203
2204 Mr. Blankinship - Right, it was just the doors. I know there's been some back-
2205 and-forth with staff and the CAT Team, whether the doors should face this way or that.
2206 That's why the condition was drafted the way it was, to recognize that it is something we
2207 need to negotiate.

2208
2209 Ms. Isaac - I think this issue's been discussed before, but I think to put
2210 this kind of responsibility on somebody when something is not being enforced on
2211 someone else's property.

2212
2213 Mr. Blankinship - I did not realize that we had a requirement back there that
2214 was not being enforced. I'd certainly rather enforce the existing requirement on Mr.
2215 Gay's property than impose a new one on Mr. Booth.

2216
2217 Ms. Isaac - I just think that any condition needs to be clarified, that if
2218 something more has to be done, he needs Mr. Gay's approval.

2219
2220 Mr. Balfour - Any other questions? Thank you, folks.

2221
2222 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
2223 Kirkland, the Board **granted** application **A-99-2003** for a variance to build a lube shop at
2224 3118 Williamsburg Road (Gilbert Gardens) (Parcel 810-714-3440). The Board granted
2225 the variance subject to the following conditions:

2226
2227 1. The property shall be developed in substantial conformance with the plan filed
2228 with the application. No substantial changes or additions to the layout may be made
2229 without the approval of the Board of Zoning Appeals.

2230
2231 2. At the time of building permit application, the applicant shall submit the
2232 necessary information to the Department of Public Works to ensure compliance with the
2233 requirements of the Chesapeake Bay Preservation Act and the code requirements for
2234 water quality standards.

2235
2236 3. A detailed landscaping and lighting plan shall be submitted to the Planning Office
2237 with the building permit for review and approval.

2238
2239 4. All exterior lighting shall be shielded to direct light away from adjacent property
2240 and streets.

2241

- 2242 5. All landscaping shall be maintained in a healthy condition. Dead plant materials
 2243 shall be removed within a reasonable time and replaced during the normal planting
 2244 season.
 2245
- 2246 6. Fire lanes shall be marked and maintained in accordance with the Fire
 2247 Prevention Code.
 2248
- 2249 7. All trash shall be in closed containers with regular pickups, the area shall be kept
 2250 clean, and the containers shall be properly screened.
 2251
- 2252 8. All repair and service work shall be conducted entirely within the enclosed
 2253 building. The overhead doors shall remain closed during repair or service work. Outside
 2254 storage shall not be permitted.
 2255
- 2256 9. Hours of operation shall be limited to 8:00 AM to 7:00 PM, Monday through
 2257 Saturday.
 2258
- 2259 10. [Added] The existing building shall be painted to match the new building as
 2260 nearly as practical.
 2261

2262 Affirmative:	Balfour, Kirkland, McKinney, Nunnally, Wright	5
2263 Negative:		0
2264 Absent:		0

2265
 2266 The Board granted this request, as it found from the evidence presented that, due to the
 2267 unique circumstances of the subject property, strict application of the County Code
 2268 would produce undue hardship not generally shared by other properties in the area, and
 2269 authorizing this variance will neither cause a substantial detriment to adjacent property
 2270 nor materially impair the purpose of the zoning regulations.
 2271

2272 Mr. Balfour - I think we had a case that we passed by earlier. **(Returned**
 2273 **to A-93-2003 Partlow)**
 2274

2275 Minutes of the May 22, 2003, meeting of the Henrico County Board of Zoning Appeals
 2276 were distributed for consideration.
 2277

2278 On a motion by Mr. McKinney, seconded by Mr. Wright, the Board **deferred** the
 2279 vote on minutes of the **May 22, 2003**, Henrico County Board of Zoning Appeals
 2280 meeting until September 25, 2003.
 2281

2282 Mr. Blankinship - The floor is open for nominations for the office of Chairman.
 2283

2284 On a motion by Mr. McKinney, seconded by Mr. Nunnally, the Board **elected Mr.**
 2285 **Russell A. Wright as Chairman** of the Henrico County Board of Zoning Appeals
 2286 for the term of 2003-2004.
 2287

2288	Affirmative:	Balfour, Kirkland, McKinney, Nunnally, Wright	5
2289	Negative:		0
2290	Absent:		0
2291			
2292	Mr. Blankinship -	The floor is open for nominations for the office of Vice	
2293	Chairman.		
2294			
2295	On a motion by Mr. McKinney, seconded by Mr. Kirkland, the Board elected Mr.		
2296	James W. Nunnally as Vice Chairman of the Henrico County Board of Zoning		
2297	Appeals for the term of 2003-2004.		
2298			
2299	Affirmative:	Balfour, Kirkland, McKinney, Nunnally, Wright	5
2300	Negative:		0
2301	Absent:		0
2302			
2303	There being no further business, and on a motion by Mr. Nunnally, seconded by Mr.		
2304	Kirkland, the Board adjourned until September 25, 2003 , at 9:00 am.		
2305			
2306			
2307			
2308			
2309			
2310		Daniel T. Balfour,	
2311		Chairman	
2312			
2313			
2314			
2315			
2316			
2317		Benjamin Blankinship, AICP	
2318		Secretary	
2319			