

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, JULY 26, 2001, AT**
4 **9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
5 **DISPATCH ON JULY 5 AND 12, 2001.**
6

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

Also Present:
Benjamin Blankinship, Secretary
Susan W. Blackburn, County Planner II
Priscilla M. Parker, Recording Secretary

7
8 Mr. Kirkland - Welcome, ladies and gentlemen, to the July meeting of the
9 Board of Zoning Appeals. Before we get started, I'll have the Secretary read the rules.
10

11 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies
12 and gentlemen. The rules for this meeting are as follows. The Secretary, myself, will
13 call each case. Then the applicant will come to the podium to present the case. At that
14 time I'll ask all those who intend to speak, in favor or opposition, to stand, and they will
15 be sworn in. The applicants will then present their testimony. When the applicant is
16 finished, anyone else will be given an opportunity to speak. After everyone has spoken,
17 the applicant, and only the applicant, will be given the opportunity for rebuttal. After
18 hearing the case, and asking questions, the Board will take the matter under
19 advisement. They will render a decision at the end of the meeting. If you wish to know
20 what their decision is, you may stay until the end of the meeting, or you may call the
21 Planning Office at the end of the day. This meeting is being tape recorded, so we will
22 ask everyone who speaks, to speak directly into the microphone on the podium, and to
23 state your name for the record. Out in the foyer, there are two binders, which have the
24 staff report for each case, including the conditions suggested by the staff. Mr.
25 Chairman, I believe we have one request of an unusual nature.
26

27 Mr. Kirkland - No withdrawals or deferrals?

28
29 Mr. Blankinship - No sir.
30

31 Mr. Kirkland - Yes, we do have one request of an unusual nature. Mr.
32 Nunnally, if you'd like to make your motion, please.
33

34 Mr. Nunnally - Mr. Chairman, I'd like to make a motion that we re-hear the
35 case that was presented to us last month, A-83-2001, in the name of Lois McGuire
36 Durette, that it be re-heard again at next month's meeting.

37
38 Mr. Kirkland - What date is that Mr. Secretary?

39
40 Mr. Blankinship - August 23, 2001.

41
42 Mr. Kirkland - Second by Mr. McKinney. All those in favor, say aye. All
43 those opposed? Okay, we will re-hear it next month, August 23, 2001.

44
45 On a motion by Mr. Nunnally, seconded by Mr. McKinney, the Board **granted** the
46 request for a re-hearing of variance application **A-83-2001**, to be re-heard on August 23,
47 2001 at 9:00 am.

48
49 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
50 Negative: 0
51 Absent: 0

52
53 Ms. Durette, you might want to check with Mr. Blankinship
54 or the office to find out, you have to send notices out again like you did last time.

55
56 Mr. Kirkland - Okay, if you would, call the first case.

57
58 **A - 93-2001** **ROY CRAIG HART** requests a variance from Section 24-94 of
59 Chapter 24 of the County Code to allow two carports to remain &
60 build an addition at 5202 Antigo Road (Hechler Village) (Tax Parcel
61 147-9-BB-35), zoned R-3, One-family Residence District (Fairfield).
62 The minimum side yard setback and total side yard setback are not
63 met. The applicant has 4 feet minimum side yard setback and 9 feet
64 total side yard setback, where the Code requires 12 feet minimum
65 side yard setback and 30 feet total side yard setback. The
66 applicant requests variances of 8 feet minimum side yard setback
67 and 21 feet total side yard setback.

68
69 Mr. Kirkland - Is the applicant here? Come forward please.

70
71 We've heard all the evidence on this case.

72
73 Mr. Blankinship - Yes sir, this was deferred with a request that the applicant
74 produce more specific measurements of the property.

75
76 Mr. Kirkland - Let me have you sworn in first. If you would, raise your right
77 hand. And would you state your name.

78
79 Mr. Blankinship - Do you swear that the testimony you are about to give is the

80 truth, the whole truth, and nothing but the truth, so help you God?

81

82 Mr. Hart - Yes I do. Roy Hart.

83

84 Mr. Kirkland - And would you hand that to him now. We heard the
85 testimony last month, and we had asked for a line survey. What did you find out.

86

87 Mr. Hart - What he has right there is the information that what exists
88 there today. That's the property lines and the setbacks that are there.

89

90 Mr. Blankinship - This is the first I've seen of this, so if you'll just allow me a
91 minute.

92

93 Mr. Kirkland - We can bear with you.

94

95 Mr. Hart - We just got our hands on it yesterday.

96

97 Mr. Blankinship - We had included in the notice letters that the applicant had 4
98 feet minimum side yard setback and 9 feet total side yard setback. According to this,
99 the lesser of the 2 side yards is 2.9, and the total is 7.0, so it is considerably tighter than
100 we had thought last month, so it's a good thing we did this, but I don't see any
101 qualitative change to the request. It's still the same fundamental issues that were
102 before you last month.

103

104 The house hasn't moved.

105

106 Mr. Blankinship - No, but the tolerances are all somewhat closer than we
107 thought they were before, so this should be "the applicant has 2.9 feet minimum side
108 yard setback, and 7.0 feet of total side yard setback, where the Code requires 12 and
109 30. The applicant requests 9.1 feet minimum side yard setback and 23.0 feet total side
110 yard setback.

111

112 Mr. Kirkland - That's all we needed, right?

113

114 Mr. Blankinship - That's all we need.

115

116 Mr. Kirkland - Okay, that concludes the case. We'll rule on it at the end.

117

118 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
119 Nunnally, the Board **denied** application **A-93-2001** for a variance to allow two carports
120 to remain & build an addition at 5202 Antigo Road (Hechler Village) (Tax Parcel 147-9-
121 BB-35).

122

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

124 Negative: 0

125 Absent: 0

126
127 The Board denied your request as it found from the evidence presented that authorizing
128 this variance would be of substantial detriment to adjacent property or would materially
129 impair the purpose of the zoning regulations.

130
131 Mr. Kirkland - Next case. New applications.

132
133 **A - 95-2001** **CHERYL TOWNER AND JEFFERY CUMMING** request a variance
134 from Section 24-94 of Chapter 24 of the County Code to enclose
135 the existing deck at 4604 Village Run Court (Village at Innsbrook)
136 (Tax Parcel 38-6-A-27), zoned R-3AC, One-family Residence
137 District (Conditional) (Three Chopt). The rear yard setback is not
138 met. The applicant has 32 feet rear yard setback, where the Code
139 requires 35 feet rear yard setback. The applicant requests a
140 variance of 3 feet rear yard setback.

141
142 Mr. Kirkland - Anyone else wish to speak on this case? If you would,
143 ma'am, raise your right hand and be sworn in.

144
145 Mr. Blankinship - Do you swear that the testimony you are about to give is the
146 truth, the whole truth, and nothing but the truth, so help you God?

147
148 Ms. Towner - I do.

149
150 Mr. Kirkland - Would you state your name. Have all your notices been
151 turned in according to the Code? We have them in the file. State your case.

152
153 Ms. Towner - Yes. Cheryl Towner. We are adding onto our house to
154 make room for our second baby. As part of that project, we want to screen in our deck,
155 mainly so the kids will have a place to play out of the sun and rain and the mosquito
156 problem, and we have tons of oak trees and acorns drop on your head and everything
157 else, and we just want the extra back yard area. We weren't aware of the rear yard line
158 information until they started the project, so I've got contractors sitting around waiting to
159 tie in the roofline. Our neighbors are very supportive; as a matter of fact one of them
160 gave it to me in writing that it's an enhancement of property values. They've all called
161 and asked if there's anything they can do to help.

162
163 Is there any screening to the rear of your property, trees, bushes, etc.?

164
165 Ms. Towner - We back up to Franklin Federal Bank, and it's all woods.

166
167 And the property behind you is the bank?

168
169 Ms. Towner - Right. The only people who would be able to see this would
170 be Mr. and Mrs. Garner, they're on the corner of Village Run and Village Run Court, and
171 they have no objections.

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They're already looking at the deck, aren't they?

Ms. Towner - Yes. Exactly.

Mr. Kirkland - Any other questions by Board members? Anyone else wish to speak? That concludes the case ma'am.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board **granted** application **A-95-2001** for a variance to enclose the existing deck at 4604 Village Run Court (Village at Innsbrook) (Tax Parcel 38-6-A-27). The Board granted the variance subject to the following condition:

1. This variance applies only to enclosing the existing deck. All other applicable regulations of the County Code shall remain in force.

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

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

Mr. Kirkland - Next one sir.

A - 96-2001 **HERBERT E. KENNEDY** requests a variance from Sections 24-94 and 24-9 of Chapter 24 of the County Code to build a one-family dwelling at 10800 Chicopee Road (Tax Parcel 38-A-25 (part)), zoned A-1, Agricultural District (Three Chopt). The lot width requirement and public street frontage requirement are not met. The applicant has 0 feet public street frontage and 35 feet of lot width, where the Code requires 50 feet public street frontage and 150 feet of lot width. The applicant requests a variance of 50 feet public street frontage and 115 feet of lot width.

Mr. Kirkland - Is there anyone else here who wishes to speak on this case? If you would, sir, raise your right hand and be sworn in.

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

Mr. Kennedy - Yes sir.

Mr. Kirkland - Would you state your name for the record. Have all your

219 notices been turned in? Okay, state your case.

220

221 Mr. Kennedy - Herbert E. Kennedy. Yes sir. We request a variance to build
222 a one-family dwelling on this piece of property shown on the screen up there. This
223 piece of property has been in the Kennedy family for over 40 years. I live across the
224 road from the property that we're considering, and my mother lives across the road too.
225 If this variance is allowed, my intent is to give this parcel of land to my granddaughter,
226 whom we raised, and she's going to build a house there she hopes. She's already been
227 pre-approved by a mortgage company. We're talking with a builder. We even have
228 public water available; we will have to put in a septic system. I have made direct
229 contact with all of the adjoining property owners; they have no objection. As a matter of
230 fact, they stated that they would rather have one single dwelling on this large piece of
231 land rather than back up to a subdivision. We can meet all of the suggestions that were
232 made by the Planning Committee, and we're ready to go.

233

234 Do you mean the suggested conditions?

235

236 Mr. Kennedy - Yes. If you folks have any questions, I'll be glad to answer
237 them for you.

238

239 Are you going to access this on Chickopee Road, which
240 dead-ends right at the property?

241

242 Mr. Kennedy - Right, it dead-ends, and we've extended Chickopee Road
243 and we use it as our driveway. We gave ourselves a 50-foot right-of-way by extending
244 Chickopee; it's not a public road. This piece of property also faces the driveway road.

245

246 That condition number 3 says you would have to connect to
247 the public sewer. There's no public sewer that serves the property?

248

249 Mr. Kennedy - That's right. If you look at the first page here, the report, it
250 talks about utilities, and it says 'water and private septic.'

251

252 We'd have to change that condition then.

253

254 Mr. Blankinship - Yes sir, we'll have to add the health department condition.
255 We have a standard condition that covers that.

256

257 Mr. Kirkland - Any other questions? Anyone else wish to speak? That
258 concludes the case sir.

259

260 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
261 Nunnally, the Board **granted** application **A-96-2001** for a variance to build a one-family
262 dwelling at 10800 Chickopee Road (Tax Parcel 38-A-25 (part)). The Board granted the
263 variance subject to the following conditions:

264

265 1. This variance applies only to the public street frontage and lot width
266 requirements. All other applicable regulations of the County Code shall remain in force.

267
268 2. At the time of building permit application, the applicant shall submit the
269 necessary information to the Department of Public Works to ensure compliance with the
270 requirements of the Chesapeake Bay Preservation Act and the code requirements for
271 water quality standards.

272
273 3. Connection shall be made to public water.

274
275 4. Approval of this request does not imply that a building permit will be issued.
276 Building permit approval is contingent on Health Department requirements, including,
277 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
278 of a well location.

279
280 5. The applicant shall present proof with the building permit application that a legal
281 access to the property has been obtained.

282
283 6. The owners of the property, and their heirs or assigns, shall accept responsibility
284 for maintaining access to the property until such a time as the access is improved to
285 County standards and accepted into the County road system for maintenance.

286
287 7. The applicant shall locate all improvements on the lot so that minimum yard
288 requirements are met subsequent to the dedication and construction of a public street.

289
290 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
291 Negative: 0
292 Absent: 0

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

299
300 Mr. Kirkland - Next one.

301
302 **A - 97-2001** **HOWARD F. COSSEY** requests a variance from Sections 24-95(i)2
303 and (t) of Chapter 24 of the County Code to build a single-family
304 dwelling at 9820 Osborne Landing (Newstead Farms) (Tax Parcel
305 283-1-2-12A), zoned A-1, Agricultural District (Varina). The
306 accessory structure location and total lot area requirement outside a
307 flood plain are not met. The applicant has 0 acres total lot area
308 outside the flood plain and an accessory structure in the front yard,
309 where the Code requires 1 acre total lot area outside the flood plain,
310 and allows accessory structures in the rear yard. The applicant

311 requests a variance of 1-acre total lot area outside the flood plain
312 and to allow an accessory structure in the front yard.

313
314 Mr. Kirkland - Anyone else wish to speak on this case? If you would sir,
315 raise your right hand and be sworn in.

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

319
320 Mr. Cossey - I do.

321
322 Mr. Kirkland - Would you state your name for the record. Have all adjacent
323 landowners been contacted? Yes we have. Okay, state your case.

324
325 Mr. Cossey - Howard F. Cossey. Yes sir, I think you have it in your file. I
326 brought it up here where they have. Okay, I want to correct a couple of things before I
327 start, and that is, the attached garage will be attached to the house, which means it's all
328 one structure we're talking about now, so we can do away with this garage being
329 separated from the house. It will be attached to the house, with a breezeway or
330 whatever, as many people have out there.

331
332 Mr. Kirkland - So this drawing here if

333
334 Mr. Cossey - not quite correct. You can draw a line between
335 the garage and the house, so that there will be a walkway between there, covered with
336 roof. You see what I'm talking about? The other one, I don't know if you have this total
337 thing, it should be there, is the flood plain elevation, they tell me is 20 feet. That's a
338 FEMA number, and the existing finished floor of the existing residence is 21.1, which
339 puts it up out of the water.

340
341 Mr. Kirkland - Can I ask you one question? What is your flood plain
342 designation, like a letter of the alphabet, they're EF's, AF's.

343
344 Mr. Cossey - FEMA says it's A, but I have numbers here that go back,
345 those numbers keep creeping up, and FEMA finally said they're going to make it 20
346 feet, which is a zone A.

347
348 Mr. Kirkland - Mr. Blankinship, what is it, in the flood plain, don't they have
349 to be a certain distance up and different classifications.

350
351 Mr. Blankinship - They have to be 1 foot above the flood level

352
353 Mr. Kirkland - Even in, they're different, they're A's or B's, they're different
354 ways of doing this.

355
356 Mr. Blankinship - I don't think any of them are more than 1 foot though. I think

357 the letters really designate how they determine the flood plain designation.

358

359 Mr. Kirkland - I know that near the water, if you're near a river or
360 something, they vary tremendously.

361

362 Mr. Blankinship - Okay. Where you have tidal influences I guess.

363

364 Mr. Kirkland - Okay, continue on sir; I'm sorry.

365

366 Mr. Cossey - Okay, no problem. Zone A is what is listed on here. I have a
367 little scheme of this thing if you need to have a copy of that, it's FEMA number. The
368 other thing I want to point out is, as you can see there, the whole focus of the houses
369 out there is on the James River. That's the major part of it. So this house is meant to
370 sort of fit the neighborhood, and I'm trying to do a lot of other things at the same time.
371 One is, the existing house is nonconforming. The existing house has a basement. All
372 things considered, if I build the new house behind it, I'm further away from the river,
373 which makes everything better to all the people I heard of, and while I'm at that, I do
374 have one question. In your evaluation, we have a statement that says, 'granting a
375 variance from that provision may be considered a "use variance," which is prohibited by
376 the Code of Virginia.' I haven't found anybody who knows what a "use variance" is. I
377 don't know what that is, so I can't speak to that. Nobody seems to know.

378

379 Mr. Kirkland - Mr. Blankinship, would you answer his question.

380

381 Mr. Blankinship - A "use variance" is simply a variance from a provision of the
382 Code that restricts uses. For the most part, variances are granted from side yard
383 setbacks, lot area requirements, street frontage requirements, mostly dimensional
384 requirements. The State Code defines a variance as an adjustment of the rules in one
385 of those things, the size of the property, the location of buildings on the property, and
386 the law is specific that the Board cannot grant a variance to allow a use that would not
387 otherwise be allowed. For example, if you had agricultural land and you applied for a
388 variance to put a convenience store there, they can't do that by variance. You have to
389 go through a different process, through a rezoning, to change that. The question of the
390 flood plain, it's a use regulation that says you can't have a new dwelling in the flood
391 plain, so from that perspective, it appears that what you're requesting is a "use
392 variance." It can also be looked at that the flood plain is a measurement; it's a matter of
393 height and distance from the river, and so

394

395 Mr. Cossey - and topography.

396

397 Mr. Blankinship - it could be looked at the other way, that it is a
398 legitimate variance, but that's a point that staff felt it's important for the Board to be
399 aware of and to be thinking about, and not just go along with business as usual.

400

401 Mr. Cossey - Now that that's defined, then yes, I would be after relief on
402 size and topography. Also, do you have the letter from the Department of Public Works,

403 showing that I'm bettering the situation?

404

405 Mr. Blankinship - The letter's in the file; I don't know if it was included in the
406 packets.

407

408 Mr. Kirkland - We didn't receive one in our packets.

409

410 Mr. Cossey - I'll give you one here.

411

412 Mr. Blankinship - It's in the file.

413

414 Mr. Kirkland - Proceed.

415

416 Mr. Cossey - To make things better, and still satisfy a lot of the ordinances
417 and rules and everything, by building a new house, I'm getting rid of some problems.
418 One is, the existing house is nonconforming, and the RPA, resource protection area,
419 and also as far as insurance goes, the existing house has a basement; if I pull back, the
420 new house will not have a basement so we're getting rid of that problem, which is
421 pointed out in the rules of the zoning.

422

423 Are you currently residing in your existing house? Has it
424 flooded any time in the past few years?

425

426 Mr. Cossey - When we're say the past few years, we're talking the flood
427 plain was established back in Agnes in 1972.

428

429 So it did flood in '72?

430

431 Mr. Cossey - The basement flooded. It's never been up into the house. I
432 have evidence from talking with neighbors, and as you can see this number I just gave
433 you on this plot plan, the flood plain is 20 feet. That's incidentally greater, and I have
434 some information on that, than what it originally started out with Henrico measurements,
435 and the finished floor level of the existing house is 21.1 feet, as the new house will also
436 comply with being up out of it. One hardship I have, if the existing house has to be the
437 way I go, is, I don't know if anybody is in insurance or not, but they cover nothing in a
438 basement. You can get all the flood insurance you want, and nothing in the basement
439 is covered, so there to me is a hardship. I don't know whether that's size, topography,
440 or rules or whatever it is, but to me it's a hardship. I'm building a new house, I'll get rid
441 of that problem. Another thing I think, as we talk about here, 20 foot and 21 foot,
442 compared to some of the things around, let's take the First Market Bank down in
443 Shockoe Bottom. They built the floodwall. They're building this First Market down here,
444 just a few feet above the water. Up here's the floodwall. If it ever tops over that, they're
445 still in the flood plain. But where I'm at, I'm one foot in the top of the flood plain, not
446 down near the bottom, and I think that's very important when it comes to size, because
447 the house where I'm living, the floor has never been in a flood, and this new house
448 won't be in the 100-year flood plain, and I think that's an important factor. However, in

449 some cases, people try to make one rule apply to everything.
450
451 Mr. Kirkland - May I ask you a question before you go any further, and Mr.
452 Blankinship also. I see here the flood plain line is drawn through the corner of the
453 house, is that correct?
454
455 Mr. Blankinship - The RPA line?
456
457 Mr. Kirkland - Yes, the RPA line is through the corner of the new proposed
458 home, correct?
459
460 Mr. Cossey - That letter that I gave you from the Department of Public
461 Works clears that. I can't say for sure, because when I laid it out, it's going to be about
462 a foot on each side back into the RPA zone, but very minimal.
463
464 Mr. Kirkland - But it's going to be in there?
465
466 Mr. Cossey - Very minimal.
467
468 Mr. Kirkland - That's all I need to know.
469
470 Mr. Cossey - One of the reasons why that has to be done, if you see the
471 well, I guess you have a copy of that, the well and the septic tank, which incidentally
472 they've asked for in the septic tank area, it was recently rebuilt, and it's been oversized
473 with 2 tanks and good for a 5-bedroom house, although that's not what I'm asking for.
474 Setting this house right in between these sort of dictated that I encroach just a bit into
475 that RPA line. I have to have a talk with Mr. Stringer, the minimum I can get by with, the
476 rules may say 10, but the minimum I can get by with is 7 feet from the septic tank and 7
477 feet from the well, and we've discussed this, and he says that's okay. So that allowed
478 me to put this house right in between the 2 of them, still stay far enough from the
479 existing house, and I encroached slightly into the RPA.
480
481 Are you saying the new house won't have a basement? So
482 the condition number 6 wouldn't apply?
483
484 Mr. Cossey - Condition # 6? It will apply.
485
486 You have a crawl space or what?
487
488 Mr. Cossey - That will be met. All these conditions will be met.
489
490 Mr. Blankinship - I would suggest, Mr. Balfour, on condition # 4, that we strike
491 the words "including basement" and add a second sentence reading, "The house shall
492 not have a basement."
493
494 Mr. Kirkland - That everything?

495
496 Mr. Cossey - I have a copy of the septic permit if you need it.
497
498 Mr. Kirkland - I think we've probably got that in the file.
499
500 Mr. Cossey - And then I have some old records showing how the flood
501 plain has increased from 18.9 feet in Agnes, to 19.3 feet, to when FEMA came in and
502 put their black mark on it and said 20 feet. So the flood plain is a little bit nebulous as
503 far as measurements go.
504
505 Mr. Blankinship - As development occurs, you get more impervious area and
506 the flood plain rises.
507
508 Mr. Cossey - Or the measurements are corrected. I don't know how all
509 that came about. I'm just going back in the records.
510
511 Mr. Kirkland - Any other questions by Board members? Does anyone else
512 want to speak on this case? That concludes the case sir.
513
514 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
515 Wright, the Board **granted** application **A-97-2001** for a variance to build a single-family
516 dwelling at 9820 Osborne Landing (Newstead Farms) (Tax Parcel 283-1-2-12A). The
517 Board granted the variance subject to the following conditions:
518
519 1. Only the improvements shown on the plan filed with the application, as amended
520 at the meeting, may be constructed pursuant to this approval. No substantial changes
521 or additions to the layout may be made without the approval of the Board of Zoning
522 Appeals. Any additional improvements shall comply with the applicable regulations of
523 the County Code.
524
525 2. At the time of building permit application, the applicant shall submit the
526 necessary information to the Department of Public Works to ensure compliance with the
527 requirements of the Chesapeake Bay Preservation Act and the code requirements for
528 water quality standards.
529
530 3. Approval of this request does not imply that a building permit will be issued.
531 Building permit approval is contingent on Health Department requirements, including,
532 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
533 of a well location.
534
535 4. The elevation of the lowest floor of the building shall be a minimum of one foot
536 above the base flood elevation. The house shall not have a basement.
537
538 5. Electrical, heating, ventilation, plumbing and air conditioning equipment and other
539 service facilities shall be designed and/or located so as to prevent water from entering
540 or accumulating within the components during conditions of flooding.

541
542 6. All enclosed areas below the lowest floor that are subject to flooding shall be
543 designed to automatically equalize hydrostatic flood forces on exterior walls by allowing
544 for the entry and exit of floodwaters. Designs for meeting this requirement must either
545 be certified by a registered professional engineer or architect or must meet or exceed
546 the following minimum criteria: (i) A minimum of two openings having a total net area of
547 not less than one square inch for every square foot of enclosed area subject to flooding
548 shall be provided; (ii) The bottom of all openings shall be no higher than one foot above
549 grade; (iii) Openings may be equipped with screens, louvers or other coverings or
550 devices, provided that they permit the automatic entry and exit of floodwaters.

551
552 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
553 Negative: 0
554 Absent: 0
555

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

561
562 Mr. Kirkland - Next case sir.

563
564 **A - 98-2001** **GLORIA J. TYLER** requests a variance from Section 24-95(q)5 of
565 Chapter 24 of the County Code to add a sunroom at 6308
566 Springcrest Lane (Darbytown Meadows) (Tax Parcel 192-9-A-3),
567 zoned R-3C, One-family Residence District (Conditional) (Varina).
568 The rear yard setback is not met. The applicant has 28.5 feet rear
569 yard setback, where the Code requires 35 feet rear yard setback.
570 The applicant requests a variance of 6.5 feet rear yard setback.

571
572 Mr. Kirkland - Does anyone else wish to speak on this case? If you would
573 ma'am, raise your right hand and be sworn in.

574
575 Mr. Blankinship - Do you swear that the testimony you are about to give is the
576 truth, the whole truth, and nothing but the truth, so help you God?

577
578 Ms. Tyler - Yes I do.

579
580 Mr. Kirkland - Would you state your name for the record. Would you move
581 that mike a little closer to you. Have all adjacent landowners been contacted according
582 to the County Code? All right, we have them in the file. Proceed with your case. What
583 would you like to do?
584

585 Ms. Tyler - Gloria J. Tyler. Yes, they have been notified. I want to add a
586 sunroom onto the back of my house, and mainly for the purpose of just having
587 additional living space.

588
589 What size is your house now, Ms. Tyler?

590
591 Ms. Tyler - I think it's like maybe 1300 square feet.

592
593 And how many rooms do you have in it?

594
595 Ms. Tyler - Seven.

596
597 How large is your family?

598
599 Ms. Tyler - When I first bought the house, it was just myself, and now my
600 son and my daughter-in-law and my grandson are living with me, and that's the main
601 reason I want to add on. We need more space.

602
603 This 14 by 32 addition, is that just a sunroom, or does that
604 include a bath?

605
606 Ms. Tyler - Sunroom only.

607
608 What's located to the rear of your property?

609
610 Ms. Tyler - St. Paul's Pentecostal Church.

611
612 There are no houses close to the rear line?

613
614 Ms. Tyler - No, just the church itself in the rear.

615
616 Mr. Kirkland - Any other questions? Anyone else wish to speak? That
617 concludes the case ma'am.

618
619 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
620 Wright, the Board **granted** application **A-98-2001** for a variance to add a sunroom at
621 6308 Springcrest Lane (Darbytown Meadows) (Tax Parcel 192-9-A-3). The Board
622 granted the variance subject to the following condition:

623
624 1. Only the improvements shown on the plan filed with the application may be
625 constructed pursuant to this approval. No substantial changes or additions to the layout
626 may be made without the approval of the Board of Zoning Appeals. Any additional
627 improvements shall comply with the applicable regulations of the County Code.

628
629 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

630 Negative: 0

631 Absent:

0

632

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

638

639 Mr. Kirkland - Next one sir.

640

641 **A -100-2001** **MICHAEL A. WATERS** requests a variance from Section 24-
642 95(i)(2) of Chapter 24 of the County Code to build an addition at
643 9771 Hoke Brady Road (Tax Parcel 276-A-20), zoned A-1,
644 Agricultural District (Varina). The accessory structure location
645 requirement is not met. The applicant has an existing pool and tool
646 shed that will be in the side yard, where the Code allows accessory
647 structures in the rear yard. The applicant requests a variance to
648 allow the pool and shed in the side yard.

649

650 Mr. Kirkland - Anyone else wish to speak on this case? If you would sir,
651 raise your right hand and be sworn in.

652

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

655

656 Mr. Waters - I do.

657

658 Mr. Kirkland - Would you state your name for the record. Have all adjacent
659 landowners been contacted? In the file. Proceed with your case.

660

661 Mr. Waters - Michael A. Waters. Yes Mr. Chairman. This is a relatively
662 simple matter, I hope, if I could move the pool and the garage, I could add the addition
663 without the variance request. I chose to add the addition on the back side, for aesthetic
664 reasons as the application states, but also the 2 practical reasons. One is that I would
665 lose a bathroom window if I did that. The other reason is because of the slope of the
666 land. I don't believe it would conflict with the drain field, but because of the way the land
667 slopes, it could. I didn't raise the question with the Health Department, but it could be a
668 problem. I'll be glad to answer any questions you might have. One other point, if you
669 don't mind. There are 2 existing homes on our street, which have pools. If you view
670 them from the street, they are in the side yard, and they're very obvious. Our pool is in
671 the back yard; it cannot be seen from the house. When we first looked at this house,
672 we didn't even know it had a pool. You can't see it from the street. You can see it from
673 the air, obviously, and if there was a home on the property next to us, you could see it
674 from that property. If there were homes behind us, I assume you could see it from that
675 property as well.

676

677 Mr. Waters, what will the addition be used for?

678
679 Mr. Waters - The bedrooms that we have in the house are very small.
680 You can't put a queen-sized bed in them, and what we're trying to do, and my wife does
681 a lot of needlework. The other problem we have, is the way the house is constructed,
682 we have a combined living room, dining room, and right now, when my wife does
683 ironing, she ends up doing it in the dining room area. She's a nurse, so she irons
684 uniforms all the time, so the idea was to use one existing bedroom as sort of a hallway,
685 but also as an ironing room, and then replace that bedroom with a new bedroom. This
686 would also allow us, we have 3 boys, and while none of them are living at home at the
687 present time, we don't know exactly what the future holds, and we just wanted the extra
688 room.

689
690 Mr. Kirkland - Any other questions by Board members? Anyone else wish
691 to speak on this case? That concludes this case.

692
693 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
694 Wright, the Board **granted** application **A-100-2001** for a variance to build an addition at
695 9771 Hoke Brady Road (Tax Parcel 276-A-20). The Board granted the variance subject
696 to the following condition:

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

702
703 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
704 Negative: 0
705 Absent: 0

706
707 The Board granted this request, as it found from the evidence presented that, due to the
708 unique circumstances of the subject property, strict application of the County Code
709 would produce undue hardship not generally shared by other properties in the area, and
710 authorizing this variance will neither cause a substantial detriment to adjacent property
711 nor materially impair the purpose of the zoning regulations.

712
713 Mr. Kirkland - Next case.

714
715 **A -101-2001** **SCOTT M. ALLEN** requests a variance from Section 24-94 of
716 Chapter 24 of the County Code to enclose the existing deck at
717 12104 Loxton Court (Preston at Wyndham) (Tax Parcel 1-3-A-23),
718 zoned R-4C, One-family Residence District (Conditional) (Three
719 Chopt). The rear yard setback is not met. The applicant has 27
720 feet rear yard setback, where the Code requires 35 feet setback.
721 The applicant requests a variance of 8 feet rear yard setback.

722

723 Mr. Kirkland - Anyone else wish to speak on this?
724
725 Mr. Blankinship - Do you swear that the testimony you are about to give is the
726 truth, the whole truth, and nothing but the truth, so help you God?
727
728 Mr. Kirkland - Now you can say who you are. Have all your notices been
729 turned in? We have them in the file. Now you can tell us what you want.
730
731 Ms. Allen - Yes I do. I'm Michelle Allen. My husband Scott was called
732 away, out of town on business today. We would like to screen in an existing deck. We
733 have 2 small children, 3 months, and a 2-year-old, and would benefit from being able to
734 let them enjoy the outdoors with the protection of a screened in porch. You can't see it
735 from this picture, but we have almost a pie-shaped yard, and one of our 2 rear property
736 lines backs up to 2 water retention areas. One is a saved area in the community, which
737 stays swampy most of the time, and behind that is a BMP, which collects a lot of water,
738 and we have a very bad mosquito problem, so we very much would like to screen that
739 porch in. As the notice says, we're short about 8 feet on the closest corner, again
740 because of the irregularity of the lot line. It's only a problem on the closest corner that
741 you can see on the map. We did consider, as the evaluation states, putting the
742 screened-in porch to the right of this, which would actually mean it would come off of
743 our family room instead of our sunroom. The problems that came up with that, is there's
744 no exterior entrance. It would mean removing windows out of our family room to put in
745 a door, or it would mean going outside before you could come inside again, to leave the
746 existing deck and use that as a walkway to get to the porch. We don't really feel that we
747 need both a deck and a screened-in porch, and both of those structures would be a little
748 overwhelming for the size of our house and the yard. We do have a screen of trees that
749 we have started on that back property line where the closest points are, to add privacy
750 between our home and our neighbor.
751
752 Mr. Kirkland - Any questions by Board members?
753
754 What did you line up for your husband to do since he left you
755 this job?
756
757 Ms. Allen - Well, unfortunately he gets called away a lot on business, so
758 I probably should have expected this.
759
760 Mr. Kirkland - Anyone else wish to speak on this case? That concludes the
761 case.
762
763 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
764 Balfour, the Board **granted** application **A-101-2001** for a variance to enclose the
765 existing deck at 12104 Loxton Court (Preston at Wyndham) (Tax Parcel 1-3-A-23). The
766 Board granted the variance subject to the following condition:
767

768 1. This variance applies only to enclosing the existing deck. All other applicable
769 regulations of the County Code shall remain in force.

770
771 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
772 Negative: 0
773 Absent: 0
774

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

780
781 Mr. Kirkland - Next case sir.

782
783 **A -102-2001 CHARLES A. GAVIN** requests a variance from Sections 24-
784 95(i)(2), 24-94 and 24-95(i)(2)(f) of Chapter 24 of the County Code
785 to build an addition at 6505 River Road (Westham) (Tax Parcel
786 126-6-E-2), zoned R-1, One-family Residence District (Tuckahoe).
787 The accessory structure location requirement, minimum side yard
788 setback, and pool setback are not met. The applicant has 9 feet
789 minimum side yard setback, 0 feet pool setback and a pool in the
790 side yard, where the Code requires 20 feet minimum side yard
791 setback and 10 feet pool setback and allows accessory structures
792 in the rear yard. The applicant requests variances of 11 feet
793 minimum side yard setback, 10 feet pool setback and allowing an
794 accessory structure in the side yard.

795
796 Mr. Kirkland - Anyone else wish to speak on this case? If you would, raise
797 your right hand and be sworn in.

798
799 Mr. Blankinship - Do you swear that the testimony you are about to give is the
800 truth, the whole truth, and nothing but the truth, so help you God?

801
802 Mr. Gavin - Yes I do.

803
804 Mr. Kirkland - State your name for the record. Have all your notices been
805 turned in? We have them in the file. Okay, proceed with your case

806
807 Mr. Gavin - Charles Gavin. Yes sir they have. Good morning
808 gentlemen. Our lot is somewhat unique in so far as it has a valley. It sort of runs from
809 the northeast corner to the southwest corner; it starts very high and then goes low, and
810 then goes back up. That's why the house right now is built towards the northeast
811 corner. My wife and I wanted to put an addition on the east line, because it looks like
812 we're going to have the possibility of an in-law situation. We wanted to create a new
813 master for us and make the in-law suite, leave it on the other end of the house. So we

814 wanted to put an addition where you see the screened-in porch on your screen. We
815 wanted to enclose that, make it a breakfast room, and then make the addition off of the
816 end. There's actually a drainage easement that the County has that runs through the
817 back line. You'll see that in the back. But also the way the land lies from the front
818 corner, right along this big oak tree, all the water flows along that area right along the
819 rear of the enclosed pool house. So if you built something on this end of the house,
820 you'd have problems with water and that drainage easement. What we would like to do
821 is put something that comes out more of an L-shape on the other end of the house and
822 remove the existing pool structure to make that an outdoor pool and then just have an
823 addition on this side of the line. The person most affected would be the neighbor on the
824 east side, who would be the Potts, and I've spoken to them, in addition to the Bates
825 behind us, and Dr. Riley and his wife on the other side. Dr. Riley has since passed
826 since I filed the application, but the Potts don't have any objection. In fact, because the
827 lot is so high in the northeast corner, when they put in their lot, they have a driveway in
828 between our house and you see where the white Bronco is parked. They actually
829 elevated their lot because the lot slopes off so severely behind their house, so our
830 property would actually be sort of down the side, so it wouldn't be as visible to them as
831 you might imagine. That's why we're asking for the variance, to get a little closer to their
832 lot line. Our lot line would actually be the existing structure would basically be right at
833 the rear right corner of the pool house as you see right now. The drainage easement,
834 I'm not sure if you can tell or not, but there's actually some, back on the previous
835 picture, when that water, especially when we have a hard rain, right by that oak tree, all
836 the water funnels right down there and goes right around that house. A structure
837 anywhere else, other than where we propose, unless we came right off the back of the
838 house and made it more of a T-type addition, probably wouldn't work.

839
840 Mr. Kirkland - Any questions by Board members?

841
842 Is Johnny Bates your neighbor?

843
844 Mr. Gavin - Yes sir he is.

845
846 You probably need a little screen between you and him.

847
848 Mr. Gavin - Well actually he's put a big screen back there. He's a good
849 neighbor.

850
851 Mr. Kirkland - Does anyone else wish to speak on this case? If not, that
852 concludes the case sir.

853
854 After an advertised public hearing and on a motion by Mr. Balfour, seconded by Mr.
855 McKinney, the Board **granted** application **A-102-2001** for a variance to build an addition
856 at 6505 River Road (Westham) (Tax Parcel 126-6-E-2). The Board granted the
857 variance subject to the following condition:

858

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

863
864 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
865 Negative: 0
866 Absent: 0

867
868 The Board granted this request, as it found from the evidence presented that, due to the
869 unique circumstances of the subject property, strict application of the County Code
870 would produce undue hardship not generally shared by other properties in the area, and
871 authorizing this variance will neither cause a substantial detriment to adjacent property
872 nor materially impair the purpose of the zoning regulations.

873
874 Mr. Kirkland - Next one sir.

875
876 **A -103-2001** **BECKY AND BRAXTON GLASGOW** request a variance from
877 Sections 24-95(i)(2) and 24-95(q)(5) of Chapter 24 of the County
878 Code to build a carport and screened porch at 9913 Carrington
879 Place (Riverlake Colony) (Tax Parcel 98-7-E-28), zoned R-1, One-
880 family Residence District (Tuckahoe). The accessory structure
881 location and minimum side yard setback are not met. The
882 applicants have 9.5 feet minimum side yard setback and a
883 swimming pool in the side yard, where the Code requires 12 feet
884 minimum side yard setback, and allows accessory structures in the
885 rear yard. The applicants request variances of 2.5 feet minimum
886 side yard setback and an accessory structure in the side yard.

887
888 Mr. Kirkland - Does anyone else wish to speak on this case? Okay sir, if
889 you would stand at the same time, raise your right hand and be sworn in.

890
891 Mr. Blankinship - Do you swear that the testimony you are about to give is the
892 truth, the whole truth, and nothing but the truth, so help you God?

893
894 Ms. Glasgow - I do.

895
896 Mr. Kirkland - Okay, would you state your name for the record. Could I ask
897 you one more question? Have you turned in all your notices? Now you can proceed.

898
899 Ms. Glasgow - My name is Becky Glasgow. Yes we have. Until night
900 before last we didn't know that there was any objection to our plans. My husband is out
901 of town also, because he had planned to be out of town when we didn't think there was
902 any objection, but there's been some miscommunication about what we are allowed by
903 our neighborhood to do, and not to do, in our building. We based our building plans on
904 what we believed to be allowed, and now we're finding out that there's some difference

905 of opinion on that, and we're several thousand dollars into the planning of the project
906 and preparation for the building. After receiving the information, night before last, and
907 talking to as many people as we could yesterday, and talking to my husband and our
908 contractor, we see now that it's going to cost a lot more to do it the way that we're
909 hearing is the only way we can do it. So I'm not sure what to do except to ask that
910 maybe we put off this request for a month, so that we can reach a compromise,
911 hopefully, with our neighborhood review committee.

912
913 Do you want to defer it?

914
915 Mr. Kirkland - Does the opposition have any objection to that sir?

916
917 Opposition - No sir.

918
919 So moved.

920
921 Mr. Kirkland - All those in favor say aye. So next month.

922
923 Ms. Glasgow - So I need to redo everything I've done?

924
925 Mr. Blankinship - We'll be in touch with you about that.

926
927 Upon a motion by Mr. Balfour, seconded by Mr. McKinney, the Board of Zoning Appeals
928 **deferred** application **A-103-2001** for a variance to build a carport and screened porch at
929 9913 Carrington Place (Riverlake Colony) (Tax Parcel 98-7-E-28). The case was
930 deferred for 30 days, to allow time for further discussions with your neighborhood review
931 committee, from the July 26, 2001, until the August 23, 2001, meeting,

932
933 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
934 Negative: 0
935 Absent: 0

936
937 Mr. Kirkland - Next case.

938
939 **A -104-2001 HEZEKIAH WILKERSON** requests a variance from Section 24-94
940 of Chapter 24 of the County Code to build a sunroom at 4740 Glen
941 Finnian Drive (Yahley Mill East) (Tax Parcel 229-5-A-4), zoned A-1,
942 Agricultural District (Varina). The rear yard setback is not met. The
943 applicant has 39 feet rear yard setback, where the Code requires
944 50 feet rear yard setback. The applicant requests a variance of 11
945 feet rear yard setback.

946
947 Mr. Kirkland - Is the applicant here for this case? We'll pass this one by till
948 later on.

949
950 Mr. Kirkland - Next case.

951
952 **A -105-2001** **DAVID M. STEVENS** requests a variance from Section 24-
953 104(k)(4)b of Chapter 24 of the County Code to install a sign at
954 8052 W Broad Street (Tax Parcel 70-A-18), zoned B-2, Business
955 District (Brookland). The sign height requirement is not met. The
956 applicant wishes to install a sign above the roof line, where the
957 Code allows signs below the roof line.
958

959 Mr. Kirkland - Anyone else wish to speak on this case? Okay sir, if you
960 would, raise your right hand and be sworn in.
961

962 Mr. Blankinship - Do you swear that the testimony you are about to give is the
963 truth, the whole truth, and nothing but the truth, so help you God?
964

965 Mr. Kirkland - State your name for the record sir. Have all your notices
966 been turned in according to the Code? Okay, we have them in the file. All right, state
967 your case.
968

969 Mr. Stevens - I do. My name is David Stevens. Yes I have; you should
970 have them on record. Sir I'm here representing Kabuto's Restaurant. What they're
971 wanting to do is actually replace a sign that was destroyed in a fire. The sign that
972 they're wanting to put up is as close to an exact replica of what was there before, as we
973 could determine through photographs and measurements taken of the old sign. I have
974 some other documentation going on here, if I could pass these out to possibly review.
975

976 Mr. Kirkland - We got this already.
977

978 Mr. Stevens - Just in case there's any questions. In that, of course, you
979 have a drawing of the, that packet I'm handing out now, that was, the first picture that's
980 on there is a picture of the old sign after the devastation by the fire. The next, what
981 you've already got also included in your package is a drawing of the new sign. As you
982 can see there, the exactness of the duplication of that sign, and it is in regards to size
983 and length, proportion. You also have, that was given, I believe, a photo of the building
984 with the sign applied, as it would look. That drawing is to scale and an accurate
985 depiction of the sign and building as it would go for.
986

987 Mr. Kirkland - Is that this one right here?
988

989 Mr. Stevens - Is that the package you just got?
990

991 Mr. Kirkland - Yes sir.
992

993 Mr. Stevens - No sir, it's the one you were given. Yes sir, it's a color photo
994 there. That's as it would actually look. I want to note that the layout of that sign on the
995 building is located again in the same exact footprint as it was previously before the fire.
996 Again, nothing has changed. We're wanting to put it up exactly as it was before, the

997 only thing that's actually changing is the building, and it's just the architectural design of
998 the building, because it actually fits the footprint as previous also. What I had just given
999 you is regarding to the reasoning behind the request for the survey, and it's a
1000 photographic survey going down West Broad Street, both in the east and west
1001 directions. As to the lack of visibility of this, as you can tell, you've got a westward set
1002 of pictures and an eastward set of pictures, totaling 17. Out of those, you can only see
1003 that sign in about 5 or 6 of those pictures. In the east direction set of photos, you will
1004 see that at no time until you're up at the traffic light and looking back over your left-hand
1005 shoulder. Is any portion of that building visible to any Broad Street traffic except where I
1006 have indicated that the sign is to be placed? There's a wall and the raised area of the
1007 ground there, and the fence behind the Crown Station, and the businesses in front
1008 completely hide that building except for the cupolas, which extend above the roof line
1009 there. Again, this is a sign that existed before, due to the fire, we're asking that it be
1010 replaced. Staff had recommended, or had said something about the freestanding sign,
1011 which I've also included pictures in there. There's no place for them to use that
1012 freestanding sign to help advertise this. The only place that this business can advertise
1013 is by signage on the building, but as shown by the pictorials that I've given you there,
1014 the only place that is effective, especially from the eastward views coming from the west
1015 on West Broad Street, that location that we've picked, and where the sign was
1016 previously, is the only place the sign would be visible from. Again, going in the
1017 westward direction, there's only, and all these pictures were taken from the traffic-bound
1018 lanes, there's a site plan that's showing those pictures were taken in about a 700-800-
1019 foot spread, from one drive to somewhat past the second drive, going to and from down
1020 West Broad Street. So you've got an actual significant photo of the problem they are
1021 incurring. As I stated in my letter previously, as far as the request, zoning often grants,
1022 the ordinance states that attached signs shall not extend above the roof line. Zoning
1023 administratively gives relief to that sentence for an extension of 40 inches. That's
1024 common in regards to applying for sign permits. So they take it to that fact, again,
1025 commonly. So we're asking that the sign be allowed to be put back again in the same
1026 footprint, as it was prior to the fire, and continue business as usual.

1027
1028 Mr. Kirkland - Let me ask you a question. From the top of the roof to the
1029 top of the sign is how far? I'm talking about on the end of the gable here, this line right
1030 here, that line.

1031
1032 Mr. Stevens - Yes sir, that's going to be, I'm sorry, point out again how you
1033 want me to

1034
1035 Right here.

1036
1037 Thirteen feet.

1038
1039 Mr. Stevens - Well it's, from the bottom of that, it's 13 feet, but the sign
1040 itself, from where you're pointing, up to the top of the sign is going to be approximately 8
1041 feet, 7 or 8 feet.

1042

1043 Mr. McKinney - What is in the construction above the roof? Is that
1044 equipment or what?
1045
1046 Mr. Stevens - No it's not equipment. It's my understanding, Mr. Browning,
1047 that is a closed
1048
1049 Mr. Kirkland - Sir, you didn't get sworn in, so if you're going to say anything,
1050 you need to raise your right hand and come down here to this microphone. Mr.
1051 Blankinship, I think you need to swear him in. Will you raise your right hand?
1052
1053 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1054 truth, the whole truth, and nothing but the truth, so help you God?
1055
1056 Mr. Browning - Yes I will.
1057
1058 Mr. Kirkland - State your name.
1059
1060 Mr. Browning - William Browning. I'm designing associate architecture.
1061
1062 Mr. Kirkland - And now, the question you asked him?
1063
1064 Mr. Stevens - Mr. Browning, that particular part, the cupola there, that is
1065 just an architectural feature; it houses no equipment or anything, is that correct?
1066
1067 Mr. McKinney - How about the other one?
1068
1069 Mr. Browning - The other one is enclosing an atrium that's inside of the
1070 entrance. The ceiling inside of the larger one to your left in that photo, as I'm looking at
1071 it there
1072
1073 Mr. Kirkland - Can you move closer to the mike – we are taping this.
1074
1075 Mr. Browning - I am sorry. The feature to the left, the one that would be
1076 directly over the entrance, is an atrium inside of the restaurant. It has approximately an
1077 18-foot-ceiling above floor, so the ceiling of that is about where the gutter line would be,
1078 the bottom of the slope.
1079
1080 Mr. McKinney - You say it's an atrium that goes from the floor, 18 feet all the
1081 way up?
1082
1083 Mr. Browning - That is correct. It's just a higher ceiling, and what we're
1084 doing in that, what I call an atrium area, is an art feature of a sky set; it's specially lit
1085 inside the building.
1086
1087 Mr. McKinney - Mr. Browning, isn't that considered part of the roof of the
1088 building?

1089
1090 Mr. Browning - Yes sir, to me it is. Both of those are architectural features.
1091 The one that we're talking about now has the atrium ceiling, does have a higher ceiling
1092 than the one to the right, the smaller one, which is behind that sign. So there's 2
1093 different heights inside the building. Our request has been to locate the sign where the
1094 sign was before, which will put it on the back corner of the building and closest to the
1095 roof, which is simply a lower, mansard-shaped roof. That's where, when it's placed to
1096 the rear, which offers the best exposure and keeps it off of the higher roofs, that's where
1097 it exceeds the 40 inches.
1098
1099 Mr. McKinney - In your opinion, what is the highest part of this roof. Wouldn't
1100 it be that ridge of that atrium?
1101
1102 Mr. Browning - That is correct sir; it would be 18 feet inside of that atrium
1103 area.
1104
1105 Mr. McKinney - Well that's part of the roof of this building, correct.
1106
1107 Mr. Browning - That is correct sir.
1108
1109 Mr. McKinney - So Mr. Secretary, why is this sign; it's below the highest part
1110 of the roof.
1111
1112 Mr. Blankinship - Mr. McKinney, I don't know who made the application for
1113 building permit; that's not the information we were given when we reviewed the permit,
1114 for the sign permit. We were told that there was nothing, that neither of these 2 features
1115 had any area that was open to below. We were told that at building permit application,
1116 that they stood on top of the roof.
1117
1118 Mr. McKinney - Well now it is; it's part of the building. Well are you saying
1119 now as Secretary of this Board that they don't need a variance for this sign?
1120
1121 Mr. Blankinship - That's what it's sounding like, I agree. It seems to have been
1122 a misunderstanding.
1123
1124 Mr. McKinney - I don't think you should even be here. But as it is, we'll go
1125 ahead and proceed, just so you're safe.
1126
1127 Mr. Stevens - I can assure the members of the Board that this situation was
1128 addressed and spoken in the building department, and certain members of the planning
1129 department, this information was brought to them, and it came back to us that we had to
1130 go through a variance, because the sign, as the ruling has come back to me on several
1131 occasions, attempting to permit signs, if the sign is not going on a portion of the building
1132 that is not considered the roof line, and where that sign is going, the roof line is below
1133 the sign
1134

1135 Mr. McKinney - Well this is part of the roof line. Let me ask Mr. Browning
1136 one other question. This atrium that goes up – I see where you've got here "finished
1137 wood trim." What's to be in the top of this atrium? Is there a skylight, hanging plants?

1138
1139 Are you the architect?

1140
1141 Mr. Browning - Yes sir, we're the architects for the project, and inside the
1142 atrium area, as I mentioned before, is an arched ceiling that will be, we have an artist
1143 who's doing a night scene that's going to be lit with revolving lights that's creates simply
1144 a scene on the ceiling.

1145
1146 Mr. McKinney - You've got a clear span from the floor, all the way up to the
1147 bottom of this roof?

1148
1149 Mr. Browning - Clear span, heated, cooled, there are trusses on top of that;
1150 it's part of the roof.

1151
1152 Thank you.

1153
1154 Mr. Kirkland - Any other questions? Anyone else wish to speak? That
1155 concludes the case.

1156
1157 And the 9:00 o'clock agenda.

1158
1159 Mr. Kirkland - And that concludes the 9:00 o'clock agenda, and since it's
1160 not 10:00 o'clock yet, we can't act on the 10:00 o'clock until it's 10:00 o'clock. We'll
1161 take a break.

1162
1163 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
1164 Wright, the Board **granted** application **A-105-2001** for a variance to to install a sign at
1165 8052 W Broad Street (Tax Parcel 70-A-18). The Board granted the variance subject to
1166 the following condition:

1167
1168 1. This approval is only for the location of the subject sign above the roof line.

1169
1170 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
1171 Negative: 0
1172 Absent: 0

1173
1174 The Board granted this request, as it found from the evidence presented that, due to the
1175 unique circumstances of the subject property, strict application of the County Code
1176 would produce undue hardship not generally shared by other properties in the area, and
1177 authorizing this variance will neither cause a substantial detriment to adjacent property
1178 nor materially impair the purpose of the zoning regulations.

1179
1180 Mr. Kirkland - We're starting the 10:00 o'clock agenda. If you would, read

1181 the rules again, for those who missed them in the first round.

1182

1183 Mr. Blankinship - Mr. Chairman, Members of the Board, ladies and gentlemen.
1184 The rules for this meeting are as follows. The Secretary, myself, will call each case.
1185 Then the applicant will come to the podium. At that time I'll ask those who intend to
1186 speak, in favor or opposition, to stand, and be sworn in. The applicants will then
1187 present their testimony. When the applicant is finished, anyone else who wants to
1188 speak will be given the opportunity. After everyone has spoken, the applicant, and only
1189 the applicant, will be given the opportunity for rebuttal. After hearing the case, and
1190 asking questions, the Board will take the matter under advisement. They will render all
1191 of their decisions at the end of the meeting. If you wish to know what their decision is,
1192 you may stay until the end of the meeting, or you may call the Planning Office at the end
1193 of the day. This meeting is being tape recorded, so we will ask everyone who speaks,
1194 to speak directly into the microphone on the podium, and to state your name for the
1195 record. Out in the foyer, there are two binders, which contain the staff report for each
1196 case, including the conditions suggested by the staff.

1197

1198 Mr. Kirkland - Do we have any deferrals or withdrawals on the 10:00
1199 o'clock agenda?

1200

1201 Mr. Blankinship - No sir.

1202

1203 How about the case we passed over?

1204

1205 Mr. Kirkland - Is anyone here from A-104-2001 Hezekiah Wilkerson.
1206 Anyone representing them? We'll wait till the end. Okay, if you would, call the next
1207 case.

1208

1209 Mr. Blankinship - Mr. Chairman, the next 2 cases are companions. Would you
1210 like me to call them together?

1211

1212 Mr. Kirkland - Yes please.

1213

1214 **A -106-2001** **TOM AND PATTI COLEMAN** request a variance from Section 24-
1215 95(b)(5) of Chapter 24 of the County Code to build a dwelling at
1216 1305 Libbie Avenue (Monument Avenue Crest) (Tax Parcel 115-3-
1217 B-2 (part)), zoned R-3, One-family Residence District (Brookland).
1218 The lot width requirement is not met. The applicants have 60 feet
1219 lot width, where the Code requires 65 feet lot width. The applicants
1220 request a variance of 5 feet lot width.

1221

1222 **A -107-2001** **TOM AND PATTI COLEMAN** request a variance from Sections 24-
1223 95(1)(2)d. and 24-95(c)(1) of Chapter 24 of the County Code to
1224 allow existing dwelling to remain at 1307 Libbie Avenue (Monument
1225 Avenue Crest) (Tax Parcel 115-3-B-1 (part)), zoned R-3, One-
1226 family Residence District (Brookland). The accessory structure

1227 setback and minimum side yard setback are not met. The
1228 applicants have 6.25 feet minimum side yard setback and 0 feet
1229 accessory structure setback, where the Code requires 7.8 feet
1230 minimum side yard setback and 3 feet accessory structure setback.
1231 The applicants request a variance of 1.55 feet minimum side yard
1232 setback and 3 feet accessory structure setback.
1233

1234 Mr. Kirkland - Anyone else wish to speak on this case? Okay sir, if you
1235 would raise your right hand and be sworn in.
1236

1237 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1238 truth, the whole truth, and nothing but the truth, so help you God?
1239

1240 Mr. Coleman - Yes I do.
1241

1242 Mr. Kirkland - Would you state your name for the record. Have all your
1243 notices been turned in according to the Code?
1244

1245 Mr. Coleman - Name's Tom Coleman. Yes sir.
1246

1247 Looks like one notice went for both cases.
1248

1249 Mr. Kirkland - Yes. If you would, state your case.
1250

1251 Mr. Coleman - Thank you Mr. Chairman. My wife and I own an existing
1252 house and the lot adjacent to it along Libbie Avenue. The lot on the corner is a 78-foot
1253 lot; the vacant lot is a 60-foot lot. The majority of the houses along Wythe Avenue and
1254 Monument Avenue, in that area are 60-foot lots. Actually most of the lots that are larger
1255 than 60 feet happen to be either on a corner or side up to an alley. I think that, certainly
1256 as far as lot width and area, this lot would be consistent with the majority of the houses
1257 in the neighborhood. There's a lot of existing landscaping, trees and shrubs, on the
1258 lots, and that would help minimize the impact of construction. The existing garage, the
1259 reason we'd like that to remain, it is architecturally similar to the house, it's made out of
1260 the same brick, it's got a similar hip-style roof, it does have a shingle roof rather than a
1261 slate roof, but basically, architecturally, it is similar to the existing house. We have
1262 talked to the neighbors about this personally. They are supportive. They're aware that
1263 the house had 2 previous owners, and while structurally it is in good condition, it needed
1264 a lot of TLC, and we've put a lot of work into the lot and into the house, and I think
1265 they're comfortable that we would share their concern in that we would want a house
1266 built on that lot to be as consistent as possible with the existing construction in the
1267 neighborhood.
1268

1269 Mr. Coleman, have you got a contract on this lot, subject to
1270 variance?
1271

1272 Mr. Coleman - Not currently. We have talked to some people, but we

1273 haven't signed any contracts yet.

1274

How was this problem discovered?

1276

1277 Mr. Coleman - Actually, there was an existing variance on the lot when we
1278 purchased the house; we purchased them together, and at that time it was not our
1279 intention, although we knew at some point in the future that we might want to request
1280 that variance again.

1281

1282 Mr. Kirkland - Any other questions by Board members? Anyone else wish
1283 to speak? That concludes the cases. Thank you sir.

1284

1285 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
1286 Nunnally, the Board **granted** application **A-106-2001** for a variance to build a dwelling
1287 at 1305 Libbie Avenue (Monument Avenue Crest) (Tax Parcel 115-3-B-2 (part)). The
1288 Board granted the variance subject to the following condition:

1289

1290 1. This variance applies only to the lot width requirement. All other applicable
1291 regulations of the County Code shall remain in force.

1292

1293 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

1294 Negative: 0

1295 Absent: 0

1296

1297 The Board granted this request, as it found from the evidence presented that, due to the
1298 unique circumstances of the subject property, strict application of the County Code
1299 would produce undue hardship not generally shared by other properties in the area, and
1300 authorizing this variance will neither cause a substantial detriment to adjacent property
1301 nor materially impair the purpose of the zoning regulations.

1302

1303 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
1304 Nunnally, the Board **granted** application **A-107-2001** for a variance to allow existing
1305 dwelling to remain at 1307 Libbie Avenue (Monument Avenue Crest) (Tax Parcel 115-3-
1306 B-1 (part)). The Board granted the variance subject to the following condition:

1307

1308 1. This variance applies only to the minimum side yard and accessory structure
1309 setback requirements from the property line. All other applicable regulations of the
1310 County Code shall remain in force.

1311

1312 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

1313 Negative: 0

1314 Absent: 0

1315

1316 The Board granted this request, as it found from the evidence presented that, due to the
1317 unique circumstances of the subject property, strict application of the County Code
1318 would produce undue hardship not generally shared by other properties in the area, and

1319 authorizing this variance will neither cause a substantial detriment to adjacent property
1320 nor materially impair the purpose of the zoning regulations.

1321
1322 Mr. Kirkland - Next case.

1323
1324 Mr. Blankinship - Now we have a real bonus, Mr. Chairman. The next 3 cases
1325 are companions.

1326
1327 Mr. Kirkland - Do them all.

1328
1329 **A -108-2001** **HIGGINS FAMILY** requests a variance from Section 24-94 of
1330 Chapter 24 of the County Code to allow the existing dwelling to
1331 remain at 912 South Gaskins Road (Tax Parcel 123-A-2 (part)),
1332 zoned R-0, One-family Residence District (Tuckahoe). The lot
1333 width requirement and rear yard setback are not met. The applicant
1334 has 50 feet lot width and 20 feet rear yard setback, where the Code
1335 requires 200 feet lot width and 50 feet rear yard setback. The
1336 applicant requests a variance of 150 feet lot width and 30 feet rear
1337 yard setback.

1338 **A -109-2001** **HIGGINS FAMILY** requests a variance from Section 24-94 of
1339 Chapter 24 of the County Code to build a one-family dwelling at 916
1340 South Gaskins Road (Tax Parcels 123-A-2 (part) and -6A), zoned
1341 R-0, One-family Residence District (Tuckahoe). The lot width
1342 requirement is not met. The applicant has 50 feet lot width, where
1343 the Code requires 200 feet lot width. The applicant requests a
1344 variance of 150 feet lot width.

1345 **A -110-2001** **HIGGINS FAMILY** requests a variance from Section 24-9 of
1346 Chapter 24 of the County Code to build a one-family dwelling at 301
1347 Daniels Road (Tax Parcel 123-A-7), zoned R-0, One-family
1348 Residence District (Tuckahoe). The public street frontage
1349 requirement is not met. The applicant has 0 feet public street
1350 frontage, where the Code requires 50 feet public street frontage.
1351 The applicant requests a variance of 50 feet public street frontage.

1352
1353 Mr. Kirkland - Is the applicant here? Anyone else wish to speak?
1354 Everybody stand up and raise their hands.

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

1358
1359 Mr. Wright - Mr. Chairman, I'll disqualify myself from these cases.

1360
1361 Mr. Kirkland - Would you state your name for the record sir?

1362
1363 Mr. Condlin - Yes sir, my name is Andy Condlin, from Williams Mullen,

1364 representing the Higgins Family.
1365
1366 Mr. Kirkland - Have all adjacent landowners been contacted in all these
1367 cases?
1368
1369 Mr. Condlin - Yes sir, in all 3 cases we contacted the adjacent landowners
1370 as required, and submitted those receipts in to the staff.
1371
1372 Mr. Kirkland - All right, state your case.
1373
1374 Mr. Condlin - Mr. Chairman, members of the Board, my name is Andy
1375 Condlin, from Williams Mullen. I have with me Ralph and Janie Higgins, who are
1376 brother and sister. Together with their brother Ken, they are members, or owners of the
1377 Higgins Family Limited Partnership, who are owners of the property. I'm going to have
1378 to warn you, I'm pretty bad with this pen, and it always comes up to haunt me, but I
1379 wanted to go through the parcels that we're talking about today. With just this parcel 7,
1380 which accesses the property through Daniels Road, which is a private road through,
1381 over and across, and owned by the Country Club of Virginia, and there is easement
1382 rights on parcel 7, as we have provided in the package, insurable easement rights by a
1383 title company. Also we will be talking about parcel 6A, that I'll be referring to. You'll see
1384 on this plan, there is another plan where parcel 2 actually consists of this parcel and all
1385 the way up along here. So that's all parcel 2. As it stands now, parcel 6A has
1386 absolutely no access to any public road. I described parcel 2, which consists of parcel
1387 2A, parcel 2B, parcel 2C, and parcel 2D, which currently is an entire parcel. No one on
1388 the tax maps in the County records has parcel 2. Finally, there is what I call the Ralph
1389 Higgins parcel, which has a home on it, that sits approximately at this location right
1390 here. And that's where Mr. Ralph Higgins currently lives, and it's titled in his name
1391 alone. That is not the subject of any of the variance requests, but I did want to mention
1392 that, because it will be mentioned a number of times.
1393
1394 Mr. Balfour- I'm not clear. Are you saying you've got frontage and access
1395 on Daniels Road for 2 lots, but you kind of confused me talking about the little lot.
1396
1397 Mr. Condlin - Well, if I may – Ben, do you have the parcel 2? Actually,
1398 Ben, I was thinking of this that shows all of them, which is parcel 2, as a whole, not
1399 broken up.
1400
1401 Mr. Balfour- I guess my question is, it looks like you've got access
1402 through Gaskins Road, is that right?
1403
1404 Mr. Condlin - For parcel 2, yes sir, there is access to Gaskins Road. We
1405 are not asking for a lack of access for parcel 2 because of that. You can see, currently,
1406 here is all of parcel 2 as it currently stands, which is right here. That house that's
1407 located on it, which we affectionately call the barn, where we make Janie live, in what's
1408 called the barn, that's been renovated to a home and has been used as a home since
1409 the 1940's. All of this property that we're talking about, including the Ralph Higgins

1410 property, was owned at one time by their parents, Mr. and Mrs. Kenneth and Mary
1411 Higgins. After their passing, it's gone through the estate, and to the children of their
1412 estate, and as part of the settlement of that estate, they have waited to distribute this
1413 property until they settled the remainder of the estate. That's where we are now, where
1414 they want to disburse it to not only the children, but to provide for the potential of the
1415 grandchildren to live on the properties. I wanted to let you know that we're coming to
1416 you today with everything; we're showing you everything, putting it all on the table, so
1417 that we don't have to come back at you piecemeal as we do every little time. We
1418 wanted to be able to show you the big picture and a long-term look at the property.
1419 While it may seem complicated initially, this is really quite frankly, some simple
1420 requests. It just ends up having to be 4 variance requests over and across what now
1421 exists as 3 parcels.

1422
1423 Let me talk first about parcel 7, and then I'll talk about the other ones, because parcel 7
1424 is on its own. Parcel 7 sits right here, and as I told you, it has no other access but for
1425 Daniels Road. This is a variance request for that lack of public access, public road
1426 frontage, and it's no different than farther west of this, farther down Daniels Road, the
1427 Board of Zoning Appeals, in 1989, granted a variance for a parcel 9. There were 2
1428 parcels, sitting parcel 9 and parcel 10, and the BZA said "we'll grant you one variance
1429 for those 2 parcels," which is exactly what happened, parcel 9 was sold. Parcel 10 is
1430 now made part of what's called Middle Quarter Subdivision. It's a proposed 15-lot
1431 subdivision that surrounds this property. But for the lack of public road frontage, it
1432 meets all other Code requirements needed to build a single family dwelling. They have
1433 no other access rights, and their access rights are insurable by the easement over
1434 across Daniels Road. The dwelling obviously would have little impact on the
1435 surrounding property, particularly when you take into account some of the other
1436 property in the area, the size of the lot, the Middle Quarter Subdivision, and the fact that
1437 there would have to be no improvements made today on that road in order to use this.
1438 The variance would allow parcel 7 to be used exactly as the surrounding properties are
1439 currently being used. I would mention one thing, and it's always odd for me to ask for
1440 you to add a condition, but in talking with the Country Club of Virginia, their concern was
1441 that there may be more than one dwelling located on parcel 7. At no time is there an
1442 intent, and quite frankly, in talking with the staff, I don't think there is an ability, legally, to
1443 put more than one dwelling upon the grant of a variance for parcel 7. However, for the
1444 neighbors' sake and to make sure that everyone's aware of that, we would ask that if
1445 you are so inclined to vote for a variance for parcel 7, that you would impose a condition
1446 to said "only one dwelling may be located on parcel 7," and we could not locate or
1447 subdivide that parcel for that one variance that you grant.

1448
1449 Mr. Balfour- Is it case 108, 109, 110?

1450
1451 Mr. Condlin - 110.

1452
1453 Mr. Balfour- So we want to amend that to "no more than one residence on
1454 lot 7."

1455

1456 Mr. Condlin - Yes sir. That takes care of parcel 7.

1457

1458 Let me discuss then, parcels 2 and 6A. Parcel 6A, if you remember, is a larger piece
1459 right here, which has no access from any property. As you can see, it's completely
1460 blocked off to Gaskins Road via parcel 2. Allow me to put up the other lot. This is what
1461 we're proposing, and it's kind of an odd configuration. Obviously parcel 2 is an oddly
1462 configured lot. This is just a strange lot, which currently accesses Daniels Road and
1463 Gaskins Road. It covers all of these parcels. This parcel that you see here, that we're
1464 labeled parcel 2D, we're proposing that it be made, and there's no variance request
1465 associated with this parcel 2D, and we can by subdivision law, simply merge it with the
1466 Ralph Higgins parcel, which is what we want to do, for one reason in particular, which is
1467 to say, there are no other lots now fronting on Daniels Road that would need to come
1468 forward to the BZA. As part of our parcel 2 request, we could have said we'll use that
1469 as part of our parcel 2 and ask for a variance for lack of a public road frontage, but
1470 we're proposing, and the family and the children have agreed to make that part of the
1471 Ralph Higgins property. I suspect there would be no more requests for Daniels Road
1472 lack of road frontage to access Daniels Road on this property. That benefits everybody
1473 at this point.

1474

1475 Let me next mention parcel 2A. It's a 50-foot wide road that we've got running along
1476 there. That is solely and completely to access parcel 6A. The children are trying to
1477 correct this lack of access by that parcel 6A. Without parcel 2A, there is no public road
1478 frontage to parcel 6A. To build a home, we need to do one of 2 things. We either need
1479 to get a variance for lack of public road frontage and get a private easement over and
1480 across the road, or we need to provide this parcel 2A and ask for a lot width variance
1481 from what's required at 200 feet to go down to the 50 feet. The reason we want to be
1482 able to put in this road, this driveway, and have this parcel 2A on there so that they can
1483 control the easement. I think you will hear today that there are some folks who are
1484 opposing making this an access road. I would propose to you that in fact, that they're
1485 probably going to present to you that they're concerned about there being a public road
1486 and a subdivision in here. By the failure to get this variance, I would propose to you
1487 that, in fact, when we don't get the variance, we're going to have to put a public road in
1488 there in order to access parcel 6A. If we can't get a variance for accessing it otherwise,
1489 either as we've requested, by the lot width requirement, by putting in the 50 feet, the
1490 only way we can get back there, is to make parcel 2A a public road, and to pay for the
1491 cost of the public road. Quite frankly, ultimately we will have to subdivide the parcel 6A
1492 to help pay for the cost of the road. That's the reality of the situation. By getting the
1493 variance, we can put one home on here. Mr. Ralph Higgins has 2 sons he's been
1494 talking to. He wants to be able to locate his sons at this parcel, to let them choose
1495 whether they want to locate or keep it open space. At any time we obviously can come
1496 forward and make this a public road, and we don't need a variance to make that a public
1497 road, and we could put that in there. We're trying to avoid that by this request, by being
1498 able to put a driveway along parcel 2A. We chose 50 feet simply because we want to
1499 be able to control that in the future if that item ever comes up. In my experience it's
1500 probably better, so that there's not an issue later on, that we don't have to come back to
1501 the BZA or go back to the Planning Commission for a waiver of public road frontage.

1502 Just give them fee simple interest in the 50 feet under parcel 2A right now.

1503

1504 Finally, we've covered the variance request for parcel 7 and parcel 2A and 6A. Next I'm
1505 going to cover the last two variances. At this location, and what I've got showing here is
1506 parcel 2A, you see again what I refer to as the barn, you can see 2 setback references,
1507 one for 50 feet here, and one for 20 feet here. When we came forward with the other 3
1508 requests, the staff requested that we actually present this and make this part of our
1509 variance request. As you can see, the barn's southeast corner, and it can't be any more
1510 true, this corner is actually the access to Gaskins Road. Either side has to cross other
1511 property in order to access Gaskins Road. The true corner, the true front line of this
1512 property, is the corner. When they did come back, some years back, for rehabilitation of
1513 the barn, Mr. Ralph Higgins spoke with Earl Clark, and they said, "there's your corner;
1514 there's your front and side yards." They decided at the time, when the permits were
1515 granted for renovation of the barn, which that basically said, "the front yard sits at this
1516 location; the rear yard therefore is this location; you've got 50 feet here; you've got 20
1517 feet, which makes your side yard. You're good to go; go ahead and get your permits."
1518 This is the way it's been, and I believe it's been interpreted that way ever since. I'm not
1519 speaking for the staff, but I believe they're trying to say, "let's be rather safe than sorry;
1520 let's clean it all up since we're looking at the big picture." Maybe the front yard is
1521 actually right here; the location of the barn doesn't change; and this is actually its
1522 historic location; this is always where it's been located. The property lines don't change,
1523 and we can't move the property lines, because Mr. Ralph Higgins' property is right here.
1524 His home is right there, is located at that spot, so if we actually move the property lines,
1525 we're going to put him in violation of the setback requirements, so we're kind of between
1526 a rock and a hard place. I think literally that's the interpretation, and it's a better safe
1527 than sorry kind of request, and that's what we're asking for today. Again, I don't think
1528 it's impacting anyone by asking that because nothing's being moved. It is what it is
1529 today. And finally, I think we're going to come to what I think is probably the more
1530 controversial piece of this entire request, which is after taking off parcel 2A to merge it
1531 with 6A, taking off parcel 2D to merge it with the Ralph Higgins property to get rid of any
1532 further Daniels Road access, we're left with 2 lots. What we're requesting for 2 lots,
1533 which we would ask for a subdivision, off of parcel 2C and 2B. Parcels 2B and 2C can
1534 meet every other lot zoning requirement, but for the lot width requirement. They meet
1535 the acreage requirement; they've got the area; they've got the space for the buildings. It
1536 literally is just that the lot width on this property along Gaskins Road – originally this lot
1537 had 336 feet of lot width along Gaskins Road. Back in the 1960's, from what I
1538 understand from the history, again relying on Mr. Ralph Higgins, was that the properties
1539 were sold to their predecessors to Mr. Schultz here, and to Mr. and Mrs. Hancock over
1540 here, was all part of the same parcel. At that time it was about, again we understand,
1541 just antidotal evidence, not being able to locate the Code, was 175-foot lot width
1542 requirements. As I said, we currently have 336 feet. I'm not sure where they came up
1543 with those numbers and what they had left over, but it was their understanding that the
1544 intent was ultimately to divide the lot into 2 at some point in the future. When the
1545 properties were sold off, that created the parcels that we're looking at now. We're
1546 simply trying to reconfigure the lot, to make it a little bit more user friendly, and to be
1547 able to use parcel 2B for the family at some point in the future. One of the ways we

1548 could get around this entire variance again, is to make parcel 2A a public road. Once
1549 that becomes a public road, and we did the drawings, we'd take a look at the parcels, to
1550 be able to come up with the lot width necessary for both of these parcels. One lot would
1551 have to front on Gaskins, and the other lot would have to front on this parcel 2A, which
1552 would then be a public road. What we're trying to do is avoid having to make that a
1553 public road, and I think the neighbors would agree, that that would change the character
1554 of the area by doing that. We feel that this is the best configuration for the property. By
1555 no means are we wed to this. There's been some discussion of "well, gee, can this leg
1556 go over opposite this leg." Well obviously, unless you're conditioned specifically to this
1557 layout, we're asking for a 50-foot lot width and 150-foot lot width variance. Therefore,
1558 we could make the 50 foot over and across this area. You could make us go to 86 feet
1559 if you wanted to, and by doing that, this pushes parcel 2B up closer to the barn, which
1560 we were trying to create some space right here. We could also move parcel 2D, cut off
1561 all lot frontage, and ask you to grant us lack of public road frontage, to go in and out to
1562 the barn through Daniels Road if we requested. There are a lot of options here, but this
1563 is what we came forward and presented with.

1564
1565 What we were ultimately trying to do, and I think the Higgins are just as interested in this
1566 as any of the other neighbors, is to preserve the character of the neighborhood, to
1567 preserve the character of what we ultimately have are 3 buildable lots, and what we're
1568 asking for is to make it into 4 buildable lots, which they could do but for this lot width
1569 requirement, and what they're trying to do is to avoid having to put a public road in, over
1570 and across parcel 2A. I think I've gone over my time limit, even though there isn't a time
1571 limit. I would ask for you to consider one additional consideration. In discussing this
1572 case with the staff, we brought forward, as I said at the very beginning, this whole case.
1573 We wanted to let you see everything that we're doing, what we want to do, maybe get
1574 some feedback from you, and ask for the variance approvals that we're asking for
1575 today. But there are no plans, and they're talking with the family, to be able to locate
1576 the sons and take care of the financing. The one concern I had for the family, was that
1577 there usually is in the approval letter, a 1-year time limit. I looked in the state Code; I
1578 looked in the County Code, and I found out you have rules that I didn't have a copy of,
1579 and that's in your rules, that all variances must have a building permit within 1 year's
1580 time. I would simply ask, if it's appropriate to you, to waive that requirement for the 1-
1581 year time. They want to make sure they do things right, and certainly Mr. Ralph Higgins
1582 and Miss Janie Higgins are very concerned about what goes on here. Parcel 7 will be
1583 going to Ken Higgins, the second brother of the family, and they're hoping parcel 6A
1584 and parcel 2B will go to one of the grandchildren of Mr. Ken and Mary Higgins. They
1585 just have to work that out, and they're afraid that the 1-year time limit, they don't want to
1586 have to come back. I'm not sure what the policy reason is for that, but I don't believe,
1587 and I've submitted to the staff the state Code and the County Code, where we couldn't
1588 find any provisions requiring that you impose that as a condition. Obviously, I was right.
1589 Finally, I believe we've met all jurisdictional prerequisites for each of the zoning
1590 requests. Each of the properties was acquired in good faith as it came through the
1591 estates of Mary and Ken Higgins. They have little, if any, impact on the surrounding
1592 properties. Each of the requests is a unique situation because of topography, location,
1593 shape, or otherwise, that is not shared by other properties in the area, and the failure to

1594 grant these variance requests will cause a hardship and an inability to use the property.
1595 Without the variance no home can be constructed on parcel 7, 2B or 6A, and without
1596 the variance for the rear yard, the barn will have to be moved. I believe these all qualify
1597 for the hardship that we have to present to you today. For these reasons, we ask you to
1598 confirm each of the variance requests, and I'll be happy to answer any questions for
1599 anything I haven't covered.

1600

1601 Mr. Kirkland - Any questions by Board members? Okay, those who wish to
1602 speak, let's hear those who are for the case first. That was quick. All right, the opposed
1603 please come forward. If you would, sir, state your name for the record.

1604

1605 Mr. Thornton - Mr. Chairman, members of the Board, my name is Jim
1606 Thornton. I'm an attorney representing Dr. and Mrs. William Hancock, who own the
1607 property at the southwest corner of Daniels Road and Gaskins Road. You'll see that
1608 the parcel 2 that we've been referring to, wraps around the Hancock property. And it
1609 may be best to put up the unmodified version (*referring to visual props*), since I'll be
1610 referring to these parcels by number, and they're set out on that. The Hancocks, along
1611 with the Schultz family, who own the property south of parcel 2, are the neighbors who
1612 are most affected by this request, and I'll address these variance requests from the
1613 least objectionable to the more objectionable.

1614

1615 Mr. Balfour- Could you point out the Hancock property again sir.

1616

1617 Mr. Thornton - Variance 108 is the one that refers to parcel 2, and it actually
1618 has 2 portions. The Hancocks have no objection to the request that the rear setback of
1619 the barn be changed to be permitted to be 20 feet. Variance 108 does also have the
1620 aspect to it, that it permits the 50-foot lot width, and the Hancocks do object to that
1621 aspect of that case, as I'll discuss more in just a moment. Variance 110, which is the
1622 parcel 7 request, the Hancocks have no objection to that variance request, provided that
1623 the 1-dwelling limitation is added as a condition. The Hancocks real objection is to
1624 variance 109, and the portion of variance 108 that relates to the 50-foot lot width and
1625 50-foot road frontage for parcel 2. This application simply doesn't meet the legal
1626 requirements for a variance request. Those requirements are set out in Subsection B of
1627 Section 24-116 of the Henrico Code, and I've included a copy of that at tab 1. There
1628 are 4 sections in there. The first 3 really set out the requirements for the variance.
1629 Section 1 is sort of the road map of what the requirements are. Section 2 gives the
1630 applicant the option of either showing that there's something exceptional about this
1631 property that would make regulation unreasonable, or that the variance is necessary to
1632 alleviate a hardship. The applicant can prove either one of those two. Step 3 is that all
1633 variances are in harmony with the intended spirit and purpose of the chapter. Any after
1634 that, there are 2 more requirements to be met. I won't go over the Section 2
1635 requirements in detail. I think that in large part they restate the Section 1 requirements,
1636 and most requests that meet the Section 1 requirements will also meet the Section 2
1637 requirements, whereas we contend here an application does not meet those Section 1
1638 requirements, it will not meet the Section 2 requirements. Section 3 is one last finding
1639 that the Board must specifically make, regarding the general or recurring nature of this

1640 problem.

1641
1642 So going back to Section 1, which is the road map which sets out what needs to happen
1643 for a variance to be granted, the first step is that the property must be acquired in good
1644 faith. That doesn't mean that there needed to be some devious purpose, or anything of
1645 that sort. The question was, was it acquired with a knowledge of the problem that the
1646 property has, or was it acquired without a problem that subsequent changes to the
1647 ordinance later created. I'll submit to you that parcel 6A does not meet this
1648 requirement. Parcel 6A was created in 1995 by this applicant. This applicant carved a
1649 piece of the Ralph Higgins parcel off, and created a parcel that had no road frontage,
1650 that had no access. Now that they would like to develop this parcel, they are coming to
1651 this Board and saying, "we have created a parcel that has problems. Board, you fix it
1652 for us." The case law on this is fairly clear, and I've included a case at tab 4, Abingdon
1653 vs. Combs, where the Virginia Supreme Court considered this situation, and what they
1654 have said, is that self-inflicted hardships cannot be remedied by variance. This is a
1655 classic self-inflicted hardship. This property was a part of the Ralph Higgins parcel, had
1656 access to Daniels Road. It was carved out and created in a manner that prevented it
1657 from having access, that prevented it from having frontage, and this Board cannot grant
1658 a variance to fix that problem. The second of the 2 steps under Section 1 of the
1659 ordinance, is that the property must either have something exceptional about it, that
1660 would make application of the rules unreasonable, or that the variance is needed to
1661 alleviate a hardship. There is nothing exceptional about parcel 2; it's not exceptionally
1662 shallow, it's not exceptionally narrow, there's nothing unusual about it topographically.
1663 The only thing about parcel 2 is, it does not have as much frontage as the applicants
1664 wish it did. There are pieces of property all over the county that are limited by either
1665 their acreage or their frontage or something else. In the R-0 district, 200 feet of road
1666 frontage is required. If you have 200 feet of road frontage, you get a lot. If you have
1667 400 feet, you get 2 lots. If you have 380 feet, you get 1 lot.

1668
1669 Mr. Balfour- Mr. Thornton, what do you think of Mr. Conklin's comments
1670 that if they don't get what they're asking for here, they're going to put a public road in
1671 there?

1672
1673 Mr. Thornton - Well, I think what we're dealing with is the variance request
1674 that's before us. Now whether the applicants can come up with a possible scenario that
1675 might be more objectionable, that's always something that's a possibility when you're
1676 considering zoning requests, but I would contend that for this particular variance
1677 request, the property does not meet the requirements.

1678
1679 Mr. Balfour- Had they left it as one big lot, not divided it off in '95, what
1680 would you suspect they would have done with it then that would be better, looks like
1681 they'd still have to, if they'd subdivided it and put several homes in there, they probably,
1682 as you suggested, would have a cul-de-sac coming in from Daniels Road, which is a
1683 private road.

1684
1685 Mr. Thornton - Now I would suggest to you, that the regulations cannot be

1686 interpreted to eliminate all reasonable uses of the property, and I would suggest to you
1687 that a 7-acre piece of property that the Ralph Higgins parcel was, is not an
1688 unreasonable use of that property, given it's configuration. That property had certain
1689 limitations. It was not unreasonable for the county to impose limitations on the
1690 development of that property. In this case, those are limitations that this property can't
1691 meet.

1692
1693 Mr. Balfour- I'm not sure I understand what you're telling me. How would
1694 you develop it if you had 7 acres sitting there with only access to Daniels Road?

1695
1696 Mr. Thornton - What I'm saying is that the original Ralph Higgins parcel, the
1697 7-acre parcel, as it sat, could only be developed as a single-family residence, a very
1698 valuable piece of land that would support a very valuable house. That's not an
1699 unreasonable use, and it's not something. The ability to develop a piece of property to
1700 its maximum intensity is not a property right that any particular landowner has given to
1701 him by virtue of owning the property. The only requirement of the zoning ordinance is
1702 that the zoning ordinance not unreasonably interfere with the use of the property. The
1703 requirements here do not unreasonably interfere with the use of the property.

1704
1705 Mr. Balfour- Your solution would have been to have one house on all that
1706 property, and he'd get to Daniels Road (*Unintelligible*)

1707
1708 Mr. Thornton - I think that the problem (*Tape 1 ended and did*
1709 *not automatically change over to Tape 2 without interruption; was caught within*
1710 *seconds, but some transcription lost*)

1711
1712Parcel 7, and creating a very nice 7-acre lot. It can be put back where it
1713 came from with parcel 6, and create a very nice 7 3/4-acre lot, or it can be combined with
1714 parcel 2, creating a somewhat odd 7-acre lot, probably not a good solution on that one.

1715
1716 Mr. Balfour- You're saying he made a mistake in the first place in selling
1717 off part to Schultz in parceled 1-acre lot?

1718
1719 Mr. Thornton - I can't go back to the time that those lots were sold and don't
1720 know what the motivations were and don't know what the reasons were. I think all we
1721 can do is deal with the property as it exists now. As the property exists now, it is not
1722 entitled to the variance that's being requested here.

1723
1724 Mr. Balfour- I guess that's the problem I have with it, because it looks like
1725 to me (*trailed off*).

1726
1727 Mr. McKinney- Was Dr. Hancock's property part of this property?

1728
1729 Mr. Thornton - At one time it was. Again I would suggest that to the extent
1730 that the selling off of parcels has left too little road frontage, that is another example of
1731 the self-inflicted hardship, and one that's not appropriate to the variance remedy.

1732
1733 Mr. Balfour- That's what bothers me. Had he not done that, and he had
1734 one big lot there, the other 2 lots had not been sold, I suspect they'd still be coming out
1735 on Gaskins Road somewhere eventually.

1736
1737 Mr. Thornton - Which ones? I'm sorry?

1738
1739 Mr. Balfour- If they had not sold off the 2 that you just said they chose to
1740 sell off for some reason earlier, and that was one big parcel of land sitting there, I
1741 suspect they would have had maybe more than one, maybe a couple of entrances onto
1742 Gaskins Road, is all I'm saying.

1743
1744 Mr. Thornton - I really can't speculate about what might have happened if
1745 they'd aligned the property differently. I think we need to deal with the property as it is,
1746 and the request as it is. The final step of the variance process is a requirement that all
1747 the variances be in harmony with the intended spirit and purpose of the chapter. I think
1748 this is where this request really fails. The whole purpose of the frontage and lot width
1749 requirement is to prevent large tracts from shooting off strips of land to the public road
1750 to get access. It's not hard to imagine a worst case scenario for that type of
1751 development, and I think what is being proposed here comes pretty close to it. I think
1752 this type of development is what the supervisors were trying to avoid when they added
1753 the lot frontage requirement. Instead of a driveway every 200 feet, which was what it
1754 was imagined by the ordinance, when you factor in the Schultz driveway just over the
1755 line from parcel 2, there are going to be 4 driveways within 400 feet available to this
1756 property, and I think that is not at all what the Board had in mind. This is not only not in
1757 harmony with the intended spirit and purpose of the chapter, it is exactly what the
1758 zoning ordinance is trying to avoid. Section 2 of the variance requirements again
1759 requires certain things that I think, if you agree, that the property does not meet the
1760 Section 1 requirements, it probably will not meet the Section 2 requirements either.
1761 Section 3 requires that the Board specifically find that the situation is not of a general or
1762 recurring nature as to make it reasonably practical for the formulation of a general
1763 regulation for such condition. In other words, does this happen enough that there ought
1764 to be a rule to govern it? I would submit to you that every piece, or almost every piece,
1765 of R-0 zoned property in the County is limited in development potential by either
1766 acreage or frontage. The fact that this particular piece is limited by frontage is not
1767 particularly unusual; it happens all over the County. If the supervisors had wanted
1768 exceptions in this situation, they could have easily passed an ordinance that said "200-
1769 foot lot widths are required unless you've got a lot of acreage. Then you only need 50."
1770 But that wasn't what they did, and the reason was that they wanted to prevent this type
1771 of development. I'll close with a quote from the supporting statement in the application,
1772 on page 6, under paragraph 1, "where there's an ability to meet every other zoning
1773 requirement to allow parcel 2 to be divided into 2 lots, there's simply not enough
1774 frontage on Gaskins Road." There simply is not enough frontage. The Hancocks
1775 couldn't agree more. This property variance request should be denied, and I will submit
1776 to you that it comes so far from meeting the variance requirements that it must be
1777 denied. Thank you.

1778
1779 Mr. Kirkland - Any questions? All right, next person to speak in opposition.
1780 Would you state your name for the record sir.

1781
1782 Dr. Dingledine - I'm William S. Dingledine, and I live across the street from
1783 the property involved. We have 5 acres, and 400 feet on Gaskins Road, which extends
1784 from the corner of the Schultz's lot, beyond what is currently showing. (*distributes a*
1785 *handout*) I request that you review this before making any decision. We are opposed to
1786 this variance for several reasons. We feel that creating an additional lot is not in the
1787 character or the flavor of this neighborhood, and attempting to do so by creating a
1788 variance is foreign to the purpose of the County Code and Ordinance. I think I can
1789 answer Jim Thornton's comment about what the requirements were some years ago
1790 when we bought our house in 1963. The requirements were that this was R-0'd and
1791 had to have 200 feet. If I remember correctly, this went way back to the previous
1792 owners, so that would take it back some 50-60 years. We're concerned about the
1793 changes that would occur on the tree line, along the road. You may remember in the
1794 past two years there's been all this construction putting in the water line or the water
1795 pipes from the pumping station down below Gaskins Road, below the railroad tracks up
1796 to the treatment center on Three Chopt and Gaskins. In doing so, we were required to
1797 give up 10 feet of our land, because there were trees partly on County land that nobody
1798 wanted to remove. Now with the creation of these variances, they would end up
1799 removing a number of these trees, in fact probably half of them, if they were going to put
1800 in roadways. As has been previously pointed out, including the Schultz's drive, you
1801 would have 4 roadways in a distance of some 370-380 feet. We would also like to point
1802 out that this property had been in the same family for a number of years. In
1803 reconfiguring and selling off property, the result has been that they have landlocked
1804 certain parcels. This, to our way of thinking, does not create a reason to grant a
1805 variance for the purpose of now, getting access to that particular property. We also feel
1806 that the Higgins Family Partnership could be divided and resolved without offering
1807 variances, or without approving variances. We understand the need for the rear
1808 variance for the home that's built where the old barn was, and we certainly don't object
1809 to that. Are there any questions I can answer?

1810
1811 Mr. Kirkland - Any questions by Board members? Thank you.

1812
1813 Dr. Dingledine - I would add that we feel like if variances go through, in the
1814 future this would have certainly a detrimental effect on our property, which we've tried to
1815 create and maintain in accordance with County ordinances. Thank you.

1816
1817 Mr. McKinney- Dr. Dingledine, let me ask you a question. Let's say that this
1818 is the Higgins property as a family, and so forth, and they decide to market this property
1819 without this variance, and they put in a subdivision, and they take what they've got here,
1820 which possibly could be 10 houses, 8 houses, maybe 12 houses – how do you feel
1821 about that?

1822
1823 Dr. Dingledine - I don't see how you can put in 10 or 12 houses.

1824
1825 Mr. McKinney- All our zoning requires is 1 acre per lot. If they put all this
1826 property together and come off of Gaskins Road, with one entrance, public road, into
1827 this subdivision, that's what they can have. Are you aware of that?
1828
1829 Dr. Dingledine - Yes, I'm aware of how much land is there.
1830
1831 Mr. McKinney- Well, the land can be developed in 1-acre lots.
1832
1833 Dr. Dingledine - But I don't think you'd have that many lots.
1834
1835 Mr. McKinney- Let's say you get 6 lots out of it – do you think that would be
1836 less impact than what this is, to, what you're talking about, the neighborhood as a
1837 whole?
1838
1839 Dr. Dingledine - I think it depends on how it would be constructed, how it
1840 would be designed, and that's for the future, and I really don't know how I can answer it
1841 any more specifically.
1842
1843 Mr. Balfour- I think what he's suggesting is, if you won your battle, you'd
1844 probably lose the war.
1845
1846 Mr. Kirkland - Any other questions? Okay, thank you sir. Anyone else in
1847 opposition? If you would sir, state your name for the record.
1848
1849 Mr. Schultz - My name is Donald Schultz. I own the property adjacent to
1850 the Higgins property, and adjacent to parcels 2A and 6A, which is what I have to
1851 express some opposition to. Looking to the future, as someone was just mentioning,
1852 parcel 6A, is there any assurance that there would not be any further development back
1853 in there, to put 4 homes back in that area? And that the proposed 50-foot frontage
1854 would not become a public road, which borders my property, and if that were a public
1855 road, that would definitely be detrimental to the value of my property I feel? One, we
1856 would be destroying what has been designated by the County as a wetland, a protected
1857 wetland in that area, and also just the value of my property, having a public road on that
1858 side of it, I feel would be detrimental to the value of my property.
1859
1860 Mr. Balfour- I think Mr. Condlin said there was not going to be a public
1861 road, but he can answer that when he gets up here.
1862
1863 Mr. Schultz - Is there any assurance that that cannot be rezoned in the
1864 future, to do that?
1865
1866 Mr. McKinney- If there's a condition on this case. Let me ask you something
1867 Mr. Schultz. Have the neighbors met with Mr. Condlin or the Higgins?
1868
1869 Mr. Schultz - I have not. I've tried to contact Ralph, as he has tried to

1870 contact me, and we played a little phone tag; we never did get to speak.
1871
1872 Mr. McKinney- Because apparently there are some concerns with the
1873 adjoining neighbors, etc., and they've been notified this is by law that the Higgins want
1874 to do this, and it appears that you have not sat down at the table and talked with them
1875 and addressed your concerns to their attorney, Mr. Condlin. Besides that, if this could
1876 be taken care of prior to getting here, you might ask to do this. I don't know what their
1877 feeling is on it, but in the final analysis, it might work better for everyone concerned.
1878 You're concerned, "will this be developed?" Well, we never can say will it be developed
1879 50 years, 100 years down the road, but in the immediate future, in our lifetime, it may.
1880 You might be able to work it out where it would not be. I don't know.
1881
1882 Mr. Schultz - Okay. I understand that. And I think I've expressed my
1883 concerns, so I've finished up here.
1884
1885 Mr. Kirkland - Thank you sir. Anyone else in opposition wish to speak? If
1886 not, Mr. Condlin, would you like to rebut?
1887
1888 Mr. Condlin - Yes sir. Mr. Chairman, members of the Board. I'll answer
1889 Mr. McKinney's question. We had talked with and, unfortunately I know, as Mr. Schultz
1890 has said, Ralph had gone around and thought it would be better if he and Janie talked
1891 to the individual neighbors, to sit down and go over things and their concerns. I've
1892 spoken to a number of neighbors, and I asked for the conditions, we've talked to them
1893 over the phone, or I met with them otherwise, but we have met with them, instead of as
1894 a group, but as an individual basis, because we felt we knew which property owners
1895 were specifically going to be affected by this.
1896
1897 Mr. Balfour- How many did you contact and talk with?
1898
1899 Mr. Condlin - I guess probably about 5, 5 different folks, the Schultzes, the
1900 Hancocks, we talked to the Dinglelines, and the CCV, so that's 4 of the immediately
1901 adjacent, I know Mr. Tashjian was aware of it.
1902
1903 Mr. McKinney- Are the people here who are in opposition, who'll raise their
1904 hand, who've been contacted by them?
1905
1906 Citizen I was not contacted.
1907
1908 Mr. McKinney- Ma'am, you can't speak unless you've been sworn in. We
1909 just called for a show of hands.
1910
1911 Citizen- I'd like to speak when my turn comes.
1912
1913 Mr. Kirkland - Okay, no problem.
1914
1915 Mr. McKinney- So you've got how many again who were contacted?

1916
1917 Mr. Condlin - The 4 folks who are here. Everyone here was contacted.
1918 We sent the letter and then we called up.
1919
1920 Mr. Balfour- Are some not here who were contacted, is my question?
1921 Besides CCV?
1922
1923 Mr. Condlin - Well we do have some adjacent folks. Mr. Tashjian is the
1924 only other adjacent one, and CCV. They're all here, the folks that are here representing
1925 CCV, and then Mr. Tashjian's here as well, they were all contacted as the adjacent
1926 neighbors. I believe that's all the adjacent neighbors that were. I know some of the
1927 other neighbors, from conversations, were aware of this, not neighbors, but people in
1928 the area.
1929
1930 Mr. Kirkland - Mr. Condlin, before you get into your rebuttal, that woman
1931 just made a statement that she'd like to speak, and I called for all of the "for" and the
1932 "opposition," and she didn't raise, she would like – ma'am, do you want to speak? Are
1933 you in opposition or for the case? If you would come forward, because once he starts
1934 his rebuttal, that's going to cut off any more talk. He's the last man to talk. If you would
1935 state your name for the record.
1936
1937 Mr. McKinney- Was she sworn in?
1938
1939 Ms. Hancock - My name is Doris Hancock. We are on the corner lot. It's 2
1940 acres. We have no plans to divide it. We received this literature after we had plans for
1941 a few days vacation, so we did not have a great deal of time. But I did go over to speak
1942 with Janie Higgins. None of her family contacted us in regards to this, although we
1943 received all of the written material. So then there was nothing that was gained when I
1944 talked with Janie Higgins, so we contacted and got our very nice attorney to help us out
1945 on very short notice, and I think he's done very well. Thank you.
1946
1947 Mr. Kirkland - Thank you ma'am. Does anyone have anything else to say,
1948 because after the rebuttal starts, it's all over. You've already spoken sir, no more repeat
1949 information. Okay, go ahead.
1950
1951 Mr. Condlin - Thank you sir. I believe I'm very nice too, just for the record,
1952 but I may not have done as well, so we'll leave it at that. I'm not as good looking either,
1953 I know that. But let me just throw a couple of things. I'll be real quick. Parcel 6A, in
1954 talking with, and I probably oversimplified things in saying that it was coming through
1955 the estate. When Mr. Ralph Higgins, the father, passed away, his instructions for his
1956 wife were for her to live in the house that Mr. Ralph Higgins' son is currently living in,
1957 that's not part of this variance request. She maintained that, and she gave parcel 6A to
1958 the children. The children at that time organized the Higgins Family Limited Partnership
1959 to create for tax and estate purpose benefits, for all the children to enter into on the
1960 advice of their accountant. That's when they received parcel 6A. When Mrs. Higgins,
1961 the mother, passed away, that's when the property passed to Ralph for the home where

1962 he currently lives, and Ralph Higgins' son, currently here. That's how all this, and the
1963 rest of the property at that point, which was then owned by Mrs. Mary Higgins, the
1964 mother, all the rest of that then came into the children. That's how the project – I
1965 probably oversimplified it, but it did all come into the Family Limited Partnership
1966 pursuant to the requests of the estates, the first time to the father for parcel 6A, and the
1967 remainder of it for the mother's estate, Mrs. Mary Higgins.

1968
1969 Mr. Balfour- Did the Higgins Partnership sell Mr. Schultz his property?

1970
1971 Mr. Condlin - No sir, I believe that was done, and I talked to Mr. Ralph
1972 Higgins for some history on that; that was done back in the 60's, and I believe Mr.
1973 Schultz maybe is the third, fourth owner of that, somewhere along there. Both the
1974 Hancock property, which I believe was back in the 60's as well, from your predecessors
1975 in title, and the Schultz property, were sold back in the 60's, and that's what started this
1976 problem, where they sold off those pieces of property. As to parcel 6A, as I've
1977 explained, I do believe it was acquired in good faith, because it was acquired as it's
1978 shaped, as it is today, through the estate, and the estate did not own the house at that
1979 time. Mrs. Mary Higgins, the mother, did. We just can't get to the property; that's the
1980 basic issue we have here. We need to access it to build a home, and it's as simple as
1981 that. We want to be able to access it by parcel 2A. We can access it by an easement
1982 and come back again another day for you, if you would prefer, to get a variance for lack
1983 of public road frontage. Or as I said, as you understand, we can go forward and simply
1984 put a public road. They don't want to do that. I'm not going to say that they're martyrs;
1985 it's expensive; that's the bottom line.

1986
1987 Mr. Balfour- What do you think about a condition about that?

1988
1989 Mr. Condlin - I'm not sure legally how that would work. What if we decide
1990 not to put any variance on it, and we just go to dedicate that road? I'm not sure how
1991 that works. I can't guarantee, nor do the Higgins want to guarantee, something might
1992 happen to Mr. Ralph Higgins, and one son might move into the home up front, and they
1993 might sell that and subdivide that into a lot or two extra. I don't know. They can't
1994 guarantee that, and I don't think that at any time in my conversations with the neighbors,
1995 did we ever express that that was a distinct possibility, that it would never happen. We
1996 don't know what's out there, but what we're trying to do is to put in a private driveway. I
1997 can tell you, as I told you before, if we get denied a variance, and you tell us it'd be
1998 much better off that we go forward with a lack of public road frontage and get an
1999 easement, we can still come back and have parcel 2, owned by the Higgins Family
2000 Limited Partnership, dedicate that road, put it into the public road frontage, get into
2001 parcel 6 that way. And we can always do that if we don't get our variances. That's just
2002 the reality of the situation; they want to be able to make use of the property. Mr.
2003 Thornton, as always, does a fantastic job, and he referenced the Code. I will read you
2004 this; you know the Code better than I with respect to this. Every time I talk to Susan or
2005 Ben, they always point something different out to me, that I didn't know was there, but
2006 they say "by reason of the exceptional narrowness, shallowness, size or shape of a
2007 specific piece of property," I would contend to you [Ben, if you could throw parcel 2 up

2008 there], I think parcel 2 meets every one of those things. This is about as oddly
2009 configured lot as you can get. We are benefiting, we believe the neighborhood, we are
2010 benefiting the county, we are benefiting everyone, including probably the Higgins
2011 themselves, by being able to lop off parcel 2D and make that part of Ralph Higgins'
2012 property, by being able to access parcel 6A with a private driveway and being able to
2013 use that, potentially, for just one lot. If we have to put a public road in to pay for it, I can
2014 almost guarantee you, they're going to have to subdivide it to help pay for that public
2015 road that would have to go in there. And finally, I would contend to you with respect to
2016 parcel 2, at the time of the sale, the Schultz and the Hancock property, in the evidence
2017 that we have from Mr. Ralph Hancock, there is farther down Daniels Road some smaller
2018 lots, that were between 150 and 175 feet, that were intended to be sold. I don't know,
2019 and I don't have the Code, at that time, when these properties were sold, and that's my
2020 mistake, that maybe that would have been the best thing, but I think the intent was, they
2021 received it in good faith; they're trying to make the best of an odd situation with, what I
2022 would consider a lot that is certainly exceptional in his narrowness, exceptional in its
2023 shallowness, size or shape, has a barn that's what I deem an historic barn, although it's
2024 not certified as such, a historic residence on there. It's a very neat area, and its location
2025 is very important that it be put there. Altogether, we're not going to try to destroy trees;
2026 we're trying to avoid that. We're not trying to destroy the character of the neighborhood;
2027 we're trying to avoid that. We're trying to avoid the detrimental effect that all the
2028 neighbors are concerned about. There is no ulterior motive here; we've laid all the
2029 plans on the table. We're asking you to just take a look at the whole picture and say,
2030 "this makes sense." Maybe parcel 2C, because the Hancocks don't want that strip on
2031 their side, we can flip the strip on the other side, so that parcel 2C accesses Gaskins
2032 Road over by parcel 2A. If we get the variance, we have the ability to do that, as long
2033 as you don't condition that. We've talked with some folks, and as far as our position
2034 goes, I think this is the best situation for everybody concerned, given the situation today,
2035 and we do meet the requirements of the Code. Again, I'll be happy to answer any
2036 questions.

2037
2038 Mr. Kirkland - Any questions of Mr. Condlin? No other questions, that
2039 concludes the cases.

2040
2041 Mr. Kirkland - **A-108, A-109, and A-110-2001.**

2042
2043 Mr. Balfour - I move we approve them, but as I recall, there are a couple
2044 of amendments – 1. Mr. Blankinship, if we can do it, he wanted a waiver of a one-year
2045 building permit, I had a note to that effect.

2046
2047 Mr. Blankinship - Yes, they'd requested that.

2048
2049 Mr. Balfour - Can we do that?

2050
2051 Mr. Blankinship - I believe you can. You can suspend any of your rules on a
2052 unanimous vote.

2053

2054 Mr. Balfour - I think he had a pretty good reason for that. I move that we
2055 amend it to allow the waiver of the building permit if he's not able to obtain it within one
2056 year.

2057
2058 Mr. McKinney- On that one dwelling?

2059
2060 Mr. Kirkland- On that one dwelling. On 110.

2061
2062 Mr. Blankinship - On all of them, I think is what he had in mind. He and I
2063 spoke about this a little bit in advance, and I believe.

2064
2065 Mr. Balfour - If you understood that, I'll make it for all of them then. I think
2066 it was the second amendment, if we pass them in order, that he said there'd be only one
2067 residence on parcel 7, by my notes. I move that. Then I move for approval with the 2
2068 amendments.

2069
2070 After an advertised public hearing and on a motion by Mr. Balfour, seconded by Mr.
2071 McKinney, the Board **granted** application **A-108-2001** for a variance to allow the
2072 existing dwelling to remain at 912 South Gaskins Road (Tax Parcel 123-A-2 (part)).
2073 The Board granted the variance subject to the following condition:

2074
2075 1. This variance applies only to the lot width and rear yard setback requirement. All
2076 other applicable regulations of the County Code shall remain in force.

2077
2078 Affirmative: Balfour, Kirkland, McKinney, Nunnally 4
2079 Negative: 0
2080 Absent: 0
2081 Abstain: Wright 1

2082
2083 The Board granted this request, as it found from the evidence presented that, due to the
2084 unique circumstances of the subject property, strict application of the County Code
2085 would produce undue hardship not generally shared by other properties in the area, and
2086 authorizing this variance will neither cause a substantial detriment to adjacent property
2087 nor materially impair the purpose of the zoning regulations.

2088
2089 After an advertised public hearing and on a motion by Mr. Balfour, seconded by Mr.
2090 McKinney, the Board **granted** application **A-109-2001** for a variance to build a one-
2091 family dwelling at 916 South Gaskins Road (Tax Parcels 123-A-2 (part) and -6A). The
2092 Board granted the variance subject to the following condition:

2093
2094 1. This variance applies only to the lot width requirement. All other applicable
2095 regulations of the County Code shall remain in force.

2096
2097 Affirmative: Balfour, Kirkland, McKinney, Nunnally 4
2098 Negative: 0
2099 Absent: 0

2100 Abstain: Wright 1

2101

2102 The Board granted this request, as it found from the evidence presented that, due to the

2103 unique circumstances of the subject property, strict application of the County Code

2104 would produce undue hardship not generally shared by other properties in the area, and

2105 authorizing this variance will neither cause a substantial detriment to adjacent property

2106 nor materially impair the purpose of the zoning regulations.

2107

2108 After an advertised public hearing and on a motion by Mr. Balfour, seconded by Mr.

2109 McKinney, the Board **granted** application **A-110-2001** for a variance to build a one-

2110 family dwelling at 301 Daniels Road (Tax Parcel 123-A-7). The Board granted the

2111 variance subject to the following conditions:

2112

2113 1. This variance applies only to the public street frontage requirement. All other

2114 applicable regulations of the County Code shall remain in force.

2115

2116 2. No more than one dwelling shall be built on the subject parcel.

2117

2118 Affirmative: Balfour, Kirkland, McKinney, Nunnally 4

2119 Negative: 0

2120 Absent: 0

2121 Abstain: Wright 1

2122

2123 The Board granted this request, as it found from the evidence presented that, due to the

2124 unique circumstances of the subject property, strict application of the County Code

2125 would produce undue hardship not generally shared by other properties in the area, and

2126 authorizing this variance will neither cause a substantial detriment to adjacent property

2127 nor materially impair the purpose of the zoning regulations.

2128

2129 Mr. Kirkland - Next case, Mr. Blankinship.

2130

2131 **A - 62-2001** **KARL AND TONY WOLPERT** appeal a decision of the Planning

2132 Director pursuant to Section 24-116(a) of Chapter 24 of the County

2133 Code with respect to nonconforming status of the Richmond Yacht

2134 Basin, 9950 Hoke Brady Road (Tax Parcels 284-A-3, 4 and 5)

2135 zoned A-1, Agricultural District (Varina). The Planning Director has

2136 determined that Richmond Yacht Basin may continue its current

2137 operation without a Provisional Use Permit.

2138

2139 Mr. Blankinship - We are re-hearing A-62-2001. This case was decided 2

2140 months ago. Last month the representatives of the Richmond Yacht Basin asked the

2141 Board to reconsider their decision, and this morning, while I'm sure you would not

2142 accept any repeat of old testimony, we do need to hear the new information to be

2143 presented by Richmond Yacht Basin and then give the other parties the opportunity to

2144 reply to it.

2145

2146 Mr. Kirkland - All those who are going to speak on this case, including Mr.
2147 Moore, stand and raise your right hand and be sworn in. State your name for the
2148 record.

2149
2150 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2151 truth, the whole truth, and nothing but the truth, so help you God?

2152
2153 Mr. Moore - I do. Yes sir, Mr. Chairman, my name is Glenn Moore. I'm
2154 an attorney. I'm here this morning on behalf of the Richmond Yacht Basin. Thank you
2155 for this opportunity to present some additional information for your consideration, with
2156 respect to Mr. Marlles' determination that certain improvements made to the Yacht
2157 Basin property in 1996 were not significant enough in nature to require a provisional use
2158 permit. In other words, the nonconforming use status of the property could continue,
2159 notwithstanding those changes. What I'd like to do is present some evidence to you this
2160 morning which will give you a better idea of precisely what was done in 1996, in order to
2161 further protect the Yacht Basin property. That was the purpose of the improvements at
2162 that time. What I'd like to start with is an aerial photograph that we have of the property
2163 that was taken in approximately 1991. I can pass that to you. I think you will recall from
2164 the presentation a couple of months ago, that in 1986 there were some improvements
2165 made. I believe the boat shed on the right-hand side, or the western most boat shed,
2166 was added at that time, and consequently you had slips on both the north and south
2167 side of that structure were put in place at that time. You'll see that to the west of that
2168 structure, there are some dolphins that are intended to break up debris, stop debris from
2169 coming down river and causing damage to the shed and the boats, and also you'll see
2170 that there is one single pier or supporting structure for the dolphins, because out from
2171 the shed, that was in place in 1986, and you'll see also that the area just to the west of
2172 the shed was used for purposes of docking boats at that time, and also there was a
2173 walkway along the western edge of that shed, that was in place in 1986.

2174
2175 In 1996, at the suggestion of Bob Nelson with Engineering Design Associates, and Mr.
2176 Nelson is here today, a couple of things were added. Improvements were added solely
2177 to protect the shed and the boats within the shed from debris coming down river during
2178 a flood situation. I have a plan that shows the actual additions that were made in 1996.
2179 What you see is that the walkway or structure that supports the dolphins at the lower
2180 end of the screen, was already in place. That was not added. The 2 structures that
2181 support the dolphins that are colored in green were added in 1996, as were the poles
2182 that you see inserted into the river bed to further provide protection for the boatshed.
2183 Those were essentially the only changes that were made to the facility in 1996. I have
2184 photographs of those. This is a letter that was written by Mr. Nelson in January of this
2185 year, that explains why these particular structures were needed for protection. I also
2186 show you, so you'll understand why these particular structures were necessary, a
2187 picture of some damage that occurred as a result of debris coming down river from a
2188 flood. It's interesting to see that that one structure that went out from the boatshed was
2189 able to stand up, whereas the shed itself was knocked down by the debris. There
2190 appears to be some effectiveness from these devices in protecting the structures.
2191 Unfortunately, they weren't in place when that particular flood occurred. I think the

2192 important thing here, is the improvements that were made in 1996, were made for the
2193 purpose of protecting what was already there; the boatsheds and the docking areas
2194 were already in place. There was no expansion of the capacity of the marina as a result
2195 of those improvements. So I believe that particular determination was made by Mr.
2196 Marlles, and I believe it's supported by the evidence that I've been able to give you this
2197 morning, that in fact there was no expansion of the nonconforming use, merely efforts
2198 taken to protect their integrity.

2199
2200 In the staff report that accompanied your package on this case, there was a suggestion
2201 that this particular facility has never been legal, and I would say to you that, I'm sure
2202 that Mr. Blankinship is able to review the Code, go back and based on what he knows
2203 today and his review of the Code, can make that determination. But I would also say to
2204 you that over the years, numerous building permits have been issued for improvements
2205 in the marina, and in fact, a letter that Mr. Marlles wrote to Forrest Parker in February of
2206 this year, noted that building permits were issued as recently as 1991, '94 and '96. At
2207 none of those times were any zoning changes required. I think what happens here is
2208 that over the years the interpretation of the zoning ordinance and applicable state law is
2209 done by reviewing individuals with facts and places at that time. I know you will agree
2210 with me, that Henrico County Planning officials are very zealous in making sure that
2211 zoning requirements are satisfied. I'll have to say that I think in these instances,
2212 determinations were made when requests were made to modify this particular facility,
2213 that zoning requirements were satisfied. Otherwise, they would have been required to
2214 meet the zoning requirements in order to get the building permits and ultimately
2215 certificates of occupancy. Over the years a number of times, a determination has been
2216 made that this is a legal, nonconforming use of that property. For the reasons that I've
2217 stated this morning, I would like to ask that you reverse your earlier decision and affirm
2218 Mr. Marlles determination that there has been no expansion of the nonconforming use
2219 of the Richmond Yacht Basin, as a result of the protective devices installed in 1996, that
2220 consequently, no provisional use permit was needed to support the installation of those
2221 facilities. I'll be happy to answer any questions members of the Board may have, and
2222 as you know, there are other people here who may be able to confirm some of the
2223 information that I've given to you, if you have any questions about that.

2224
2225 Mr. McKinney- Mr. Moore, let me ask you a question. If for some reason,
2226 these dolphins are not quite satisfactory, can you go ahead and add some more? On
2227 up the river? How far up the river can you go with them?

2228
2229 Mr. Moore - I would say that if they don't add any capacity, expand the
2230 nonconforming use, I don't know why you couldn't do that, if you got the necessary
2231 building permits to do it. You'd have to go to the Virginia Marine Resources
2232 Commission, of course, to do that.

2233
2234 Mr. McKinney - Who controls the view of the river?

2235
2236 Mr. Moore - Who controls the view of the river? I have no idea who
2237 controls the view of the river. I think that the issue here today, Mr. McKinney, is just

2238 whether or not there's been an expansion of a nonconforming use. Maybe the Virginia
2239 Marine Resources Commission

2240

2241 Mr. McKinney - I understand that, I'm not speaking of the boathouse; I'm
2242 speaking of the dolphins, that you say were put there in 1996?

2243

2244 Mr. Moore - 1986. This picture was taken in 1991, and you can see the
2245 facilities there.

2246

2247 Mr. McKinney - I thought we had testimony before that they were put there in
2248 '95 or '96.

2249

2250 Mr. Moore - The dolphins are the sets of poles at the end of the walkway,
2251 the pilings. I'm told, and there are people here that are with Richmond Yacht Basin who
2252 can confirm that they were there prior to 1996 and back to 1986.

2253

2254 Mr. McKinney - The dolphins were? But the walkways were not?

2255

2256 Mr. Moore - No, they were added. One of them was, the one at the
2257 bottom of the sheet was. The other 2, plus the poles that support them, are the only
2258 things added in '96.

2259

2260 Mr. Kirkland- What permit was granted in '96? You stated that there were
2261 some building permits granted for several years, and you said there were some granted
2262 – what was that for in '96?

2263

2264 Mr. Moore - I'm not sure. I picked that up from Mr. Marlles' letter. I do
2265 know, I am aware, my impression is that they did not get building permits for these
2266 structures that we have in question right now. They did go back, and they also did not
2267 get VMRC approval, but they have subsequently gotten that, they have obtained that. If
2268 we are successful in having a determination made that they do not have to be taken out,
2269 we'll go back and apply for the building permits to make sure that they comply with the
2270 building code that's applicable.

2271

2272 Mr. Kirkland - Any other questions of Mr. Moore? Thank you Mr. Moore.
2273 Mr. Marlles, do you have anything to add? And I'd like to ask you about that
2274 '96.....

2275

2276 Mr. Marlles - Mr. Chairman, members of the Board, good morning. I think
2277 Mr. Moore has probably covered most of the information I would have in my
2278 presentation. I do want to draw your attention, maybe this helps in the way of
2279 comparing what was there in 1991, which is the photograph on the top, showing the 2
2280 boats, and a more recent photograph on the bottom. Basically you can see what was
2281 added in 1996, which is the 2 walkways that Mr. Moore referenced. Regarding the
2282 question of building permits, and this is the building inspector's records, indicate in
2283 1991, a building permit was issued for a shell building and a deck. In 1994 a building

2284 permit was issued for interior alterations, and the 1996 permit was for electrical work. I
2285 do not have copies of those permits right in front of me, so I can't tell you exactly where
2286 on the property all of those permits were issued for, but it's clear that there was a history
2287 of the County approving building permits for this property over a period of time. To sum
2288 up, I believe that, based on the information again, my position is that I don't believe the
2289 work that was done in 1996 really was extensive enough to warrant the requirement for
2290 a PUP. The actual physical work done, I think it's clear from the 2 aerial photographs
2291 that the use, the actual docking of the boats were there in 1991, so with that, I'd be glad
2292 to answer any questions.

2293
2294 Mr. McKinney- One question, the building permits, were they routed, as they
2295 are normally routed, through Planning and Zoning?
2296

2297 Mr. Marlles - Yes sir, we have indication on the most recent building
2298 permits, that they were signed off by personnel in the Planning Office. Unfortunately,
2299 they are no longer with us, but we have the records.

2300
2301 Mr. Kirkland - So basically you had 2 boats pointed one way; today you
2302 have 2 boats pointed the other way.
2303

2304 Mr. Marlles - That's right.
2305

2306 Mr. Wright- Mr. Marlles, let me ask you a question. When the current
2307 zoning ordinance took effect in 1960, our notes say the zoning of the property remained
2308 agricultural. A marina was permitted by conditional use permit; that's 1960. There was
2309 an expansion in 1986, a substantial expansion, and the ordinance in 1960 did not
2310 permit, says "original Yacht Basin was never legal because the ordinance did not permit
2311 that use."

2312
2313 Mr. Marlles - Yes sir, that's Mr. Blankinship's staff report.
2314

2315 Mr. Wright- What's your comment with respect to that?
2316

2317 Mr. Marlles - This has been, and I did allude to this at the first hearing, it's
2318 sometimes very difficult to try to go back and reconstruct what was in the minds of the
2319 staff at that time, particularly since they're not here. I can tell you, I'm becoming more
2320 convinced that, at the time, and in the past, and up until recently, staff did not feel we
2321 had jurisdiction for improvements actually constructed on the James River. That to me
2322 is the only logical explanation that I can come up with as to why staff signed off on those
2323 previous building permits. I think I mentioned to you at the first hearing that both the
2324 building official and I looked at this issue, literally for several months, including trying to
2325 get the advice of the County Attorney to determine whether we had jurisdiction, and it
2326 was only literally several days before the last BZA hearing in May, that we got a clear
2327 answer from the County Attorney's office, that they believed we did have jurisdiction, so
2328 my explanation for that, or the best one that I can come up with, is staff at that time did
2329 not believe we had jurisdiction over the improvements over the James River.

2330
2331 Mr. McKinney- Are you saying that the County Attorney back then stated
2332 that we did not have jurisdiction?
2333
2334 Mr. Marlles - I didn't see any record of that, but I did see, in terms of
2335 discussions, even current discussions with some staff members, not ones that were
2336 directly involved with the building permit, but with other officials who were here, I'm
2337 saying that there seems to be a question, up until recently, whether we had jurisdiction.
2338 I believe that in the past the staff did not believe we had jurisdiction.
2339
2340 Mr. Kirkland - So now we have an official document somewhere that says
2341 we have jurisdiction?
2342
2343 Mr. Marlles - I would consider it an informal opinion from the County
2344 Attorney's office; I wouldn't say it's an official opinion.
2345
2346 Mr. Wright- Well is it your opinion that the expansion that was made in
2347 1986 added substantial addition? Since then a use permit was required for a marina, is
2348 it your opinion that those additions were valid, legal additions?
2349
2350 Mr. Marlles - I believe that at that time the staff did not believe that they
2351 had jurisdiction over approving that.
2352
2353 Mr. Wright- They didn't believe it, but looking back now, if they did, would
2354 you consider those additions to be valid, legal additions?
2355
2356 Mr. Marlles - Given what we know today, given the advice of the County
2357 Attorney's office, I would say that we would require a PUP for what was added in 1986.
2358
2359 Mr. Wright - Why wouldn't you require it now? I'm not talking about these
2360 2 little walkways. If somebody does something that's not valid, and you find out about it
2361 later, don't you go back and require them to get a permit?
2362
2363 Mr. Marlles - Mr. Wright, I think we had this discussion at the last meeting.
2364 I would not, at this point in time, believing that the staff did not feel that we had
2365 jurisdiction in 1986, I would not at this time require them to go back and get a PUP for
2366 something that was actually constructed in 1985; I would not sir.
2367
2368 Mr. Wright- So what you're saying is the staff action back then would
2369 bind you now.
2370
2371 Mr. Marlles - I would take that into account is what I'm saying. Just like I
2372 said that any future expansion may require a PUP. It depends on the degree of
2373 expansion, but generally speaking, I would not require a business who believed that
2374 they were lawfully abiding with the Code at that time, given my belief that staff probably
2375 did not feel they had jurisdiction in '85 or '86, require them to come back and get a PUP

2376 at this point in time. But I would, look at any future expansion, and in fact I think I did
2377 testify at the last hearing, that I would and did put the property owners on notice that
2378 any future expansion may require a PUP.

2379
2380 Mr. Balfour- You think it's a form of "grandfathering," I gather?

2381
2382 Mr. Marlles - From a practical standpoint, yes sir.

2383
2384 Mr. Wright- What you're really saying is that they're "grandfathered"
2385 because of the action that was or wasn't taken back in 1985.

2386
2387 Mr. Kirkland- That you didn't think we had jurisdiction over the river?

2388
2389 Mr. Marlles - Yes, that's my belief – the staff didn't think they had
2390 jurisdiction at that time.

2391
2392 Mr. McKinney- When did a PUP come into existence?

2393
2394 Mr. Marlles - In 1995.

2395
2396 Mr. McKinney- So 1995 is when PUP came into law, correct? So you didn't
2397 even have a PUP back in 1986?

2398
2399 Mr. Marlles - There was a requirement for a conditional use permit at that
2400 time.

2401
2402 Mr. Wright- 1960 – that's my point.

2403
2404 Mr. McKinney- But the thing about it, is apparently the Richmond Yacht
2405 Basin did what they were supposed to do, filed their permits, they were routed through
2406 your departments, the other departments, and everybody signed off on it. So now
2407 you're saying that they shouldn't have done it. This is years down the road. I'm not
2408 saying you said it, but your appeal of your decision is saying we need to go back and
2409 make these people do it, that they got all the approvals.

2410
2411 Mr. Wright- That's what the Board said at the last meeting.

2412
2413 Mr. Marlles - Yes sir. I think, at least from my perspective, part of the new
2414 information here that we wanted to clarify for the Board is, and I think it's illustrated in
2415 these photographs, is the fact that the actual use, the docking of the boats, was in use,
2416 at least back into 1991. I at least wanted the Board to see, have a clear indication, of
2417 how the extent of the physical improvements that were added in 1996, which I think,
2418 from my perspective, are relatively insignificant. I think the point was also made by Mr.
2419 Moore, that the improvements that were added, the 2 additional sections to the dock,
2420 were done primarily to add some structural integrity to the existing boatshed and protect
2421 it from flooding, as opposed to expanding the use.

2422
2423 Mr. Kirkland - Any other questions of Mr. Marlles? Thank you sir. I guess
2424 we need to hear from the other side now. If you would come forward sir. Would you
2425 state your name for the record sir?

2426
2427 Mr. K. Wolpert - My name is Karl Wolpert, along with my brother, Tony, we're
2428 adjacent property owners to the marina. First of all, I just want to thank the Board for
2429 agreeing with us last time we met. We feel the Board made the proper decision, and we
2430 hope that the Board will stay with their previous decision. I would like to address the
2431 point that was just made by Mr. Moore. The top photo is dated to be from 1991. I have
2432 with me a copy of the 1986 VMRC permit application that I'd like to put up on the
2433 screen. There's one drawing that was included with that application that I'd like to put
2434 up. If you could move that all the way to the left side, I want to see the title block for just
2435 a second, so you can see what the date was, the bottom right. That was 1986, and
2436 where your finger is there, that was the Engineering Design Associates drawing that
2437 was prepared on behalf of the marina and submitted with the application.

2438
2439 Now, if we can move back to the other side where we were. Do you notice over here,
2440 there is that pier that was in that photo in 1991, is not there. In fact, there's no
2441 indication that there was ever a plan to moor any boats on the western edge of that
2442 structure. We were copied on this application, and when we saw this application, we
2443 saw this line running up and down, which is an extension of our property line. When we
2444 received this, we really didn't have an objection, because our river rights, our river
2445 frontage, was not being violated. This was what was proposed and approved in 1986
2446 by the VMRC. The photo that was placed before, in 1991, apparently that one dock
2447 was constructed, I don't know when, it was not constructed in 1986, or if it was, it was
2448 not constructed with the approval of the VMRC. My point is, that to make the statement,
2449 that in 1995, there was just some minor addition, and it didn't change the use because
2450 there are some boats there, is erroneous, because that wasn't what was approved.
2451 Furthermore, there was a question asked of one of the preceding individuals, that if
2452 more docks or more piers were required to protect the marina, if what's there today is
2453 not sufficient, would there be a problem with putting more in there? Yes, I have a real
2454 problem with that, because that's my river frontage. My property is being diminished
2455 because of these structures that can be seen from my river frontage. What gives an
2456 adjacent property owner the right to construct structures in property or an extension of
2457 property that's not theirs. I have a real problem with that; I don't think there's any legal
2458 grounds for it.

2459
2460 Mr. Kirkland - You ever been duck hunting?

2461
2462 Mr. Wolpert - No sir, I'm not a hunter.

2463
2464 Mr. Kirkland - You ever seen duck blinds built in front of people's property?

2465
2466 Mr. Wolpert - Yes, but they typically get approval.

2467

2468 Mr. Kirkland - They get approval by the Game and Inland Fisheries, not by
2469 the property owner. They can stick a duck blind in front of your place.
2470
2471 Mr. Wolpert - Does that mean I can build a dock in front of the marinas?
2472
2473 Mr. Kirkland - No, but I'm saying there are certain things that happen on the
2474 water that doesn't affect landowners, that you can't control.
2475
2476 Mr. Wolpert - But there's got to be a point of reasonableness though. How
2477 far can you take it?
2478
2479 Mr. Kirkland - I know. I know. That's true.
2480
2481 Mr. Wolpert - Somebody asked the question. In my mind, there's zoning
2482 requirements, there's setbacks, that have to be met.
2483
2484 Mr. Balfour- Can you point out your property line, roughly, on that
2485 photograph?
2486
2487 Mr. Wolpert - My property line is approximately

2489 Mr. Blankinship - It shows on this one. Try to keep them all oriented the same
2490 way now.
2491
2492 Mr. Balfour- I see, that property line is that line right to the right.
2493
2494 Mr. Wolpert - Right. Again, when we got the drawing in 1986, that end of
2495 that dock met the end of our property line, so we're saying. "hey, that's fair; that's the
2496 river frontage that belongs to the marina. We have no objection." But again, what was
2497 built, at some point after 1986, is not what was on the drawing that we were provided
2498 and that the VMRC approved.
2499
2500 Mr. Wright- But it wasn't built after 1995?
2501
2502 Mr. Wolpert - Apparently from that photo, we were of the impression that
2503 all 3 extensions were built in 1995.
2504
2505 Mr. Wright- You mean the second big shed there to the left?
2506
2507 Mr. Wolpert - That shed was built in 1986. Probably the permit was
2508 granted in December of 1986. So that entire shed was built in the first part of 1987. So
2509 that depicts that shed.....
2510
2511 Mr. Balfour- Which you have no objection to, because you saw the plans
2512 and understood that it came to your boundary line.
2513

2514 Mr. Wolpert - Correct. Correct. If I could now go back to my previous
2515 items, which I can't seem to find There was some discussion about the
2516 County not having jurisdiction over river rights, etc. Approximately 4 years ago, 2 miles
2517 up river, there was a proposed marina. It was called the Newstead Landing. There was
2518 extensive community objection, etc. There was all kinds of – zoning was involved,
2519 building department – all different facets of the County were involved. I think it's pretty
2520 clear that the County does have jurisdiction, and for individuals to say that the County
2521 doesn't, this is not correct.

2522
2523 Mr. Wright- We're talking about back in 1960 and 1986; I'm not talking
2524 about 1990.

2525
2526 Mr. Wolpert - The VMRC, as far as the additional finger piers – again I
2527 want to reiterate what I said last time, they gave “conditional approval,” they gave
2528 approval based on settlement of the Riparian River Rights. They did not give carte
2529 blanche approval, so yes it's approved, but no it isn't, until the Riparian Rights get
2530 resolved. One thing that I would like to bring up, in 1986 when the permit application
2531 was made by the marina, if I could put a copy of the actual VMRC application
2532 instructions up on the board there. It clearly says that the VMRC does not have entire
2533 jurisdiction. It says, “Some health departments, local agencies, do not use this
2534 application. You should contact them for information regarding the requirements. Even
2535 though one application has been filed, separate permits are often required from
2536 regulatory agencies. Before you begin work, make sure you receive authorization or
2537 waivers from each agency.” If I look at the application again that we received a copy of,
2538 from 1986, of the VMRC application, essentially the marina has indicated on their
2539 application that they did not discuss this with any local, state, or federal regulatory
2540 agencies. Again, this is the 1986 boat shed. My point I'm trying to make here is, there
2541 have been statements in that, yes we have been getting permits, we've been getting
2542 authorization by the County. By their own admission, they haven't.

2543
2544 Mr. Wright- But they did get it in '86.

2545
2546 Mr. McKinney- They got a building permit on it.

2547
2548 Mr. Wolpert - According to this, they didn't.

2549
2550 Mr. McKinney- You can say that, but they did get one.

2551
2552 Mr. Wolpert - I haven't seen that. From the previous letter that I've gotten
2553 from the County, from a building official, it says that a permit would be required. “My
2554 investigation concludes that a building permit is required for the last boat shed and
2555 adjoining finger piers that are located along the western end of the site.” The last boat
2556 shed is this 1986 structure, so my assumption was that if the building official says he
2557 needs one, he never got one.

2558
2559 Mr. Blankinship - I don't believe we have a building permit for the 1986 boat

2560 shed. We have some permits for work done on the land – decks, electrical work, a shell
2561 building – that were on the land part of the marina. I don't know that we have ever
2562 issued a building permit for any construction in the riverbed.

2563
2564 Mr. McKinney- But as the Planning Director said in the opinion, he "didn't
2565 have the right at that time," Therefore it was done with the building permits
2566 they've got, as he stated, went through the departments, in '86, or what year I don't
2567 know, but it was prior to the PUP requirement, it was a conditional use.

2568
2569 Mr. Kirkland - '91,'94, and '96.

2570
2571 Mr. Wolpert - Again, I'm going by the information that I have on hand, that
2572 it doesn't appear that the required permits and zoning requirements that were in
2573 existence and that time were met.

2574
2575 Mr. McKinney- Mr. Wolpert, let me ask you a question. Would you like them
2576 to commit to you that no other improvements will be done, or to your satisfaction, from
2577 here on out? What would you like?

2578
2579 Mr. Wolpert - What I would like, that would be item 1. Item 2 is, I would
2580 like those structures which are in my river frontage, to be removed.

2581
2582 Mr. McKinney- You're talking about the dolphins.....

2583
2584 Mr. Wolpert - The dolphins and the extensions that you see there. I
2585 understand the marina's concern, and I've seen it. When there's floods, there's a lot of
2586 debris that comes down the river. But my point is, if there's protection required, of the
2587 structure, what gives one property owner the right to install some protective measure on
2588 river frontage that's not his? If protection is required, so be it, then that protection
2589 should be on his river frontage.

2590
2591 Mr. McKinney- That's what we're up in the air about. We don't know
2592 whether it was his or not, because of what's in it, it was done long ago. Apparently it
2593 was grandfathered in. What I'm asking you, if you get some kind of agreement with
2594 them, that they will absolutely do no more, would that satisfy you, I mean not totally, but
2595 would that help?

2596
2597 Mr. Wolpert - That would definitely, the expansions, the property can't
2598 withstand any more, and I'm dealing with all the traffic.

2599
2600 Mr. McKinney- Could we look at it from a standpoint that, there were a lot of
2601 mistakes made, it was grandfathered in apparently, you could look at it that way. It's
2602 like, the County may have made a mistake on your tax assessment back in 1986, they
2603 would come back on you and send you a bill for \$10,000 and say "we made a mistake."
2604 And you say, "no, you're not going to do that; I'm grandfathered in; you're not going to
2605 do that to me." We've got not quite the same scenario, but we're trying to make

2606 everybody happy if they would come to you and say, "Mr. Wolpert, we're all sorry it
2607 happened, this will not happen again, in any way," and you got that in writing?
2608

2609 Mr. Wolpert - That would go a long way. There's a few other issues that
2610 go along with zoning, that I would like addressed, the traffic, parking on my property,
2611 speeders, some other things that I feel like zoning process would identify and would put
2612 constraints on.
2613

2614 Mr. McKinney- I know you brought up before, about the parking on your
2615 property, that there could be signs put up, towing enforced.....
2616

2617 Mr. Wolpert - But there's got to be an enforcement. Heretofore, when I've
2618 made objections years ago, it was "I can't control people; we don't live right here." It
2619 was kind of, there wasn't any bite to the enforcement, and I don't know how you get
2620 around something like that.
2621

2622 Mr. McKinney- Well you're on private property; you chose to put up "private
2623 property, no trespassing" on either side of this descriptive easement that comes
2624 through, that goes to the marina, and somebody parks on that property, you can call
2625 whatever towing service you want and say, "come get this thing," they like to tow these
2626 away, because they get a big fee for it."
2627

2628 Mr. Kirkland - Just make sure you let the police department know first.
2629

2630 Mr. Wolpert - And there's one other thing that I'd like to bring up, is that
2631 one of the things that we've been concerned about over the years, is that it is private
2632 property, and here we have a business whose patrons are going across our property.
2633 We feel like we have a real liability, should somebody have an accident on our property,
2634 if somebody gets, God forbid, seriously hurt. There's a lot of personal injury attorneys
2635 out there. They're all looking to make a buck. That's something that really concerns us.
2636 Some sort of indemnification, something that will hold harmless. I think, even from the
2637 County, just 3 weeks ago I came home one night, and there were 3-4 Henrico County
2638 emergency vehicles parked on the top of the hill. In fact they were blocking my
2639 brother's access to his house, because they were in the middle of the road, but they
2640 were looking for a drowning victim, who eventually was found the following day, but it
2641 just kind of hit home, what happens if somebody gets hurt down there, and here you
2642 have a marina, or business, that, for whatever reason, has been grandfathered in, or in
2643 existence and is not in compliance with statutes that were in place as far back as 1960.
2644 If something like that were to happen, what would be the outcome of some personal
2645 injury suit if they start digging in and trying to get more out of nothing?
2646

2647 Mr. Balfour- Have you ever tried to get an injunction against them? They
2648 are their invitees; if they come on the property if there's an injunction on it, you can take
2649 them back to court.
2650

2651 Mr. Wolpert - That's true. Part of this is, we're just private owners, and

2652 we're not trying to make this a job to monitor other people's patrons. We're looking to
2653 not be sued at some point in the future. We're looking at not having to see speeders
2654 running up and down, having to pick up litter. This is Battlefield Park. I don't know if
2655 any of you have ever been down there, real quiet, picturesque, very slow pace of life,
2656 and that's what we like, and it's been that way for a lot of years, but as the marina has
2657 started to expand, there's been more traffic; there's been more people going down,
2658 kicking the tires, and it's just, one of these days, something's going to happen. I think
2659 we have a lot of liability; I think the County has a lot of liability.

2660
2661 Mr. McKinney- This is a private road that comes in there, right? Prescriptive
2662 easement, or is it a deeded easement?

2663
2664 Mr. Wolpert - I believe it's a deeded easement. And it was in existence
2665 when my parents bought this property in 1974 I believe. And that easement was in
2666 existence from a previous property owner.

2667
2668 Mr. McKinney- Maybe some of our learned attorneys could tell us what
2669 would happen if somebody got hurt on a deeded easement.

2670
2671 Mr. Wright- I don't think that's our concern. That's a legal issue, like a lot
2672 of these other things we're talking about, are legal issues, which maybe are of real
2673 concern, but that's not what's before this Board.

2674
2675 Mr. Wolpert - Let me see if I had any other points here I wanted to cover.
2676 One last thing, if I could get, one of the other statements that were made, I believe it
2677 was last time, was that the marina's been in continuous existence since 1940 or
2678 something like that. Our research from the County records, the first piece of property
2679 that was bought by the marina itself, was in 1950. This particular parcel was bought in
2680 1970 by Mr. Parker and Mr. Harris, who are the owners of the marina. I don't
2681 understand the logic of a continuing existence when you're adding property, to say that
2682 you've been there, you want to get grandfathered in, but yet you buy a piece of property
2683 in 1970, ten years after the zoning law, or the process that the County has established
2684 is put into place, and then you can say, "well, we built something in '86, and we're going
2685 to grandfather this in, because the marina has been here this whole time." Well, that to
2686 me, doesn't hold water, and to this day, that piece of property still has not been
2687 absorbed into one of the other parcels and is in the name of the marina. It's still in the
2688 name of the 2 owners of the marina, so it's still identified as a separate parcel in the tax
2689 records. I believe that's all I had. Were there any questions for me?

2690
2691 Mr. Kirkland - Anyone have any questions of Mr. Wolpert? Your brother
2692 have anything to say?

2693
2694 Mr. Wolpert - I don't think so, no. Thank you very much.

2695
2696 Mr. Kirkland - You're welcome. All right, Mr. Moore, you're on deck, unless
2697 there's anybody else on the other side.

2698
2699 Mr. Moore - Mr. Chairman, there are a few points I'd like to make. First,
2700 with respect to that other parcel that Mr. Wolpert just showed, I say he built on it. I don't
2701 see how that's considered part of the marina.
2702
2703 Mr. Balfour- Say that again.
2704
2705 Mr. Moore - I don't quite understand the issue that was being raised
2706 about this other parcel of land. From the picture there, there's nothing there.
2707
2708 Mr. Balfour- I think what he's saying, is he bought the land, and they took
2709 something that's grandfathered in on the old piece of land and used that to bootstrap
2710 themselves up by expanding the marina in front of the new piece of land they bought
2711 after the Code went into effect. And he's saying they did it, and nobody objected.
2712
2713 Mr. Moore - I've never seen it in any zoning ordinance, and I'm not aware
2714 of anything that governs this, that says that one may only put improvements in water
2715 directly in front of his property. And I think the fact the VMRC, as recently as February
2716 of this year, approved the new extensions that we're talking about today, that are not in
2717 front of this property, suggests that that's not a requirement, that you put features in the
2718 water..... The water's owned by the state of Virginia; it's not owned by any
2719 individual, and I'm not aware that any.....
2720
2721 Mr. Kirkland - Some people beg to differ on that point.
2722
2723 Mr. Wright- Depends on where your water line is, but if he's beyond the
2724 mean water line.....
2725
2726 Mr. Moore - He's docking boats there; he's got 8 or 10 feet of water
2727 there.....
2728
2729 Mr. Kirkland - So a permit was granted in February for these finger docks?
2730
2731 Mr. Moore- Here it is, granted for all of them. And it was late, and they
2732 were fined for it, and it's a conditional improvement, as Mr. Wolpert states.
2733
2734 Mr. Blankinship - Yes, conditional on ironing out this issue of the riparian
2735 rights.
2736
2737 Mr. Moore Not the issue of the nonconforming use however. So I would
2738 simply say that, I don't know whether the Wolperts appeared before VMRC or not,
2739 perhaps they did, but apparently they don't feel, well they feel that a court needs to
2740 determine whether or not there's an issue with respect to extending improvements in
2741 front of someone else's property, and I don't think that that's an issue before this Board
2742 either. The issue before this Board is "can those improvements that have been put in
2743 place to protect what else is there, be allowed without requiring a provisional use

2744 permit?" But I will also say, to address something Mr. McKinney raised, an issue he
2745 raised, is that, my clients are willing to commit that they will not extend this facility west
2746 of where the current improvements are, unless something were to happen to them, that
2747 they'd want to replace those, but they'll commit to that in writing, to the Wolperts, that
2748 nothing will be built west of there.

2749
2750 Mr. Balfour- Is the case still pending that's referred to in this letter?

2751
2752 Mr. Moore - Yes it is still pending, but you know, Mr. McKinney asked that
2753 question, and I don't know that that would satisfy them or not, perhaps if won't, but
2754 we're willing to make that commitment.

2755
2756 Mr. Balfour- Suppose it was a title requirement. It looks like those fingers
2757 are pointing west, 3 of them, and they're there for protection primarily, even though you
2758 stick a couple of boats out there. If you turned them parallel, and only had 1 or 2,
2759 wouldn't you get the same protection, and then he'd have less encroachment on the
2760 front of his property?

2761
2762 Mr. Moore- He'd have the same encroachment.

2763
2764 Mr. Kirkland - That's what was there until they turned them the other way;
2765 that's what I was saying earlier.

2766
2767 Mr. Moore - I don't see that there'd be a material change there. That's all
2768 I have, unless Board members have any other questions.

2769
2770 Mr. McKinney- So you're saying that your client agrees, and will agree in
2771 writing, that there will be no more additions to the western end

2772
2773 Mr. Moore - It will not extend in the water to west of where it is now.

2774
2775 Mr. Kirkland - Mr. Marles, may I ask you a question, and you all now are
2776 firmly under the understanding that you have jurisdiction of anything that goes on down
2777 there. And you will look very closely every time something happens down there. Thank
2778 you sir. All right, no further questions? That concludes the case.

2779
2780 Mr. Wright - I move that we reverse the Board's decision, made in May,
2781 on the basis that there was information that I was not aware of, that didn't come before
2782 the Board, on which I based my prior decision, and the fact that the County considers
2783 that as nonconforming persuades me to make that decision, with the idea that the 2 new
2784 walkways were not substantial enough to require them to get a PUP.

2785
2786 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
2787 McKinney, the Board reversed its earlier decision of May 24, 2001, on **A-62-2001**
2788 appeal, and affirmed the decision of the Planning Director with respect to

2789 nonconforming status of the Richmond Yacht Basin, 9950 Hoke Brady Road (Tax
2790 Parcels 284-A-3, 4 and 5).

2791
2792 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
2793 Negative: 0
2794 Absent: 0

2795
2796 Mr. Kirkland - I've got one more case I need to call here, the one we
2797 passed.

2798
2799 **A -104-2001 HEZEKIAH WILKERSON** requests a variance from Section 24-94
2800 of Chapter 24 of the County Code to build a sunroom at 4740 Glen
2801 Finnian Drive (Yahley Mill East) (Tax Parcel 229-5-A-4), zoned A-1,
2802 Agricultural District (Varina). The rear yard setback is not met. The
2803 applicant has 39 feet rear yard setback, where the Code requires
2804 50 feet rear yard setback. The applicant requests a variance of 11
2805 feet rear yard setback.

2806
2807 Mr. Kirkland - Mr. Blankinship, I was under the impression that possibly this
2808 needed to be deferred.

2809
2810 Upon a motion by Mr. Nunnally, seconded by Mr. McKinney, the Board of Zoning
2811 Appeals **deferred** application **A-104-2001** for a variance to build a sunroom at 4740
2812 Glen Finnian Drive (Yahley Mill East) (Tax Parcel 229-5-A-4). The case was
2813 deferred for 30 days, to allow the presence of an applicant or representative to
2814 present the case, from the July 26, 2001, until the August 23, 2001, meeting,

2815
2816 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
2817 Negative: 0
2818 Absent: 0

2819
2820 Mr. Kirkland - We have some other items here, that we received in our
2821 packets. Approval of the 2002 Calendar, and some amendments to the rules.

2822
2823 Mr. Blankinship - Mr. Chairman, when we prepared your 2001 Calendar,
2824 because of the way the 5th Thursday fell in October, we moved September and
2825 October's meeting up, and that allowed us to keep consistent time between meetings,
2826 even though the week of the month that the meeting fell changed. In 2002, we're
2827 fortunate that August is the month that has 5 Thursdays in it, which means we can keep
2828 September and October on the 4th Thursday, and still have good spacing of meetings to
2829 move November and December to the 3rd Thursday. So the only 2 dates that would not
2830 be the 4th Thursday, would be November 21 and December 19.

2831
2832 Upon a motion by Mr. Wright, seconded by Mr. McKinney, the Board approved moving
2833 the November and December meetings to the 3rd Thursdays, thus approving the
2834 proposed 2002 Calendar.

2835			
2836	Affirmative:	Balfour, Kirkland, McKinney, Nunnally, Wright	5
2837	Negative:		0
2838	Absent:		0
2839			
2840	Mr. Kirkland -	Okay, the last thing is the amendment thing that we received	
2841		in the mail.	
2842			
2843	Mr. Blankinship -	I'm going to address paragraph 2 of the proposed	
2844		amendment first. We've been working for some time to get our computer system up to	
2845		the point where we can generate these lists of adjoining landowners fairly quickly.	
2846		We've finally gotten to the point where we can do that almost automatically now. As	
2847		you know, the Planning Commission and the Board of Supervisors , the staff has done	
2848		the adjoining landowner notification for them for many years. Yours are the only cases	
2849		where the applicant is required to do that themselves, and I think that's somewhat of a	
2850		handicap for us, and it leads to a lot of deferrals, and there are just other problems	
2851		raised by it. Now that we're able to do it without incurring a lot of costs or a lot of staff	
2852		time, I'd like to propose that you amend your rules so that the staff will do the	
2853		notifications, rather than the applicant.	
2854			
2855	Mr. Balfour -	So moved.	
2856			
2857	Mr. Blankinship -	You can make a motion and get it on the floor.	
2858			
2859	Mr. Wright -	I'll second and get it on the floor.	
2860			
2861		Why are we changing it from 14 to 5 days?	
2862			
2863	Mr. Blankinship -	Five days is what's required by the Code. We had asked for	
2864		14 so that the applicants could return their receipts to us 5 days prior, so that we could	
2865		check over those.	
2866			
2867		Which Code?	
2868			
2869	Mr. Blankinship -	The State Code.	
2870			
2871		Requires 5 days?	
2872			
2873	Mr. Blankinship -	Yes sir.	
2874			
2875		I'll tell you right not, that's not enough.	
2876			
2877		Can we make it any broader?	
2878			
2879	Mr. Blankinship -	If you want to make the rule 14, that's fine.	
2880			

2881 If my neighbor's going to do something, and I get 5 days
2882 notice, I haven't got time much to do anything. I'll hire a lawyer, and we're already
2883 complaining about not getting things on time sometimes.

2884

2885 Mr. Blankinship - And I can tell you that it's my intention to do it as soon as we
2886 can get the list generated.

2887

2888 I'm talking about the person who gets the notice, you get a
2889 little due process problem I think.

2890

2891 Mr. Blankinship - If you want to put 14 in your rules, there's no reason you
2892 can't do that.

2893

2894 Would that cause any problem with the staff?

2895

2896 Mr. Blankinship - No sir; we plan on doing them more than 14 anyway.

2897

2898 I just think it would be better public relations to give more
2899 notice; 5 days is a shortsomebody could be on vacation, and it happens,
2900 and they'd never know about it.

2901

2902 I move we amend it then to be

2903

2904 Mr. Blankinship - We merely took that from the Code, and I have no objection
2905 to setting it at 14 my only concern otherwise Mr. Kirkland had
2906 a question

2907

2908 The question I had, and I don't feel particularly strongly about
2909 it, is, I notice the owners had to give certified or registered, and I don't mean to be
2910 picking on the postal service, but all we're going to require here is first class mail.

2911

2912 Mr. Blankinship - That again is copied out of the State Code. The Code
2913 requires the individual to do it certified, but if the County does it, we're only required
2914

2915

2916 I'm not saying that you wouldn't do it any better than the
2917 owner; I'm more concerned about the mail service sometimes.

2918

2919 I guess the 14 days I've had some that took
2920 more than 2 weeks to get to me.

2921

2922 Mr. Kirkland - Takes more than 2 weeks to get from Glen Allen to
2923 southside.

2924

2925 Who's going to pay the cost of doing this – the applicant?

2926

2927 Mr. Blankinship - The County will. It'll just be taken out of the \$300 fee. My
2928 thinking is, that after we have about a year's experience with this, and we have a more
2929 accurate feel, both for the staff time and the physical costs involved, then we would ask
2930 the Board

2931
2932 If we're taking the costs away from the applicant, and putting
2933 it on the County, then what's the problem with the applicant paying the \$300 plus the
2934 postage fees?

2935
2936 Mr. Blankinship - We could do it that way. That would have to be determined
2937 by the Board of Supervisors; they're the ones who set the fees.

2938
2939 Are the fees set based on a lot of things, I'm sure, but one of
2940 them would be the cost of administering the hearing to begin with. Run it up to \$325
2941 and send it certified.

2942
2943 Mr. Blankinship - I was going to say, as soon as we have some more solid
2944 figures on how much it is costing us, and how much staff time this has added, we intend
2945 to at least approach the Board of Supervisors with the idea of amending the fees. They
2946 may choose not to do that, and of course it's their money.

2947
2948 Do we have other notices in the County we do by first class
2949 mail only?

2950
2951 Mr. Blankinship - As far as I know, that's how we do Planning Commission and
2952 Board of Supervisors – do you know Susan?

2953
2954 Ms. Blackburn - Yes, and they do a signed affidavit that they have been sent
2955 out.

2956
2957 Well the thing about this certified mail – some people won't
2958 go pick it up.

2959
2960 Mr. Blankinship - That's true.

2961
2962 I withdraw my comments.

2963
2964 What I do at my office when I do that, I mail them one first
2965 class and then send it certified to make sure they get it. A lot of people won't go pick it
2966 up.

2967
2968 They think it's a bill.

2969
2970 Mr. Blankinship - Yes, if they know it's from the County, they might just leave it
2971 there.

2972

2973 That puts them at an inconvenience. They've got to go pick
2974 the thing up.

2975
2976 (unintelligible)

2977
2978 If the County's working fine with first class mail and other
2979 types of notices, I say let's go with it.

2980
2981 Mr. Kirkland - Mr. Blankinship, you say the last line that we've got here,
2982 ".....the Secretary may give such additional notice to persons, " that's been in
2983 there already?

2984
2985 Mr. Blankinship - Yes, that's why it's not bold or italic.

2986
2987 Mr. Kirkland - As long as it doesn't cause a problem with somebody saying
2988 they didn't get notified.

2989
2990 Mr. Blankinship - Well, we're not going to use that just willy-nilly, but there are
2991 cases where, looking at the map, somebody is 5 feet off of adjoining, we might choose
2992 to notify that person. Also, when I was researching that, I just happened to glance at
2993 the top of another page of the rules, and saw that we don't actually follow the order of
2994 the regular meeting, as prescribed in the rules, so I didn't see any reason not to spell
2995 that out and have this amended while we're going here. That's what paragraph 1 is
2996 about there.

2997
2998 That looks like it just cleans it up some.

2999
3000 Mr. Kirkland - Okay, let's have a motion here.

3001
3002 Mr. Blankinship - Motion's already on the table.

3003
3004 Motion's already been made and seconded.

3005
3006 Mr. Kirkland - All those in favor, say aye. All opposed. We got it.

3007
3008 Mr. Blankinship - Mr. Balfour's been reappointed, I don't know if everybody's
3009 aware of that.

3010
3011 Upon a motion by Mr. Balfour, seconded by Mr. Wright, the Board approved the
3012 Amendment to the Rules Regarding Notice to Adjoining Landowners and a change in
3013 the order of business regarding the approval of minutes.

3014
3015 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
3016 Negative: 0
3017 Absent: 0

3018

3019 There being no further business, and on a motion by Mr. Wright, seconded by
3020 Mr. McKinney, the Board adjourned until August 23, 2001, at 9:00 am.

3021

3022

3023

Richard Kirkland,

3024

Chairman

3025

3026

Benjamin Blankinship, AICP

3027

Secretary