

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
2 **HENRICO COUNTY, HELD IN THE BOARD ROOM OF THE COUNTY**
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**
4 **COMPLEX, ON THURSDAY, JUNE 23, 2005, AT 9:00 A.M., NOTICE HAVING BEEN**
5 **PUBLISHED IN THE RICHMOND TIMES-DISPATCH ON JUNE 10 AND 17, 2005.**
6

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

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

7
8 Mr. Wright - Ladies and gentlemen, welcome to the June meeting of the
9 County of Henrico Board of Zoning Appeals. Would you please stand and join me for
10 the **Pledge of Allegiance to the Flag of our Country**. Mr. Secretary, would you read
11 the rules, please.
12

13 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies
14 and gentlemen. The rules for this meeting are as follows. As Secretary, I will call each
15 case. Then at that time the applicant should come down to the podium. I will ask
16 everyone who intends to speak on that case, in favor or in opposition, to stand and be
17 sworn in. The applicants will then present their testimony. After the applicant has
18 spoken, the Board will ask them questions, and then anyone else who wishes to speak
19 will be given the opportunity. After everyone has spoken, the applicant, and only the
20 applicant, will have an opportunity for rebuttal. After hearing the case, and asking
21 questions, the Board will take the matter under advisement. They will render all of their
22 decisions at the end of the meeting. If you wish to know their decision on a specific
23 case, you can either stay until the end of the meeting, or you can call the Planning
24 Department later this afternoon, or you can check the website. The vote on each case
25 will be posted to our website within an hour of the end of the meeting. This meeting is
26 being tape recorded, so we will ask everyone who speaks, to speak directly into the
27 microphone on the podium, to state your name, and to spell your last name please.
28 And finally, out in the foyer, there are two binders that contain the staff report for each
29 case, including the conditions that have been recommended by the staff.
30

31 **Beginning at 9:00**
32

33 Mr. Blankinship - Mr. Chairman, we do not have any deferrals or withdrawals
34 from the Agenda, but we did make a last-minute change to move A-58 to the 10:00

35 o'clock Agenda.

36

37 Mr. Wright - Please call the first case.

38

39 **A-59-2005** **MARIA ANDERSON-DAVIS** requests a variance from Section 24-
40 94 to build a one-family dwelling at 5130 Springfield Road (Parcel
41 755-768-5065), zoned A-1, Agricultural District (Brookland). The lot
42 width requirement, minimum side yard setback, and total side yard
43 setback are not met. The applicant has 118 feet lot width, 15 feet
44 minimum side yard setback and 31 feet total side yard setback,
45 where the Code requires 150 feet lot width, 20 feet minimum side
46 yard setback and 50 feet total side yard setback. The applicant
47 requests a variance of 32 feet lot width, 5 feet minimum side yard
48 setback and 19 feet total side yard setback.

49

50 Mr. Wright - Does anyone else desire to speak with reference to this
51 matter? Would you raise your right hand and be sworn please?

52

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

55

56 Mr. Edwards - Yes sir. Frederick D. Edwards. There was a variance
57 approved, actually twice in this case, hardship case, and before the first approval could
58 be built upon, the owner next door, who is the father, passed away. That sent
59 everything into a turmoil for about a year or so. Ms. Davis took another run at it to build
60 her home next door to her parents, and her husband unexpectedly died. So now we
61 have a mother and a daughter, and we're taking another run at it, so we'd like to
62 expedite things a little bit faster this time, and we just ask for the same approval that we
63 had twice before.

64

65 Mr. Wright - Is this the same application that was made, identical to the
66 one that was made before?

67

68 Mr. Edwards - Yes sir.

69

70 Ms. Dwyer - What was your name sir?

71

72 Mr. Edwards - Frederick Edwards.

73

74 Ms. Dwyer - If you rezoned this property to a residential zoning, rather
75 than an A-1 zoning, you would not need a variance, is that correct?

76

77 Mr. Edwards - That's correct. R-4, or R-3AC, I believe, is behind us, and R-
78 3AC across the street, so the setbacks are basically those setbacks, but just a larger A-
79 1 lot.

80

81 Ms. Dwyer - So re-zoning is an appropriate avenue for you to pursue to
82 be able to build this without obtaining a variance?
83

84 Mr. Edwards - I cannot believe that re-zoning would help this situation in
85 that the cost and the time involved with it, as opposed to doing the variance and putting
86 the house on a one-acre lot. I feel like the re-zoning case would be detailed and cost a
87 lot more in engineering costs, simply to put a family member next door. I think the
88 setbacks are pretty close to the same as all the houses around it. Nothing's really
89 changed as far as the roadway and the conditions of the area since the original variance
90 was approved.
91

92 Mr. Kirkland - Mr. Edwards, is there any reason you couldn't build a guest
93 suite on the existing home for a person to live in?
94

95 Mr. Edwards - Well, it's possible, except that Ms. Davis and Ms. Morris are
96 two different people, of course, and through marriages and through deaths, if Ms. Morris
97 decided to sell her house and move on, and Ms. Davis decided to sell her house and
98 move on, then we have a situation that might cause, even in a duplex situation, where
99 the guest house – there's a specialty buyer for a house like that. It's okay if they've
100 lived there all their lives, and they decide to sell it, but if they do sell it, being in the real
101 estate business, I know that a house with a guest house, because of the cost of doing it,
102 it's a specialty buyer. I think two separate properties and two separate lots would be a
103 much better situation.
104

105 Ms. Harris - Do you know why the lots were divided in 1999? Why was
106 this lot divided from the original lot?
107

108 Mr. Edwards - It was divided for this very reason, just so there could be a
109 separate lot. When I was involved in Winterberry Subdivision, which Ms. Morris owned
110 the land, we actually saved a sewer tap, had a sewer tap installed in the stream in
111 Winterberry to provide sewer for this dwelling that we thought we would build one day
112 for the daughter.
113

114 Ms. Dwyer - One of the things that it may be appropriate to let you know
115 about is that the law has, if not changed, become quite clear in terms of what limitations
116 have been placed upon Boards of Zoning Appeals to grant variances. We're operating
117 under some different mandates from the Supreme Court, in determining when and
118 under what circumstances variances may be approved. The rules are much stricter
119 now than perhaps they were when you were originally granted a variance.
120

121 Mr. Edwards - I understand.
122

123 Mr. Wright - Any further questions of the Board? Is anyone here in
124 opposition to this request? Hearing none, that concludes the case. A-59-2005.
125

126 Mr. Kirkland - I make a motion we deny it.

127
128 Ms. Dwyer - Second.
129
130 Mr. Wright - Motion's made and seconded that we deny it. Any further
131 discussion? Basis?
132
133 Mr. Kirkland - They have reasonable use of the property. It was part of the
134 property. They're just splitting it off. I have no reason why they're doing that. They
135 have use of the property. They can also rezone it. We talked about this. Thank you,
136 Dave.
137
138 Ms. Dwyer - They could rezone the property and comply with the
139 statutes.
140
141 Mr. Wright - Any further discussion? Hearing none, all in favor of a
142 denial, say aye. Opposed, say no. It's denied.
143
144 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
145 Dwyer, the Board **denied** application **A-59-2005** for a variance to build a one-family
146 dwelling at 5130 Springfield Road (Parcel 755-768-5065).
147
148 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
149 Negative: 0
150 Absent: 0
151
152 The Board denied the request as it found from the evidence presented that there was
153 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
154 Virginia to justify a variance.
155
156 **A-60-2005** **JULIE STEVENS AND LINDA HAMILTON** request a variance from
157 Section 24-95(i)(2) to build a shed at 1206 Haverhill Road
158 (Wildwood) (Parcel 787-754-6989), zoned R-2, One-family
159 Residence District (Fairfield). The accessory structure location
160 requirement is not met. The applicants propose a shed in the side
161 yard, where the Code allows accessory structures in the rear yard.
162
163 Mr. Wright - Does anyone else desire to speak with reference to this
164 case? Would you raise your right hand and be sworn please?
165
166 Mr. Blankinship - Do you swear that the testimony you are about to give is the
167 truth, the whole truth, and nothing but the truth, so help you God?
168
169 Ms. Hamilton - Yes. I'm Linda Hamilton.
170
171 Ms. Stevens - I do. I'm Julie Stevens.
172

173 Ms. Hamilton - We bought this house about a year ago and for a matter of
174 correction, the request isn't actually to build a shed; it's a pre-fab shed that's already in
175 existence and actually there. I don't know where that came from, but the shed is on the
176 side of the house. The house itself is a structure where it's a Colonial, and then it's got
177 what could have been an attached garage, but it's never been a garage, but it's been a
178 part of the house, and the shed is right next to that on an asphalt slab and the ultimate
179 thing is, in moving the shed back, it would just be back exactly ten feet, which would put
180 it behind the house, but it would have the same aesthetic presentation that it has right
181 now, although meeting the Code, so our request was that we are able to have a
182 variance to have it to the side of the house. It meets the requirements of the yard that
183 it's five feet from the edge of the property line, as well as ten feet from the house.
184

185 Mr. Wright - Any questions of members of the Board?
186

187 Ms. Harris - What is your objection to moving the shed to comply with the
188 Zoning Ordinance?
189

190 Ms. Hamilton - The way the yard is, it's on a hill, so going back means we'd
191 actually have to bring in several truckloads of dirt to build it up, as well as build an
192 additional structure to support the shed for the yard, because the house is built, and
193 then the yard drops down, and it's on a hill.
194

195 Ms. Harris - Had you considered putting it on the other side of the
196 house?
197

198 Ms. Hamilton - There's not enough room on the other side of the house, nor
199 is there access. It's all grass and trees, so there's not access to be able to get things in
200 and out. It's a shed that houses motorcycles.
201

202 Ms. Dwyer - One of the comments made in our staff report was that a
203 wooden base on piers could be built at the end of your driveway, and then the shed
204 could be placed on that, and you wouldn't necessarily have to have a cinder block or
205 earthen foundation.
206

207 Ms. Hamilton - That is true; of course there's the expense of that, and I
208 guess in my opinion, the aesthetics, it is the exact same; it would still be just as visible,
209 the exact same aesthetics, as well as it's housing a couple of vehicles where you now
210 have the ability to find a way to build a ramp that carries over so you can bring the
211 vehicles in and out, versus the ability that it's right there on the slab. You're absolutely
212 right; it just seems for what it is and the aesthetics, and I would require a bit more, the
213 expense of putting in that structure to house it, would be a bit high.
214

215 Mr. Blankinship - When we were out doing our site visits, you mentioned some
216 work that you had done in the rear yard recently. Could you tell the Board about that?
217

218 Ms. Hamilton - The shed had been there when we bought the house, and

219 what happened is we had to move it temporarily to bring in some dirt for some work we
220 were doing in the back yard – it was very wooded and overgrown, so we were trying to
221 improve the house there, so the shed was temporarily moved and then moved back to
222 its original spot. That’s where it got the attention of the surveyors.

223
224 Mr. Blankinship - Were you building a new deck at that time?
225

226 Ms. Hamilton - Yes, we had put a deck – in this picture, that fence doesn’t
227 exist anymore, but there is a deck that’s in the back of the house.
228

229 Ms. Dwyer - I know that issues of aesthetics and cost are important, but
230 that’s not necessarily the basis upon which we’re obligated to make our decision. The
231 standard that we have to look at is to determine if you still have reasonable use of the
232 property if we don’t grant the variance, then we don’t have the authority to grant the
233 variance. So the question is, do you still have reasonable use of this property without
234 this shed, and your response would be yes, because you can still use the property as a
235 residence.
236

237 Ms. Hamilton - That would be true with almost any additional structure, so
238 it’s not a requirement that we can’t live without it.
239

240 Mr. Wright - That fence that’s in one of these pictures, is that on the
241 property line?
242

243 Mr. Blankinship - If you look at the plat, it clearly shows both the fence and the
244 property line. We looked into that when we were on site, because I was thinking the
245 same thing you are, that the building is right up against the fence. It’s about six feet off
246 the property line at that point; the two diverge. It starts pretty close to the property line,
247 but then they diverge as they go back from the street.
248

249 Ms. Harris - Have any of your neighbors said anything to you about it, as
250 far as complaining about where the shed is?
251

252 Ms. Hamilton - No, not one complaint, and we’ve asked all of our direct
253 neighbors, in front and around us.
254

255 Mr. Wright - Any further questions of the Board? Is anyone here in
256 opposition to this request? Hearing none, that concludes the case. A-60-2005.
257

258 Ms. Harris - I move that we deny.
259

260 Mr. Wright - Motion’s made that we deny it.
261

262 Ms. Dwyer - Second.
263

264 Mr. Wright - And there’s a second. Basis for denial?

265
266 Ms. Harris - It's a shame it was built before checking the Code, and it's
267 not in compliance with the Code. Of course they have the use of the house without the
268 shed, and they can build whatever they need to support the shed to move it.

269
270 Ms. Dwyer - And they have reasonable and beneficial use of the property
271 without the variance.

272
273 Ms. Harris - And it's an eyesore. I went by there to look at it.

274
275 Mr. Wright - If they move it to comply, it'll be an eyesore too.

276
277 Ms. Dwyer - But it'll be a little bit farther back.

278
279 Mr. Wright - All in favor of denial, say aye. Opposed, no. It's denied.

280
281 After an advertised public hearing and on a motion by Ms. Harris, seconded by Ms.
282 Dwyer, the Board **denied** application **A-60-2005** for a variance to build a shed at 1206
283 Haverhill Road (Wildwood) (Parcel 787-754-6989).

284
285 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

286 Negative: 0

287 Absent: 0

288
289 The Board denied your request as it found from the evidence presented that there was
290 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
291 Virginia to justify a variance.

292
293 **A-62-2005** **MICHELE VANDELINDE** requests a variance from Section 24-9 to
294 build a one-family dwelling at 2917 Cottrell Road (Cedar Chase)
295 (Parcel 746-754-3163), zoned R-3, One-family Residence District
296 (Three Chopt). The public street frontage requirement is not met.
297 The applicant has 0 feet public street frontage, where the Code
298 requires 50 feet public street frontage. The applicant requests a
299 variance of 50 feet public street frontage.

300
301 Mr. Wright - Is there anybody here on A-62-2005? Please come to the
302 podium.

303
304 Mr. Blankinship - Mr. Chairman, we passed out some information that pertains
305 to this case.

306
307 Mr. Wright - Does anyone else desire to speak with reference to this
308 case? Please stand and be sworn at the same time. Would all of you then please raise
309 your right hands.

310

311 Mr. Blankinship - Do you swear that the testimony you are about to give is the
312 truth, the whole truth, and nothing but the truth, so help you God?
313

314 Mr. Henry - I do. My name is Michael Henry. I'm the contract owner of
315 the property, seeking he variance. As it stands right now, without the public road
316 frontage to be abated, the lot cannot be built on. We're looking for that variance.
317

318 Mr. Wright - I believe a variance was already granted for this property, is
319 that correct?
320

321 Mr. Henry - It had expired before I came in to purchase it, so when I
322 went to apply for a building permit, they said I had to reapply.
323

324 Mr. Wright - Your contract is subject to approval of this variance?
325

326 Mr. Henry - Correct.
327

328 Mr. Kirkland - You had a septic system proposed on this before?
329

330 Mr. Henry - Before they did, I went and did further research and made
331 arrangements to connect sewer to the property. It's going to be an additional \$20,000
332 to run the line, but it's going to be \$10,000 to put in a septic system, so I figured it was
333 better to make the connection now.
334

335 Ms. Dwyer - What was this originally reserved for, this particular lot?
336 Why was it reserved?
337

338 Mr. Henry - That's beyond me.
339

340 Mr. Blankinship - I think the problem was just in the lot design. This was a
341 fairly narrow strip of land that just wasn't big enough to make another lot out of, so it
342 was reserved; then at the previous application, they adjusted the boundary line between
343 this and the lot to the south to make it wider, so that it would meet the area and width
344 requirements. I don't think it was reserved as a well lot or as a recreation area, or
345 anything like that; it was just one of those little leftover parcels, and they used to handle
346 those by leaving them reserved. Today we would require them to probably to include it
347 in one of the lots.
348

349 Ms. Dwyer - By looking at the survey, on Cottrell Road, it looks like a
350 notch has been carved out of this lot. Was that originally for a roadway, to provide
351 enough space for a public street?
352

353 Mr. Blankinship - Again, I'm not certain of all the history on this, but if you look
354 at the aerial or the site map, off to the right there where the property lines come to an
355 angle, is where the County park is, and I think the County just reserved the right-of-way
356 back far enough to have access to the park and then just ended the right-of-way there.

357 That used to be the end of the reserved lot as well, and where that notch is cut out,
358 used to be where the property to the south began.
359

360 Ms. Harris - Mr. Blankinship, do we know if a variance was granted for
361 2910?
362

363 Mr. Blankinship - That did not require a variance. At the time the house was
364 built, the lot was large enough. It must have required one for public street frontage. I
365 don't know the answer to that. Do we have the old file?
366

367 Ms. Dwyer - While he's looking that up, Mr. Henry, I'm wondering why we
368 have in our packet a survey for 2491 Cedar Cone Drive. Was that included for any
369 particular reason?
370

371 Mr. Henry - Not to my knowledge.
372

373 Ms. Dwyer - It's a completely different lot; I'm just wondering why it was
374 included in our packet.
375

376 Mr. Kirkland - I was wondering that too.
377

378 Ms. Dwyer - Does the Board see what I'm talking about? Parcel A, which
379 doesn't even adjoin this parcel, so I'm just curious why there was some point to that.
380

381 Mr. Wright - Has the applicant seen this? He needs to see this.
382

383 Ms. Harris - Where would the driveway be on the property you're
384 proposing to construct?
385

386 Mr. Henry - It would come through the same access that 2910 is using.
387

388 Ms. Harris - The driveway for the house? I know the road would be
389 shared, but would there be a driveway to the house, not leading from the public road?
390

391 Mr. Henry - There's already an existing driveway along Cottrell that leads
392 back to the park and also to 2910.
393

394 Ms. Harris - There are so many right-of-ways, I'm just wondering which
395 one they are going to use if this variance is granted. We see something coming in from
396 Cedar Knoll, and then we understand there is a park entrance across the street. How
397 would they drive up on their property – where would that driveway be?
398

399 Mr. Henry - There is an existing driveway along Cottrell, so all you'd
400 have to do now is connect where you see the yellow dash directly in front of 2917 – it
401 connects.
402

403 Mr. Kirkland - I think what she's asking is if you come to 2910, would they
404 drive across your property at 2917?
405
406 Mr. Henry - There's a paper right-of-way existing.
407
408 Mr. Kirkland - Is it on your property or on the other side?
409
410 Mr. Henry - I think it runs along this front. It should show it on that
411 survey.
412
413 Mr. Kirkland - It looks like fifteen feet is on your property, and fifteen feet is
414 on the other property. I didn't know where the road is in reference to that. Is it over on
415 the property that we're talking about, 2917, or is it on the other side of the line?
416
417 Mr. Blankinship - I think it runs down the center line.
418
419 Mr. Kirkland - So it's possible that a piece of the road could be on 2917's
420 property, is that what you're saying?
421
422 Mr. Blankinship - Right, the easement is centered on the property line.
423
424 Mr. Kirkland - So they would need an access across this property.
425
426 Mr. Blankinship - They have it already; that's already deeded. I did look up –
427 that house at 2910 is shown as having been built in 1960, so I presume the building
428 permit was approved in 1959, prior to the requirement for public street frontage.
429
430 Ms. Dwyer - Does this lot otherwise meet all the requirements for an R-3
431 residence district? The reason I ask is that in our staff report, it doesn't say anything
432 about lot width, but in the document that we received from opposition, it states that there
433 was a need for a five-foot width lot variance.
434
435 Mr. Blankinship - Right, there is an increase in the lot area and the lot width
436 requirement if you don't have public water and public sewer. They no longer need the
437 lot width requirement because it will have public water and sewer.
438
439 Mr. Wright - So all he needs is a 0 road frontage. Did you show the
440 applicant this. Is anyone here in opposition to this request?
441
442 Mr. Henry - I'd like to just – one of the conditions here, # 4, the 2500
443 square foot minimum – the surrounding houses, I feel like they'll put a further burden, an
444 unnecessary burden onto this lot. I think the burden of maintaining it within the
445 consistent covenants of Cedar Chase would be adequate to protect the surrounding
446 property owners' values, because it would be built in accordance to all the other houses
447 around it, but it's putting a 2500 square foot minimum, it's larger than any of the other

448 houses that border it. There's a 1700 square-foot house adjacent to it, 1900, 2100, one
449 2400, and the brick house.

450
451 Mr. Wright - Which ones are these? Can you identify them by house
452 number?

453
454 Mr. Henry - 2495, which is directly behind us, is according to my records,
455 is 1704 square feet. 2497 is 1906 square feet. 10099 is 1956 square feet. 10097 is
456 2478 square feet. 10095 is 2108.

457
458 Mr. Nunnally - What is the minimum requirement of Cedar Chase?
459

460 Mr. Henry - I didn't have a chance to pull that up, but I assume it must be
461 1700; they wouldn't have built a house 1700 square feet if that weren't at least close to
462 what it should have been.

463
464 Mr. Wright - Mr. Blankinship can answer that question.
465

466 Mr. Blankinship - Let's see if I've got that covenant. It may be that 1700-
467 square-foot house has some space that can be finished to bring it up to 2,000.
468 Sometimes that's allowed, and it may be that's an error in the record. I'm going to look
469 while we speak. I'm not sure whether we have a copy in here of not.

470
471 Ms. Dwyer - Are there any other conditions that you object to, as listed by
472 staff?
473

474 Mr. Henry - Since I'm connecting to the public water and sewer, that's
475 not an issue for me. But the lot design, by the time you put 2500 square feet, a two-car
476 garage, it's going to be difficult to make everything work.

477
478 Ms. Harris - Will you be able to build a house consistent with the
479 surrounding neighborhood?
480

481 Mr. Henry - Yes, it's actually for my parents, and they like that style.
482 They live in the next subdivision over, off of Cox Road, so they like that area, so they do
483 want to build that style.

484
485 Ms. Dwyer - Is that a contemporary style?
486

487 Mr. Henry - It's kind of a mix. Don't know the technical term, but they
488 live in a very similar house already.
489

490 Ms. Dwyer - Transitional?
491

492 Mr. Blankinship - We don't have a copy of their covenants, but the next
493 speaker may be able to address that.

494
495 Mr. Wright - While we listen to the opposition, if you could find the answer
496 to that, is that all right sir. Is there anyone to speak in opposition, please come forward.
497
498 Mr. Wilson - Thank you very much. James Wilson, 10097 Cedar Knoll
499 Lane. It's the property directly north of the property asking for the variance. In May of
500 2003 I stood before this group. Mr. Wright, you heard it at that point, and some of the
501 others of you may have still been on the Board. At that point, I opposed the variance; I
502 clearly understood that the reserve that was on the plat when I bought my house was
503 there a part of Cedar Chase, and a house could not be built on it, and that I would be
504 given first rights to buy the land if it were sold. Unfortunately I did not follow through,
505 and thus I am here today to speak in opposition to someone building on that property.
506 The property, when requested in May of 2003 was pointed out that it was property that
507 the young lady had walked through when she was going to school and that obviously
508 needed to be hers to be built on. It was nine months later when I received the letter
509 from her giving me the right to buy the property at \$129,000. She bought it for \$65,000.
510 Since we did not buy it at \$129,000, she put it on the market, where it stayed on the
511 market for the last year, and I'm told, as I hear this morning, that there is a buyer who is
512 willing to pay the price. That has nothing to do with the land; it has to do with intentions.
513 The property that was mentioned before – did we find out why that was included in the
514 package? That was my question too.
515
516 Mr. Blankinship - Just for clarification of the adjustment of the other property.
517
518 Mr. Wilson - Show me the clarification if you would, why it needs to be
519 there. They didn't see that; I didn't see it either. Show me the plot up there like we
520 were looking for it before, please.
521
522 Mr. Blankinship - It doesn't absolutely need to be in the packet. There was a
523 change in the boundary lines between the 2003 request and the current request, so we
524 were just documenting what the change in the boundary line was.
525
526 Mr. Wilson - Okay, didn't need to be there.
527
528 Mr. Blankinship - It's not germane directly to this request, but it just clarifies a
529 change from the previous request.
530
531 Mr. Wilson - How does it clarify it? Please, I'm just trying to understand,
532 because it had nothing to do with this at all last time, and this time it doesn't have
533 anything to do with it either.
534
535 Mr. Blankinship - Someone looking at the documents from the previous
536 request could see that there's a difference in this request, and that's why.
537
538 Mr. Wilson - Okay, may I put up this lot? I think you have pictures that I
539 gave to you. I asked Mr. Blankinship to send you a package. I sent that out before I

540 received recommendation from his committee to you today, and I'd planned to update
541 that document, but it wasn't till Monday morning that I called him, and since he had not
542 faxed it to me, I had to come in to get it. If you'll notice on this plot, the plot called
543 "reserve natural" was the land that I was referring to before. It is fully lotted with trees;
544 the house directly on the other side, south of the property, is a 1200-foot, small, brick
545 rancher, which obviously would expose, by cutting down the trees and building a house
546 in there, would have detrimental effect on the property we own. I don't understand how
547 a house can be built in there, but that is what I am being told today. 2500 square feet is
548 apparently what we determined last time, because it came out of the covenant, but I do
549 not have that specifically before me. That may be why the lady did not choose to build
550 on the property. I also believe with my neighbors that it is a hazard. As you will see,
551 directly across from this little piece of property abutting the road, is entrance to Deep
552 Run Park. There's a lot of traffic, people, bicycles, there; also if you will note, the
553 pictures I gave you on the other side, the piece that Mr. Blankinship said had nothing to
554 do with this particular property, is a piece that now houses trucks, a garage, and trucks
555 are coming in and out of there. It has been used as a lawn care company for some
556 time, so in this very narrow road coming into the property, we believe that it is a hazard
557 and not something that should be allowed.

558
559 Ms. Dwyer - Mr. Wilson, there is no vehicular access to the Park from
560 this.

561
562 Mr. Wilson - That is correct, no vehicular.

563
564 Ms. Dwyer - And where are the large trucks with the lawn care business?

565
566 Mr. Wilson - They are back on that piece of property that Mr. Blankinship
567 put in your package that had nothing to do with this. If you will notice in pictures I have
568 that shoot through to the other side, you will see trucks. That's the property that
569 apparently Mrs. Rueger rebounded.

570
571 Ms. Dwyer - That's 2491 Cedar Cone Drive, and that's the rear section,
572 and the rear section of that is being used for a business you say?

573
574 Mr. Wilson - It has been used for a business, and there are trucks in and
575 out of there, and the pictures are accurate, yes.

576
577 Ms. Dwyer - And the trucks into that business are accessing Cedar Knoll
578 Lane through Cottrell Road?

579
580 Mr. Wilson - Cottrell Road is the only entrance into that property. The
581 Park developed that in essence so that it could be used for the park, and that's why it's
582 there.

583
584 Ms. Dwyer - The landscaping business is a County business?

585

586 Mr. Wilson - No, it's not. Whoever's it is, Anderson had it at one point.
587
588 Ms. Dwyer - Mr. Blankinship, is that an appropriate use for a residential
589 district?
590
591 Mr. Blankinship - That's in an A-1 Zoning District, so it's at least questionable,
592 but if it's a lawn care business, it should not be operated out of A-1.
593
594 Ms. Dwyer - It looks like it's R-3.
595
596 Mr. Blankinship - Is that within the R-3? I'm sorry, I'm thinking about the
597
598 Mr. Kirkland - I see a rather large truck from this aerial photo.
599
600 Mr. Wilson - That is true; they've built coverings in there within the last
601 year, so that makes it unattractive to me, as far as the access in and out of the road, as
602 well as to the property, which we're talking about being built on. It will have complete
603 exposure to that on the south side.
604
605 Ms. Dwyer - It seems to me that we should have a County Compliance
606 Officer check the use of that particular lot.
607
608 Mr. Wilson - I don't have any complaint with that, only that the road is
609 being used for more than just to residential housing, and I think that is incorrect to state
610 to you today. Giving a variance to this piece of property, with no frontage, to me doesn't
611 make any sense.
612
613 Mr. Kirkland - Mr. Wilson, is your statement that you do not know what the
614 minimum square footage is in the covenant?
615
616 Mr. Wilson - That is correct. I do not have that. I know last time we
617 talked about it, and I believe it was 25, and that's why it got put down as 25.
618
619 Mr. Wright - We've had testimony that houses around this property are
620 not 2500 square feet.
621
622 Mr. Wilson - My property is 2478, and they've all been built on in various
623 ways so that they could be added on. Mine has been added on two times.
624
625 Mr. Wright - You said that was exactly right, but there's some 2100?
626 Anything further, Mr. Wilson? Next?
627
628 Mr. Leggette - Hi, my name is Johnnie Leggette. I live at 10093 Cedar
629 Knoll Lane. I'm coming here today, Mr. Chairman and Members of the Board; I do not
630 have a prepared statement, but I want to speak from the heart. I live on that piece of

631 property that you see, off to the right there at an angle going into the Park, right directly
632 across from where the gentleman wishes to build on.

633
634 Ms. Dwyer - What's your address?

635
636 Mr. Leggette - 10093 Cedar Knoll. My square footage is 2500, and I
637 believe it's fifty or 2537 square feet.

638
639 Mr. Wright - You front on Cedar Knoll Lane? You would be at the corner
640 of Cedar Knoll and this private road that comes in.

641
642 Mr. Leggette - First of all, I do not understand why someone has bought a
643 piece of property which did not meet Code and you could not build on. To me, it's kind
644 of like someone's going to make a profit off of someone else's misery. Either they're
645 going to take address 97 and 95 and say "do you wish to buy the property, or I'm going
646 to build on it," and then they're going to come in and ask for a variance so they can
647 build. It's like having a stick in each hand. I'm going to beat you with this one if we can
648 build. I just feel like no house should be built on a property that doesn't meet Code. To
649 come in after the fact and say that I wish to build a house, it's kind of an unfair
650 advantage to everyone else. I took my life savings and bought this property. I've only
651 lived in it for a year, and I took a look around, and I just don't think it's fair for someone
652 else to come in on a piece of property and try to build a structure that doesn't meet
653 Code, then ask for a zero lot frontage. Their plan on using this small private road, which
654 does lead back to the park trail; they plan on using, I feel, this private road as a
655 driveway. They can pull up a structure and build that structure, if they have a zero-foot
656 frontage, right dead on that private road there. That would pull the structure up close,
657 and even though my property, when I bought it, has cedar and Leyland cypresses that
658 try to block that right there, that would bring that structure up where it towers over me
659 when I go out my door and onto my deck; I would see it.

660
661 Ms. Dwyer - Pardon me if I'm wrong, Mr. Blankinship, but I believe that
662 the house would still have to meet all the other requirements of the R-3 Zoning, that is, it
663 would have to be set back from Cottrell Road, with the appropriate front yard setback.
664 The only variance that's being requested is that the house be able to obtain access from
665 Cottrell Road, which is not a public street. All the other requirements in terms of side
666 yard, rear yard, front yard setbacks, would still have to be met.

667
668 Mr. Blankinship - Yes ma'am.

669
670 Mr. Wright - We have a plat showing the proposed dwelling, and it looks
671 like it's back at least 80 feet from that road. Anything further?

672
673 Mr. Leggette - I just again wish to be in opposition of it and the fact that
674 someone can buy the piece of property, which you cannot build on, and then come back
675 and expect everybody else to go ahead and grant this. It's a very unfair advantage to
676 everyone else and will pull down my surrounding neighborhood.

677
678 Mr. Wright - Anyone else in opposition? Yes sir, you can ask a question?
679
680 Mr. Wilson - This first part, which is shown as sort of a skew, that is
681 whose property, the County's property, that dogleg? And so they have the right to use
682 that property, I suspect.
683
684 Mr. Wright - They will have to prove to the Planning Department that they
685 have a legal right to access that property.
686
687 Mr. Wilson - But they can clean it up and do anything to it they want to it,
688 like they can take all the trees down in that piece?
689
690 Mr. Wright - I don't think they can do that.
691
692 Mr. Wilson - They could, I'm told, unless I ask you that question, and then
693 figure out how to follow up.
694
695 Mr. Wright - They will have to prove to the Planning Department they
696 have a legal right to access the property over that road, whatever that may be, and you
697 say it's already there.
698
699 Mr. Blankinship - They'll also have to get a permit from the Department of
700 Public Works to attach the driveway to the County Road.
701
702 Mr. Wilson - How may I follow up. Would Ben give me all the names to
703 follow up.
704
705 Mr. Wright - Mr. Blankinship can give you all that information.
706
707 Mr. Wilson - As I did not follow up on this property prior to it happening to
708 me, I would like to follow up if in case the Board does approve the variance.
709
710 Mr. Wright - Anyone else in opposition? Any further questions of the
711 Board? Hearing none, you have a brief time to rebut, if you care to say anything further.
712 That concludes the case. A-62-2005.
713
714 Mr. Nunnally - Move we approve it.
715
716 Ms. Harris - Second.
717
718 Mr. Wright - Motion made and seconded, that we approve it. Any further
719 discussion? All in favor, say aye. Opposed, no. It's approved.
720
721 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.
722 Harris, the Board **granted** application **A-62-2005** for a variance to build a one-family

723 dwelling at 2917 Cottrell Road (Cedar Chase) (Parcel 746-754-3163). The Board
724 granted the variance subject to the following conditions:

725
726 1. This variance applies only to the public street frontage requirements. All other
727 applicable regulations of the County Code shall remain in force.

728
729 2. The owners of the property, and their heirs or assigns, shall accept responsibility
730 for maintaining access to the property until such a time as the access is improved to
731 County standards and accepted into the County road system for maintenance.

732
733 3. Any dwelling on the property shall be served by public water and sewer.

734
735 4. Any dwelling on the property shall contain at least 2,500 square feet of livable
736 floor area.

737
738 5. The property shall be developed and maintained consistent with the covenants of
739 Cedar Chase subdivision.

740
741 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
742 Negative: 0
743 Absent: 0

744
745 The Board granted this request, as it found from the evidence presented that, due to the
746 unique circumstances of the subject property, strict application of the County Code
747 would produce undue hardship not generally shared by other properties in the area, and
748 authorizing this variance will neither cause a substantial detriment to adjacent property
749 nor materially impair the purpose of the zoning regulations.

750
751 **A-63-2005 MILTON R. JEFFERS** requests a variance from Section 24-
752 95(i)(2)b to build a 2-story detached garage at 1733 Old Oakland
753 Road (Parcel 807-705-5976), zoned A-1, Agricultural District
754 (Varina). The accessory structure height requirement is not met.
755 The applicant proposes a detached garage 20 feet in height, where
756 the Code allows accessory structures 15 feet in height. The
757 applicant requests a variance of 5 feet accessory structure height.

758
759 Mr. Wright - Does anyone else desire to speak with reference to this
760 matter? Would you raise your right hand and be sworn please?

761
762 Mr. Blankinship - Do you swear that the testimony you are about to give is the
763 truth, the whole truth, and nothing but the truth, so help you God?

764
765 Mr. Jeffers - Yes sir. Milton R. Jeffers. I'm requesting a variance for a
766 detached garage. It is five feet over what the required height is, and that's why I'm here
767 today.

768

769 Ms. Dwyer - Has the garage already been built?
770
771 Mr. Jeffers - Yes, the contractor who built it, he told me when he built it,
772 that he had everything, all the paperwork, together. When he came back for his last two
773 payments, I asked him to show me his paperwork, and he said to give him a day and
774 he'd bring it all back, and I haven't seen him since. At that time, I called my broker, Mr.
775 Leroy Charles, and asked him what I should do, and he told me we needed to go down
776 to the County and request a variance.
777
778 Ms. Dwyer - You haven't paid him the total amount yet?
779
780 Mr. Jeffers - I haven't paid him the total amount. He hasn't even come
781 back with the paperwork, so apparently he didn't even go to the County like he said and
782 get the variance and all that stuff.
783
784 Ms. Dwyer - What are you using the second floor of this building for?
785
786 Mr. Jeffers - The second floor will basically be for a workshop.
787
788 Ms. Dwyer - That's a shower?
789
790 Mr. Jeffers - Yes, I have a shower in there, but there's no water in to it
791 right now, because my septic tank and my water are on the other side of the house.
792
793 Mr. Blankinship - Is there any kind of kitchen?
794
795 Mr. Jeffers - No kitchen.
796
797 Ms. Dwyer - So you're not using it and do not intend to use it as an
798 apartment?
799
800 Mr. Jeffers - No ma'am.
801
802 Mr. Wright - This garage is already built?
803
804 Mr. Jeffers - Yes, he already has it built. He said he had everything
805 straight, but when he came back for that last payment, he said he'd be back in a day
806 with all the paperwork, and I haven't seen him since.
807
808 Mr. Wright - You can't find him?
809
810 Mr. Jeffers - I've been trying to call him.
811
812 Mr. Nunnally - Didn't you realize that you had to get a building permit to
813 build a garage like that?
814

815 Mr. Jeffers - I didn't realize. He said he was going to take care of
816 everything like that, because he was supposed to work on another job. I asked him if
817 he could come out and give me an estimate on building the garage, and he came out
818 and gave me a price and said this is what he needed down, and he'd start and get
819 everything straight and all the paperwork he needed.
820
821 Mr. Nunnally - What size is the garage?
822
823 Mr. Jeffers - It's five feet over the variance; it's 24 by 20.
824
825 Mr. Nunnally - You're going to use it for what purpose, other than putting a
826 car in it? Or are you going to put a car in there?
827
828 Mr. Jeffers - Downstairs, it's a garage for storage space. I own a limo
829 service, so one of my cars will be inside of the garage.
830
831 Mr. Kirkland - Where is your limo service office at? It's not on this site, is
832 it?
833
834 Mr. Jeffers - No sir.
835
836 Mr. Nunnally - Where is it located?
837
838 Mr. Jeffers - It's located in Richmond, 1717 North 19th Street.
839
840 Ms. Dwyer - You realize that an apartment used for that space is a
841 violation of the Zoning Ordinance? So it could never be used as an apartment.
842
843 Mr. Jeffers - Yes ma'am, understood.
844
845 Mr. Wright - Our report shows that you've got five inoperative vehicles on
846 the property – a truck, trailer, and commercial limousines. What's permitted on this
847 property, Mr. Blankinship?
848
849 Mr. Blankinship - The dwelling is a permitted use, and anything that's
850 accessory to the dwelling, such as a garage that meets the height requirement. You are
851 allowed to conduct certain types of businesses, within certain regulations, as a home
852 occupation. One of those regulations is that you can have one commercial vehicle of
853 less than 5,000 pounds, but you can't have any more than one, and you can't have any
854 that are over 5,000 pounds. I know that the Community Maintenance Division is
855 investigating other issues on this site.
856
857 Mr. Wright - Do you realize, Mr. Jeffers, that you can't have all these
858 vehicles parked or left on the property?
859
860 Mr. Jeffers - I went down and talked with them at the Revitalization, and

861 as of now, everything is pretty much in Code except the trailer, and we're working on
862 that now.

863
864 Mr. Wright - You're taking care of it?

865
866 Mr. Jeffers - Yes sir, I have donated two of the vehicles. One of the
867 vehicles I was using for restoration of an antique vehicle, so we had to put it under the
868 shed, and the other two vehicles have been removed from the property. He said he
869 would be back in ten days; I haven't seen a notice from him yet, so he probably hasn't
870 been back, since then. Since he came, I've had cars removed.

871
872 Mr. Kirkland - And you're getting the trailer taken care of?

873
874 Mr. Jeffers - Yes sir. When I talked to the young lady at Henrico, she
875 said I needed to first get the letter from the engineer, which I'm in the process of getting.
876 If the trailer is structured to fit, then I can get a permit to put a slab down to put the
877 trailer on.

878
879 Mr. Wright - Do you propose to put a driveway to this garage, because
880 the picture that we have doesn't show a driveway.

881
882 Mr. Jeffers - No, I don't propose to put a driveway to it.

883
884 Mr. Wright - You're just going to drive over the yard.

885
886 Mr. Jeffers - Yes sir. Right now it's basically just storage space from the
887 house and things like that.

888
889 Mr. Wright - It looks like a single-car garage, just to accommodate one
890 vehicle, is that correct? What are you going to use the area adjacent to the
891 entranceway for? It looks like there's a window there; it looks like a dwelling.

892
893 Mr. Jeffers - Yes sir. Downstairs – I guess that window was already
894 there; there's no apartment or anything downstairs.

895
896 Mr. Wright - What will you use that area for, downstairs?

897
898 Mr. Jeffers - Right now it's full of tools and things like that.

899
900 Mr. Blankinship - What's the oil tank for?

901
902 Mr. Jeffers - The oil tank came from my existing property at the house.
903 We got a new oil tank put in, so I just removed that one from the house.

904
905 Mr. Blankinship - It's not connected to anything?

906

907 Mr. Jeffers - No sir.
908
909 Ms. Harris - Have you secured an estimate to bring the garage into
910 compliance? Do you know what would be required financially to bring that garage into
911 compliance, lowering the ceiling height? Would your agent know?
912
913 Mr. Jeffers - No ma'am. No ma'am.
914
915 Mr. Nunnally - You have steps on the side of that garage – are those steps
916 on the outside like that so you can have a separate entrance instead of going in the
917 bottom of the garage?
918
919 Mr. Jeffers - Yes sir.
920
921 Mr. Nunnally - And you're not going to use that for any type of dwelling or
922 anything?
923
924 Mr. Jeffers - No sir; there's no kitchen or anything like that in there. I
925 don't even have any plumbing in there right now anyway.
926
927 Mr. Wright - How do you access your property?
928
929 Mr. Jeffers - As you see from the plat, we've got a driveway that comes
930 off of Old Oakland Road, and that's how we access the property there. There's a right-
931 of-way that goes to the house that passes by my neighbor's house.
932
933 Mr. Wright - Mr. Blankinship, did he have to get a variance to build on this
934 property initially? It doesn't seem to have any road frontage.
935
936 Mr. Blankinship - It does not have any road frontage. I don't know.
937
938 Mr. Kirkland - When did you build your dwelling, your home? The one on
939 this property right here.
940
941 Mr. Jeffers - The one we're staying in or the garage?
942
943 Mr. Kirkland - The house.
944
945 Mr. Jeffers - The house was built in 1965. I didn't build it; it was built
946 when we moved in. We've been there now for five years.
947
948 Mr. Wright - So you acquired it from a prior owner?
949
950 Mr. Jeffers - Yes sir. It was a foreclosure home when we got it.
951
952 Mr. Nunnally - When did you purchase it?

953
954 Mr. Jeffers - In 2000. My wife and I are staying there now.
955
956 Mr. Wright - Any further questions of the Board? Is anyone here in
957 opposition to this request? Hearing none, that concludes the case.
958
959 Mr. Blankinship - I don't immediately see the answer to that question. It may
960 be that this property was still connected out to Midview Road. It looks like it was divided
961 from 6212 Midview Road, and it may be that it was all one parcel in '65 when the house
962 was built, or it may be an old variance that we don't have.
963
964 Mr. Wright - A-63-2005.
965
966 Ms. Harris - I move we deny this.
967
968 Ms. Dwyer - Second.
969
970 Mr. Wright - Motion's made by Ms. Harris that we deny, seconded by Ms.
971 Dwyer. Any discussion?
972
973 Ms. Harris - The reason is that we're just in noncompliance with quite a
974 few things here, and at some point we do have to uphold the Code.
975
976 Mr. Wright - You might say that there were some question marks.
977
978 Mr. Kirkland - To build a garage with a garage door and no driveway
979 leading to it could be a real good question mark, a set of steps on the outside, and a
980 shower with no plumbing connected to it.
981
982 Mr. Wright - Motion's made and seconded that we deny A-63. Any
983 further discussion?
984
985 Ms. Dwyer - I think the reason we should deny it is because he has
986 reasonable use of his property without the variance, and the fact that he went ahead
987 and built it without getting the appropriate approvals should not allow him to then
988 circumvent the law.
989
990 Mr. Wright - I think that's part of it. All in favor of denial, say aye.
991 Opposed, say no. It's denied.
992
993 After an advertised public hearing and on a motion by Ms. Harris, seconded by Ms.
994 Dwyer, the Board **denied** application **A-63-2005** for a variance to build a 2-story
995 detached garage at 1733 Old Oakland Road (Parcel 807-705-5976).
996
997 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
998 Negative: 0

999 Absent: 0
1000
1001 The Board denied the request as it found from the evidence presented that there was
1002 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
1003 Virginia to justify a variance.
1004
1005 **A-64-2005** **JASON S. KELLY** requests a variance from Section 24-9 to build a
1006 one-family dwelling at 7978 Turner Road (Parcel 829-688-2319),
1007 zoned A-1, Agricultural District (Varina). The public street frontage
1008 requirement is not met. The applicant has 0 feet public street
1009 frontage, where the Code requires 50 feet public street frontage.
1010 The applicant requests a variance of 50 feet public street frontage.
1011
1012 Mr. Wright - Does anyone else desire to speak with reference to this
1013 matter? Would you raise your right hand and be sworn please?
1014
1015 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1016 truth, the whole truth, and nothing but the truth, so help you God?
1017
1018 Mr. Kelly - I do. My name is Jason Kelly. I'm here today to request a
1019 variance. I have no street frontage. What I have here is a 20-acre farm that was
1020 subdivided within the family, and the part circled in red is my piece of property, and I
1021 would like to build a home on it.
1022
1023 Mr. Wright - When was that done?
1024
1025 Mr. Kelly - 2003.
1026
1027 Mr. Wright - 2003 the subdivision was done, a family subdivision?
1028
1029 Mr. Kelly - Yes.
1030
1031 Mr. Wright - And what type of legal access do you have to the property?
1032
1033 Mr. Kelly - There is a right-of-way from Turner Road up to my mother's
1034 house, and it goes all the way back to a barn, and I would use that driveway and go
1035 around and come back from behind the house.
1036
1037 Mr. Wright - It appears that we have a copy of the deed, dated March 17,
1038 2003, by which you acquired title, and that deed grants you a right-of-way in width.
1039
1040 Mr. Kelly - Fifty feet.
1041
1042 Mr. Wright - I see that.
1043
1044 Ms. Dwyer - How many other divisions have been made of this property,

1045 this original farm?
1046
1047 Mr. Kelly - Just this one time.
1048
1049 Mr. Nunnally - Is this going to be for your personal use, Mr. Kelly?
1050
1051 Mr. Kelly - Personal use? My house.
1052
1053 Mr. Nunnally - Have you read the conditions on this property, about legal
1054 access and you've got to be a family member?
1055
1056 Mr. Kelly - The problem is that she deeded it to all the grandchildren,
1057 four of us, and my property is sort of sandwiched in between their property, so that's
1058 why I don't have road frontage.
1059
1060 Mr. Wright - Do the others have road frontage?
1061
1062 Mr. Kelly - The two up front do. There's a piece behind my piece, that
1063 obviously doesn't have road frontage. The ones in front of me do.
1064
1065 Ms. Dwyer - It sounds like there have been four divisions of this property
1066 then.
1067
1068 Mr. Kelly - Amongst four people, yes.
1069
1070 Ms. Dwyer - When were the other divisions made?
1071
1072 Mr. Kelly - At the same time?
1073
1074 Ms. Dwyer - So four divisions at the same time. Mr. Blankinship, doesn't
1075 that require zoning?
1076
1077 Mr. Blankinship - As long as they're family divisions, they're exempt from the
1078 subdivision requirement.
1079
1080 Mr. Kelly - It's a family farm; it's been in the family for probably a
1081 hundred years.
1082
1083 Mr. Wright - Any further questions of members of the Board? Is anyone
1084 here in opposition to this request? Hearing none, that concludes the case. A-64-2005.
1085
1086 Mr. Nunnally - Move we approve it.
1087
1088 Ms. Harris - Second.
1089
1090 Mr. Wright - Motion's been made, and seconded, we approve it. Any

1091 further discussion? All in favor, say aye. Opposed, say no. It's approved.

1092

1093 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.
1094 Harris, the Board **granted** application **A-64-2005** for a variance to build a one-family
1095 dwelling at 7978 Turner Road (Parcel 829-688-2319). The Board granted the variance
1096 subject to the following conditions:

1097

1098 1. This variance applies only to the public street frontage requirement. All other
1099 applicable regulations of the County Code shall remain in force.

1100

1101 2. Approval of this request does not imply that a building permit will be issued.
1102 Building permit approval is contingent on Health Department requirements, including,
1103 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
1104 of a well location.

1105

1106 3. At the time of building permit application, the applicant shall submit the
1107 necessary information to the Department of Public Works to ensure compliance with the
1108 requirements of the Chesapeake Bay Preservation Act and the code requirements for
1109 water quality standards.

1110

1111 4. At the time of building permit application the owner shall demonstrate that the
1112 parcel created by this division has been conveyed to members of the immediate family,
1113 and the subdivision ordinance has not been circumvented.

1114

1115 5. The applicant shall present proof with the building permit application that a legal
1116 access to the property has been obtained.

1117

1118 6. The owners of the property, and their heirs or assigns, shall accept responsibility
1119 for maintaining access to the property until such a time as the access is improved to
1120 County standards and accepted into the County road system for maintenance.

1121

1122 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

1123 Negative: 0

1124 Absent: 0

1125

1126 The Board granted this request, as it found from the evidence presented that, due to the
1127 unique circumstances of the subject property, strict application of the County Code
1128 would produce undue hardship not generally shared by other properties in the area, and
1129 authorizing this variance will neither cause a substantial detriment to adjacent property
1130 nor materially impair the purpose of the zoning regulations.

1131

1132 **A-66-2005** **CHRISTINE W. PEARSON** requests a variance from Section 24-9
1133 to build a one-family dwelling at 1301 Hatteras Road (Parcel 839-
1134 724-2208), zoned A-1, Agricultural District and C-1, Conservation
1135 District (Varina). The public street frontage requirement is not met.
1136 The applicant has 0 feet public street frontage, where the Code

1137 requires 50 feet public street frontage. The applicant requests a
1138 variance of 50 feet public street frontage.
1139
1140 Mr. Wright - Does anyone else desire to speak with reference to this
1141 matter? Would you raise your right hand and be sworn please?
1142
1143 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1144 truth, the whole truth, and nothing but the truth, so help you God?
1145
1146 Ms. Pearson - I do. My name is Christine Pearson. My family owned 1300
1147 Hatteras Road and all the way out to Grapevine, and my father and mother owned it,
1148 and I guess they sold the property at 1300 and split among me and my brother and
1149 sister, and we all received about a seven-acre lot. The lot that I have does not meet the
1150 road frontage requirements. It's on a dead end, and from what I understand, on the plat
1151 there is thirty feet road frontage, and it requires fifty, but because it's on an unofficial
1152 dead end, without the sewage thing at the bottom, that they consider it zero road
1153 frontage. I'm selling my property, and I have a contract on it, and then we found out that
1154 we needed a variance for road frontage.
1155
1156 Mr. Wright - So the public road dead ends right at your property?
1157
1158 Ms. Pearson - Yes sir.
1159
1160 Mr. Wright - And how large is your property?
1161
1162 Ms. Pearson - It's seven acres.
1163
1164 Ms. Dwyer - How much of that seven acres is buildable?
1165
1166 Ms. Pearson - There's only one area that's buildable that we found that's
1167 perkable, and I guess that doesn't meet the road frontage requirement from the way the
1168 house is built, is that correct.
1169
1170 Ms. Dwyer - So we're not requiring public water and sewer here?
1171
1172 Ms. Pearson - I don't know. This is my stepfather; he's my helper here to
1173 help me understand.
1174
1175 Mr. Wright - State your name for the record if you're going to speak.
1176
1177 Mr. Seay - Yes sir. My name is Bernard Seay. I'm an ex County
1178 employee; I used to do real estate appraisals for you. In this situation, the lot has a lot
1179 of slope to it, and the proposed site (we're just getting this from the realtor because the
1180 gentleman who wanted to buy the land tried to get a variance, but since it was not in his
1181 name, Christy had to come and get the variance, so that we could go ahead and sell the
1182 property), the proposed house is going to be a two-story house. I think it shows on the

1183 plat around 1900 square feet, and it's going to be in line with the other houses in the
1184 subdivision that this property abuts.
1185
1186 Mr. Wright - When was this lot created?
1187
1188 Mr. Seay - It was created on June 11, 2001, and I have a plat if you'd
1189 like to see that.
1190
1191 Mr. Wright - Mr. Blankinship, in your notes, you say the lot was created in
1192 1975. I don't understand that.
1193
1194 Ms. Pearson - The whole land was owned by my mother's family, and they
1195 gave a certain amount to my father and my mother when they moved to that area, so
1196 that's when we moved to the area. I guess they bought the property in 1975, and we
1197 moved there in 1976.
1198
1199 Mr. Wright - So in 1975 this particular lot was created?
1200
1201 Ms. Pearson - This particular lot was just part of the large lot that was
1202 owned; it was 20-some acres. It was separated and divided in 2001.
1203
1204 Mr. Nunnally - But the total property was 20-some acres?
1205
1206 Ms. Pearson - Yes sir.
1207
1208 Mr. Nunnally - You say you're selling this property, seven acres, to a
1209 builder?
1210
1211 Ms. Pearson - Whoever's going to build on the land. I don't know if he's a
1212 builder or not.
1213
1214 Mr. Nunnally - Does he have a contract subject to getting this variance?
1215
1216 Ms. Pearson - Yes sir.
1217
1218 Mr. Nunnally - Who is the buyer? Is it a contractor or individual or who?
1219
1220 Ms. Pearson - It's an individual.
1221
1222 Ms. Dwyer - Do we know how many acres are buildable? I'm concerned
1223 about it being further subdivided in the future.
1224
1225 Mr. Seay - Are you talking about the 7.335 acres? Very little.
1226
1227 Ms. Dwyer - We don't know exactly?
1228

1229 Mr. Seay - I would guess two.
1230
1231 Ms. Dwyer - Two acres out of the seven, and that's if you have septic
1232 systems as opposed to public water and sewer?
1233
1234 Mr. Seay - I think it's going to be well, and I think it's got to be above
1235 ground, not septic system.
1236
1237 Ms. Dwyer - But if we had public water and sewer, probably more
1238 acreage would be buildable.
1239
1240 Mr. Seay - I wouldn't think so.
1241
1242 Ms. Dwyer - Not without a variance
1243
1244 Mr. Wright - Any further questions of the Board? Anything further you
1245 wish to present?
1246
1247 Ms. Pearson - Personally, it's very important to us because my husband
1248 and I are moving to South America, so our moving is dependent upon this variance, so
1249 that's why we're having to come. We actually move July 7, so we're trying to take care
1250 of this before we're out of the country.
1251
1252 Mr. Wright - Is anyone here in opposition to this request? Hearing none,
1253 that concludes the case. A-66-2005.
1254
1255 Mr. Blankinship - Mr. Chairman, Mr. O'Kelly noticed a typo in the first
1256 condition. We referred to the lot width, and it should say frontage. This variance only
1257 applies to the lot frontage.
1258
1259 Ms. Harris - Which case?
1260
1261 Mr. Blankinship - A-66-2005.
1262
1263 Mr. Wright - Do I hear a motion?
1264
1265 Mr. Nunnally - Move to approve it.
1266
1267 Ms. Harris - Second.
1268
1269 Mr. Wright - Motion's made and seconded that we approve A-66-2005,
1270 with the correction to the frontage. Basis for the approval, that they would not have
1271 beneficial use without the variance.
1272
1273 Ms. Harris - Division among relatives.
1274

1275 Ms. Dwyer - Can we say that only one house can be built on this
1276 particular lot, as a condition to the variance? I guess I'm concerned about, we have a 7
1277 ½-acre parcel here.
1278
1279 Mr. O'Kelly - I Think a good portion of that lot is zoned C-1 Conservation.
1280 I don't know how much is outside of the C-1.
1281
1282 Mr. Wright - I think we can put whatever conditions we want. Whether
1283 that would stand up as an unconstitutional restriction, I don't know.
1284
1285 Mr. Blankinship - I think it would have to come back to you in either case.
1286 They would need an additional variance, and in the research of that variance, we would
1287 see that you had made a conscious decision only to allow one house. I think it serves
1288 that purpose.
1289
1290 Mr. Wright - Motion is made and seconded that we approve A-66. Is
1291 there any further discussion?
1292
1293 Ms. Dwyer - What about adding a condition that only one house be put on
1294 as a condition to this variance being granted?
1295
1296 Mr. Nunnally - That would be fine with me.
1297
1298 Ms. Harris - No, I don't feel we have to restrict what a person can do with
1299 their property to this extent. I think we're creating a Code, and we don't have the
1300 authority to write a Code, not from this seat.
1301
1302 Ms. Dwyer - Would you be comfortable with multiple houses being on
1303 this?
1304
1305 Ms. Harris - Not necessarily. Let's say the subdivision, the whole section
1306 might have been subdivided, but I agree with what Mr. Blankinship says. It has to come
1307 before this Board, the next variance, if there is going to be another one, and we can
1308 make a decision. I don't see the need to legislate what a person can build on his own
1309 property.
1310
1311 Mr. Wright - Each case stands on its own. So your motion is that we
1312 approve it "as is," with the conditions as stated. And the second was to that affect.
1313
1314 Mr. Blankinship - Actually Mr. Nunnally made the motion; Ms. Harris seconded
1315 the motion. In effect, I think Ms. Dwyer proposed an amendment.
1316
1317 Mr. Wright - You still stick with that? We'll vote on it, whether you want to
1318 add that condition.
1319
1320 Mr. Kirkland - It comes back to us, no matter what.

1321
1322 Ms. Dwyer - Right, but I think the fact that a variance has been granted
1323 does set some sort of precedent, and that would make it clear that this is what we had
1324 in mind, that we did not have in mind a subdivision coming from the terminus of this
1325 road. It was a family division, one person building a home.

1326
1327 Mr. Kirkland - I think that all the wetlands, and by the time she puts the
1328 septic in and the well, there's not going to be enough room to put but one house on
1329 there, and that's going to be tight. You've got to have a lot of room for a drain field.

1330
1331 Mr. Wright - If you want to pursue that, then we'll vote it up or down,
1332 whether you want to amend it.

1333
1334 Ms. Dwyer - I'll withdraw my amendment.

1335
1336 Mr. Wright - All in favor of the motion as made that we approve it, say
1337 aye. Opposed, no. Approved, with the conditions as stated in the report.

1338
1339 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.
1340 Harris, the Board **granted** application **A-66-2005** for a variance to build a one-family
1341 dwelling at 1301 Hatteras Road (Parcel 839-724-2208). The Board granted the
1342 variance subject to the following conditions:

1343
1344 1. This variance applies only to the public street frontage. All other applicable
1345 regulations of the County Code shall remain in force.

1346
1347 2. Approval of this request does not imply that a building permit will be issued.
1348 Building permit approval is contingent on Health Department requirements, including,
1349 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
1350 of a well location.

1351
1352 3. At the time of building permit application, the applicant shall submit the
1353 necessary information to the Department of Public Works to ensure compliance with the
1354 requirements of the Chesapeake Bay Preservation Act and the code requirements for
1355 water quality standards.

1356
1357 4. Approval from the Public Works Department to access the property off the
1358 terminus of Hatteras Road is required.

1359
1360 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1361 Negative: 0
1362 Absent: 0

1363
1364 The Board granted this request, as it found from the evidence presented that, due to the
1365 unique circumstances of the subject property, strict application of the County Code
1366 would produce undue hardship not generally shared by other properties in the area, and

1367 authorizing this variance will neither cause a substantial detriment to adjacent property
1368 nor materially impair the purpose of the zoning regulations.

1369
1370 **A-67-2005** **DR. SHOBA GHOSH** requests a variance from Section 24-94 to
1371 build an addition at 11701 Park Forest Court (Aubury at Wyndham)
1372 (Parcel 740-777-9427), zoned R-4AC, One-family Residence
1373 District (Conditional) (Three Chopt). The rear yard setback is not
1374 met. The applicant proposes 24 feet rear yard setback, where the
1375 code requires 35 feet rear yard setback. The applicant requests a
1376 variance of 11 feet rear yard setback.

1377
1378 Mr. Wright - Does anyone else desire to speak with reference to this
1379 case? Would you raise your right hand and be sworn please?

1380
1381 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1382 truth, the whole truth, and nothing but the truth, so help you God?

1383
1384 Mr. Yates - I do. John Yates. I am here on behalf of Dr. Ghosh, and
1385 what we are trying to do is build an in-law suite off the rear of this house. The in-law
1386 suite will be approximately 548 square feet, 14 by 32. It will comply with all the County
1387 Codes, of course, and the actual addition will match the existing dwelling, in foundation,
1388 siding and roof, and that's pretty much what we're trying to do. We're actually putting a
1389 room with a full bath on it for the occupants' mother, who is 76 years old.

1390
1391 Mr. Wright - Right now there's a house on the property.

1392
1393 Mr. Yates - That's correct, yes sir.

1394
1395 Mr. Wright - Being utilized.

1396
1397 Mr. Yates - That's correct, and Dr. Ghosh and their family are the
1398 original occupants. They've been there since 1997 and don't really wish to move. They
1399 have a family and children in that neighborhood and wish to stay.

1400
1401 Mr. Wright - The problem we face is a recent Supreme Court case which
1402 pretty well removes any authority from this Board to grant any kind of variance of this
1403 type.

1404
1405 Mr. Yates - Really? Okay.

1406
1407 Ms. Dwyer - The test is if there is reasonable and beneficial use of the
1408 property without the variance, which would be the case here, because they would still
1409 have reasonable use of the property as a residence. Then we don't have the authority
1410 to grant the variance.

1411
1412 Mr. Yates - Do we go before the Board of Supervisors, or is there

1413 nothing that we can do?
1414
1415 Mr. Wright - The only relief would be if the Legislature would amend the
1416 State Law to enlarge the powers of this Board or some Board to do it. That would be
1417 the only thing that I could suggest.
1418
1419 Mr. Yates - When did that go into effect? I'm just curious.
1420
1421 Ms. Dwyer - Several months ago.
1422
1423 Mr. Wright - The Supreme Court decided last year.
1424
1425 Mr. Kirkland - It's called the Cochran case if you'd like to look it up.
1426
1427 Mr. Yates - I will; I'll look it up. I appreciate your help. Thank you.
1428
1429 Mr. Wright - A-67-2005.
1430
1431 Mr. Nunnally - Move we deny it.
1432
1433 Mr. Wright - Motion is made that we deny it. Is there a second?
1434
1435 Mr. Kirkland - Second.
1436
1437 Mr. Wright - Motion's made and seconded that we deny A-67. Is there
1438 any further discussion? Basis for the denial?
1439
1440 Mr. Nunnally - Cochran case.
1441
1442 Mr. Wright - Any discussion? All in favor of denial, say aye. Opposed,
1443 no. It's denied.
1444
1445 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
1446 Kirkland, the Board **denied** application **A-67-2005** for a variance to build an addition at
1447 11701 Park Forest Court (Aubury at Wyndham) (Parcel 740-777-9427).
1448
1449 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1450 Negative: 0
1451 Absent: 0
1452
1453 The Board denied your request as it found from the evidence presented that there was
1454 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
1455 Virginia to justify a variance.
1456
1457 Mr. Wright - Next case.
1458

1459 **A-68-2005** **MATTHEW HAWKINS** requests a variance from Section 24-94 to
1460 build an attached garage at 9621 Fireside Drive (Hearthside Ridge)
1461 (Parcel 755-766-5739), zoned R-3AC, One-family Residence
1462 District (Conditional) (Brookland). The minimum side yard setback
1463 and total side yard setback are not met. The applicant has 8 feet
1464 minimum side yard setback and 20 feet total side yard setback,
1465 where the Code requires 10 feet minimum side yard setback and
1466 25 feet total side yard setback. The applicant requests a variance
1467 of 2 feet minimum side yard setback and 5 feet total side yard
1468 setback.

1469
1470 Mr. Wright - Does anyone else desire to speak with reference to this
1471 case? Would you raise your right hand and be sworn please?

1472
1473 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1474 truth, the whole truth, and nothing but the truth, so help you God?

1475
1476 Mr. Hawkins - I do. My name is Matthew Hawkins. My wife and I
1477 purchased this house last fall, and when we were in the market for a house, we were
1478 hoping to get a house with a garage. It didn't look like it was going to be in our budget
1479 at the time though. We found this house that we really fell in love with, so we went
1480 ahead and purchased it. Since then, we have come into some additional funding, and
1481 really would like to build onto our home in the form of an attached garage, partly for
1482 storage of an automobile, increased storage of lawn tools, additional items, etc., so we
1483 have been looking into the possibility of building on.

1484
1485 The current location of the driveway, including the contour and sloping of where the
1486 curb meets the road, when the driveway goes straight back, it comes up beside the
1487 house. On the side of the house, there is an existing, not really an addition, but a small
1488 shed-like area, which includes a mudroom, a small outdoor shed, and a small porch.
1489 What we're proposing is tearing down that existing structure, which is approximately five
1490 feet wide, and over top of it and extending outward, building an attached garage onto
1491 the property, such that the garage door would be in line with the current driveway, so
1492 that we would be able to drive straight into our garage.

1493
1494 We haven't made a final decision about the depth of the garage at this point. We're still
1495 trying to evaluate some costs and see what's going to be financially feasible, but we
1496 would like for the garage to be able to extend out to the outer edge of the driveway. We
1497 think that would help aesthetically, work better with the property, and would be again
1498 more in line with the way the driveway points straight up to the house like that. That's
1499 what we are proposing to do.

1500
1501 Mr. Kirkland - Mr. Blankinship, would there be any reason they couldn't
1502 build a detached garage in the back yard, meeting the setback requirements?

1503
1504 Mr. Blankinship - It looks like there's plenty of room in the rear of the lot.

1505
1506 Mr. Wright - Mr. Hawkins, I think we're faced with the same problem on
1507 this case as we were on the prior case. The Supreme Court decision basically removes
1508 authority from this Board to grant a variance where you already have a reasonable use
1509 of the property. You have a residence, and you have reasonable use. We're in the
1510 same predicament here with respect to this type of request.
1511
1512 Mr. Hawkins - I understand. Could I ask for a point of clarification perhaps?
1513 The setback numbers measurements that I received in the packet were a foot or two off,
1514 or different, from the numbers that I had surmised, based on my own measurements
1515 and the survey that we had obtained shortly before purchasing the property, so I was
1516 curious to know where the discrepancy in measurements came from
1517
1518 Mr. Blankinship - We round down to the whole foot. Oftentimes, people
1519 submit a plan; then what they actually build is a matter of inches larger than what they
1520 had actually looked at, or there's a survey error of three or four inches; then you'd have
1521 to come back before the Board to revise your variance if it was anything greater than
1522 what was originally requested. So we round down to the whole foot, just to allow for
1523 that sort of difference.
1524
1525 Mr. Hawkins - My measurements had shown that I had about twelve and a
1526 half feet to work with, where I was actually proposing a sixteen-foot wide garage, but it
1527 sounds like according to the measurements I received in my package, that it was more
1528 like eleven feet to work with, rather than the twelve and a half that I had thought.
1529
1530 Mr. Wright - It doesn't make a whole lot of difference because if it violates
1531 the requirement, we don't have the authority to vary it.
1532
1533 Mr. Hawkins - I guess what I'm trying to determine is, if I need to make
1534 other arrangements to build within the set requirements, I guess I'm trying to clarify
1535 where that is, so I know how far I can come.
1536
1537 Mr. Wright - What I would suggest is that you go have a conference with
1538 Mr. Blankinship or his office, because he can help you with that and ensure that it is
1539 within the required limits. .
1540
1541 Mr. Wright - Any further questions of the Board? Is anyone here in
1542 opposition to this request? Hearing none, that concludes the case. A-68-2005.
1543
1544 Mr. Kirkland - I make a motion that we deny it, on the basis that a detached
1545 garage could be built and meet all the side and rear setback requirements and no need
1546 for the variance.
1547
1548 Ms. Dwyer - Seconded.
1549
1550 Mr. Wright - Motion's made and seconded. Any further discussion?

1551
1552 Ms. Dwyer - I would just like to add that they do have the option of putting
1553 the garage in the back yard, but even without that, they still have reasonable use of the
1554 property.

1555
1556 Mr. Wright - They have an option there. All in favor of denial, say aye.
1557 Opposed, no. It's denied.

1558
1559 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
1560 Dwyer, the Board **denied** application **A-68-2005** for a variance to build an attached
1561 garage at 9621 Fireside Drive (Hearthside Ridge) (Parcel 755-766-5739).

1562
1563 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1564 Negative: 0
1565 Absent: 0

1566
1567 The Board denied the request as it found from the evidence presented that there was
1568 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
1569 Virginia to justify a variance.

1570
1571 Mr. Wright - The Board will take a five-minute recess.

1572
1573 **Beginning at 10:00**

1574
1575 **A-58-2005** **DAVID A. MORSE** appeals a decision of the Director of Planning
1576 pursuant to Section 24-116(a) regarding the property at 11008
1577 Ryall Road (Parcel 776-770-4876), zoned A-1, Agricultural District
1578 (Brookland).

1579
1580 Mr. Shumate - May it please the Board, my name is William Shumate. Mr.
1581 Morse had consulted with me a couple of months ago before he filed this, and he
1582 discussed the possibility of my representing him. I hadn't heard back from him, but he
1583 evidently listed me on the application to be contacted. I've tried to reach Mr. Morse the
1584 last two or three days, without success. I know I saw a copy of a letter dated May 9,
1585 when he was requesting to have a date sometime in June, because I told him I'd try to
1586 keep a date open in case he retained me. In the letter it inadvertently referred to the
1587 meeting as June 26, 2005. I'm concerned that Mr. Morse may be somewhat confused
1588 about the date of this hearing. I would respectfully request, I'm not representing him
1589 here at this point, but I felt the duty to come down when I saw that, to ask that you defer
1590 the case if he did not appear. I will be glad to take it upon myself to try to contact him,
1591 both by phone and in writing, but I would make that request.

1592
1593 Mr. Wright - What letter are you referring to?

1594
1595 Mr. Shumate - I have a copy

1596

1597 Mr. Wright - From the County?
1598
1599 Mr. Shumate - From the County dated May 9, 2005. I can tender it if you
1600 would like.
1601
1602 Mr. Wright - If you would give it to Mr. Blankinship, I'd like to see that.
1603
1604 Mr. Blankinship - He originally thought, for some reason, that he would be
1605 heard on the May Agenda, so we sent him a letter notifying him that it would be the
1606 June Agenda, and it does appear to be a typo here where we put June 26, rather than
1607 June 23.
1608
1609 Mr. Tokarz - Mr. Chairman, Tom Tokarz, from the County Attorney's
1610 Office. Given the date error on the letter, I would concur with Mr. Shumate that the case
1611 ought to be continued for a month to give Mr. Morse an opportunity to appear. He
1612 would think the hearing is on the 26th.
1613
1614 Mr. Wright - I know we have people here

1615
1616 **(Female voice from audience)** - I'm the neighbor. I'm the lady next door to them, and
1617 they asked me if I was going to be here yesterday, so they know it's today.
1618
1619 Mr. Blankinship - They must know it.
1620
1621 **(Same female voice)** - They all know it; the whole road knows it.
1622
1623 Mr. Shumate - They know it's supposed to be here, Mr. Tokarz.
1624
1625 Mr. Wright - Mr. Morse, do you know for a fact that he knows that the
1626 hearing is today?
1627
1628 **(Same female voice)** - Oh my gosh, yes, the whole neighborhood knows it.
1629
1630 Mr. Kirkland - Ma'am, would you state your name and be sworn if you're
1631 going to testify.
1632
1633 Mr. Blankinship - Sir, if you're going to speak, you might as well too. Do you
1634 swear that the testimony you are about to give is the truth, the whole truth, and nothing
1635 but the truth, so help you God?
1636
1637 Ms. Vincent - So help me God. Candy Denise Vincent, 11062 Ryall Road.
1638 I am the lady who owns the property adjacent to the property that has the issues and
1639 with which we're dealing with, with Community Maintenance, Aaron Graves. He has
1640 helped me. We had a lot of issues, and it is not even a question, one in a billion, that he
1641 knew it was today. It is today; he knew it.
1642

1643 Mr. Blankinship - I tried to call him yesterday to tell him about rescheduling it
1644 from 9:00 to 10:00 and got no answer and no answering machine, so I haven't spoken
1645 to the appellant.
1646

1647 Mr. Wright - What is the basis for your statement that he knows we're
1648 having the hearing today?
1649

1650 Ms. Vincent - I was called by Catherine Walsh yesterday and asked if we
1651 were coming today, and she told me that there was no sense in going, that he had
1652 already sold the equipment. I've sold the house now. I've had my house for sale, and
1653 there were some issues as far as visual issues with adjacent neighbors. Aaron Graves
1654 with Community Maintenance has helped me to do everything legally and to clean it up.
1655 Consequently, I closed selling the house on the 15th. I'll be gone, but the lady who's
1656 there, I don't think it's fair for them to have all these I've got pictures of all
1657 the work trucks and everything.
1658

1659 Ms. Dwyer - We're not necessarily going to hear the case right now. Who
1660 is Catherine Walsh?
1661

1662 Ms. Vincent - The neighbor across the street.
1663

1664 Ms. Dwyer - So you haven't spoken to Mr. Morse directly about today's
1665 hearing?
1666

1667 Ms. Vincent - They don't speak to me any more. They cut down my trees,
1668 but they don't speak to me.
1669

1670 Mr. Wright - We're in a little bind here, because the County sent him a
1671 letter and told him it was the 26th. We want to make sure we do the right thing, so that
1672 we don't have another legal issue, and he comes up and we get into all of that.
1673

1674 Ms. Vincent - Right. I understand your position.
1675

1676 Mr. Wright - We've got the County has requested that we continue it to
1677 the next meeting of the Board to get this date clarification, and I don't want to do
1678 something that would cause us further legal problems. We think we're going to hear
1679 testimony that we're on solid ground. Do you have a comment, sir?
1680

1681 Mr. Smith - My name is Ronald J. Smith. I live at 11611 Bent Pine, right
1682 behind the location that's in question. The only problem I have is this gentleman's
1683 coming up; he's not retained; he doesn't represent him. I don't see how he can request
1684 it. I know Mr. Tokarz, the County Attorney, jumped up, to back him up on the letter, but
1685 I just don't think it's right.
1686

1687 Mr. Wright - No matter how we got it, we have information that a letter
1688 went out from the County telling him the hearing was going to be on the 26th. That puts

1689 us in a little bind. If we continue it, it would be done at 9:00 at the next meeting of the
1690 Board, the first case on the docket, July 28 would be the hearing date. Mr. Blankinship,
1691 this letter's dated May 9 – when did the legal notice go out?
1692
1693 Mr. Blankinship - That would have gone three weeks ago today.
1694
1695 Mr. Wright - Was that before or after May 9?
1696
1697 Mr. Blankinship - The affidavit with the date on there is in the file there. The
1698 notice letters were mailed June 2nd, and the date on there is June 23.
1699
1700 Mr. Wright - So he has an official notice from the Planning Office. Mr.
1701 Tokarz, have you seen this?
1702
1703 Mr. Tokarz - Yes, I've seen the notice.
1704
1705 Mr. Wright - We have an official notice that went out on June 2, after that
1706 letter of May 9, that the hearing would be today, June 23.
1707
1708 Mr. Tokarz - Yes sir.
1709
1710 Mr. Wright - Looks like to me that would trump the May 9 letter.
1711
1712 Mr. Tokarz - I think it does. Technically speaking, I agree with you. If we
1713 were down to a throw-down, and it had to be heard today, I would agree that this notice
1714 would supercede the previous letter. The only thing that concerns me, Mr. Chairman,
1715 is, I want to make sure that you have a fair opportunity to hear from the applicant who's
1716 not here. I'm not saying this occurred, but I can see how the applicant would get this
1717 notice and would say "this is an official verification of what I got in the letter from Mr.
1718 Blankinship, which is on my calendar," and then go back and compare the dates. I
1719 personally would rather err on the side of caution and have Mr. Morse here, have Mr.
1720 Morse have the opportunity to be here and be heard, rather than go forward today, and
1721 then have him come back later and say he relied on the letter in April. I'm sorry I've got
1722 these people here, and it's inconvenient to them, but by the same token I don't have Mr.
1723 Morse here, and I think if you go ahead and hear it, you may come back next month and
1724 have him come back and say "you heard it because I relied on this letter from May 9."
1725
1726 Ms. Dwyer - And we may not have the witnesses that you've been able to
1727 get today.
1728
1729 Mr. Tokarz - What I'd like to do, to minimize the inconvenience to them, I
1730 think I've got enough evidence to completely argue this case before the Board,
1731 whenever the hearing is, but I would be glad to meet with these folks right after this and
1732 get with them and get whatever additional information they've got, so that I could
1733 present it at a later date, if it's your pleasure to continue the case. They wouldn't have
1734 to come back.

1735
1736 Mr. Blankinship - Since the hearing was advertised and noticed, do you think
1737 it'd be appropriate to take their testimony now, but not make a decision, and then
1738 continue the hearing to next month, so that they don't have to come back.
1739
1740 Mr. Tokarz - Mr. Chairman, I'd be happy for the Board to do that.
1741
1742 Mr. Blankinship - Mr. Shumate, you've stated that you're not here representing
1743 Mr. Morse, but do you have anything to add, since we've heard the attorney from one
1744 side?
1745
1746 Mr. Shumate - No, your Honor, the only thing I would say is I felt an ethical
1747 duty to come down, and if I were Mr. Morse, I would be a little reluctant to have one side
1748 heard and then a month goes by, and then he has to try to contest what happened a
1749 month ago. I think it ought to be just deferred. I will take it upon myself, in addition to
1750 the notices, of personally writing, of making sure he knows when the date is, and I
1751 apologize for the inconvenience, but I think discretion is the better part of valor, and I
1752 would respectfully ask that you just defer it for a month.
1753
1754 Mr. Wright - If we do, I want a guarantee that it would be heard at 9:00
1755 o'clock, Mr. Tokarz, so that these people would not be inconvenienced.
1756
1757 Ms. Vincent - I'm going to be out of state. (*Unintelligible, away from*
1758 *microphone*)
1759
1760 Mr. Wright - You could submit a written statement, and that would be just
1761 as effective as your personal testimony; it would be introduced into the record.
1762
1763 Mr. Tokarz - I will get her information, Mr. Wright. As soon as this is over,
1764 I will go outside and meet with her.
1765
1766 Mr. Wright - A written statement will be just as effective as your speaking.
1767
1768 Mr. Shumate - May I ask one question?
1769
1770 Mr. Wright - Yes sir.
1771
1772 Mr. Shumate - Who requested that this be set aside from 9:00 o'clock to
1773 10:00 o'clock?
1774
1775 Mr. Blankinship - That was my decision.
1776
1777 Mr. Shumate - On whose request? Just you alone, because of them, or
1778 what?
1779
1780 Mr. Blankinship - Mr. Tokarz requested it.

1781
1782 Mr. Tokarz - I requested it because of a conflict.
1783
1784 Mr. Wright - We have to have the County Attorney here, and he was not
1785 able to get here at 9:00, because of some conflict, so that's why they shoved it back, but
1786 as I say, I guarantee you next time we'll have it at 9:00.
1787
1788 Ms. Vincent - Can I ask a quick question? With this case, the issue is
1789 whether he can park a truck that weighs over 5,000 pounds in the neighborhood, and
1790 then chickens – they're gone, and the trucks are gone. I don't know if they're planning
1791 on bringing them back, but I'm leaving. I don't want to leave the person that I've sold
1792 this house to, a month down the road, all that stuff coming right back. That's the issue
1793 that I want to try to make sure that she's
1794
1795 Mr. Wright - It won't come back.
1796
1797 Ms. Vincent - That's right. The rules are the rules. How can you keep
1798 stretching a rule out? I don't understand that.
1799
1800 Mr. Wright - Nothing's stretched. He's got a right, under the Virginia law,
1801 to appeal a decision of the Planning Director, and that's what he's done. The County's
1802 still standing by its rules.
1803
1804 Ms. Vincent - 5,000 pounds if it's over; 5,000 pounds if it's under. There's
1805 no argument.
1806
1807 Mr. Wright - That's why Mr. Tokarz is here. He's representing the
1808 County.
1809
1810 Ms. Dwyer - Mr. Chairman, maybe we could reconsider the notion of
1811 these folks testifying, because it's through no fault of their own that they're here, and we
1812 may not hold the hearing today, and their testimony would be a sworn statement, much
1813 like an affidavit, and the opposition would have an opportunity to read the transcript in
1814 preparation for their case next month, which would give them some sort of an
1815 advantage.
1816
1817 Mr. Wright - What's the pleasure of the Board, to go ahead and let these
1818 folks testify while they're here?
1819
1820 Mr. Kirkland - Their legal counsel, well, he's really not their legal counsel, --
1821 Mr. Chairman, I agree, we go ahead and get their testimony and get it in the record, and
1822 therefore
1823
1824 Mr. Wright - They'll have a chance to read it.
1825
1826 Ms. Dwyer - Mr. Morse will have a chance to look at the – we could

1827 provide him with a transcript of your testimony, and he could use that in preparation for
1828 his case.

1829
1830 Mr. Wright - We ought to do what we can to help these folks. Is that the
1831 pleasure of the Board? Motion made – is there a second, that we go ahead and hear
1832 these folks?

1833
1834 Ms. Dwyer - We're going to go ahead and hear these folks and then hold
1835 in abeyance any decision until we hear from the other side next month. I second.

1836
1837 Mr. Wright - All in favor say aye. All right, we'll go ahead and take your
1838 testimony.

1839
1840 Upon a motion by Mr. Kirkland, seconded by Ms. Dwyer, the Board **determined to hear**
1841 **testimony on A-58-2005** to appeal a decision of the Director of Planning pursuant to
1842 Section 24-116(a) regarding the property at 11008 Ryall Road (Parcel 776-770-4876).

1843
1844 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1845 Negative: 0
1846 Absent: 0

1847
1848 Mr. Wright - All right, we'll go ahead and take your testimony.

1849
1850 Mr. Kirkland - If you would, re-state your name again.

1851
1852 Ms. Vincent - Candy Denise Vincent, 11062 Ryall Road, until the 15th,
1853 when I close on selling the house. I bought the property that we're talking about, my
1854 house, 2 ½ years ago. When I got there, it was woods, just a line of trees, blocking the
1855 neighbors. A year ago they took the trees down, put in a driveway, with all illegal specs,
1856 and the County already knows about it. They put in a chicken pen, a fence which
1857 encroached a foot and a half over on my property

1858
1859 Mr. Wright - I hate to interrupt you, but that is not before us. The
1860 chickens, they're gone. The only issue we have is this truck. The rest of it he didn't
1861 appeal, and the rest of it will be enforced by the County. If they come back, all you have
1862 to do is call Mr. Blankinship, and the County will see to it that it is enforced, if it requires
1863 legal action, whatever. The only issue we've got here is the parking of this commercial
1864 vehicle exceeding 5,000 pounds. You'd save us a little time if we just address that
1865 issue. We guarantee that the rest of it's gone, or will be gone. The County will see that
1866 all these other things are complied with.

1867
1868 Ms. Vincent - I don't know what else to say, other than if you want all the
1869 pictures; I've faxed them all to Aaron Graves and Dick Glover.

1870
1871 Mr. Blankinship - Of the truck?

1872

1873 Ms. Vincent - License plates, and my car got egged after the chickens had
1874 to go.
1875
1876 Mr. Wright - If you can help us with anything concerning the truck. That
1877 is the only issue before the Board today. I don't mean to cut you off from all this other,
1878 but that testimony is not relevant to the case.
1879
1880 Mr. Blankinship - What can you tell us about the truck?
1881
1882 Ms. Vincent - It's just a commercial vehicle. He comes home at 6-ish at
1883 night. Of course it's all gone now. I don't know whether Catherine, the lady that I talked
1884 about before – she told me that he sold everything.
1885
1886 Mr. Wright - If you will pass those – we'd love to have those pictures.
1887 We'll make those part of the record.
1888
1889 ***(Unintelligible male voice from audience)***
1890
1891 Mr. Wright - I can understand your frustration with these other things, but
1892 I just want to assure you, they will comply, we can guarantee you that.
1893
1894 Ms. Vincent - I just, I put my house up for sale; nobody was buying it, and
1895 everybody was questioning all that equipment, noise, etc. They've remedied the
1896 problem; my house is sold; I close on the 15th. It's a Community Maintenance issue.
1897
1898 Mr. Wright - You can rest assured that all that stuff will be complied to.
1899 Yes sir, state your name for the record again.
1900
1901 Mr. Smith - Ronald J. Smith, Sr. I live at 11611 Bent Pine Road, located
1902 behind Ms. Vincent's address, right behind Mr. Morse. Same thing he had, commercial
1903 vehicle in his driveway, pulling a large, heavy-duty trailer, with a back hoe and
1904 everything else on it and stationed it in the property, which I didn't like, and he ran it
1905 over there, same as my neighbor does, but that's not in question. It has been missing
1906 now for the past thirty days or so.
1907
1908 Mr. Wright - So it's not there now?
1909
1910 Mr. Smith - It's not there now. He took the name off the side of the truck
1911 at one time and still left it there, but now the vehicle is removed.
1912
1913 Mr. Wright - Maybe that's why he didn't show up.
1914
1915 Mr. Smith - Or wait for the decision here to bring it back, we don't know,
1916 but there was a lot of contention in the neighborhood; we're not sure whether he's going
1917 to bring it back after she moves, but we can notify you if he does.
1918

1919 Mr. Wright - The best thing you can do is keep the County informed. If
1920 you see it back, call right away. After this hearing, if the County is upheld, we will see
1921 that the truck is not there. I apologize for deferring it from 9:00 to 10:00, but in this type
1922 of case we need legal counsel to represent the County, and Mr. Tokarz had a conflict at
1923 9:00 o'clock, and that's the reason we moved it to 10:00 o'clock.
1924
1925 Mr. Smith - The decision will be made

1926
1927 Mr. Wright - July 28, yes sir. This will be at 9:00 o'clock.
1928
1929 Ms. Dwyer - Mr. Shumate, if you would like to contact Mr. Blankinship to
1930 get a transcript of what was just said and see copies of what was admitted, that would
1931 be

1932
1933 Mr. Shumate - I will advise him of it, and I appreciate your forbearance and
1934 consideration. Could I have the letter I handed up, back, or do you need that for the
1935 record?
1936
1937 Mr. Blankinship - Tom, did you keep that?
1938
1939 Mr. Wright - This is it. Is this it?
1940
1941 Mr. Shumate - That's just my only copy. I just want to make sure I send it to
1942 the right address.
1943
1944 Mr. Blankinship - We have the same thing in the file.
1945
1946 Mr. Wright - All right sir, thank you very much. A-58 has been continued
1947 until the next meeting.
1948
1949 Upon a motion by Mr. Kirkland, seconded by Ms. Dwyer, the Board **deferred** application
1950 **A-58-2005** appealing a decision of the Director of Planning regarding the property at
1951 11008 Ryall Road (Parcel 776-770-4876), from the June 23, 2005, until the July 28,
1952 2005, meeting.
1953
1954 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1955 Negative: 0
1956 Absent: 0
1957
1958 Mr. Wright - Next case.
1959
1960 **A-69-2005** **ARIEL SKELLEY** requests a variance from Section 24-95(i)(2) to
1961 build an in-ground pool and gazebo at 13 Highland Road
1962 (Westham) (Parcel 759-731-8984), zoned R-1, One-family
1963 Residence District (Tuckahoe). The accessory structure location
1964 requirement is not met. The applicant proposes a pool and gazebo

1965 in the front yard, where the Code allows accessory structures in the
1966 rear yard.
1967
1968 Mr. Wright - Does anyone else desire to speak with reference to this
1969 matter? Would you raise your right hand and be sworn please?
1970
1971 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1972 truth, the whole truth, and nothing but the truth, so help you God?
1973
1974 Ms. Skelley - I do. My name is Ariel Skelley, and I live at 13 Highland
1975 Road.
1976
1977 Mr. Clark - I do. My name is H. E. Clark, and I live at 11 Highland Road.
1978
1979 Ms. Skelley - I've lived at 13 Highland Road for three years, and for two
1980 years this house has been under an extensive renovation. We're just finishing up the
1981 interior and the façade, and we have great plans for the landscape, and I was just
1982 incredibly surprised when I came in to get my permit for a swimming pool and was told
1983 that my back yard is actually my front yard. I have photographs, and I have a plat of the
1984 land to show you, and I also have my neighbor here, Mr. Clark, who can address that
1985 historically, that has been the back yard, which is where I plan on putting the pool. I do
1986 have photographs; I have three copies if you would like me to approach and give them
1987 to you.
1988
1989 Ms. Dwyer - I think we already have the plat.
1990
1991 Ms. Skelley - On mine, I've drawn in where the pool would go, and it
1992 matches up with your photographs, and I also have an architectural rendering of what
1993 the pool will look like. This house is on a corner, of Highland Road and East Highland
1994 Road, which has only just recently been named East Highland, within the last six
1995 months. It was called Crescent Avenue, and Crescent Avenue/East Highland Road is a
1996 small road that accesses three driveways. My house, and historically the house before
1997 it, were all sited so that Crescent Avenue/East Highland is the back of the house, and if
1998 you see in the photographs, the driveway entrance to my house is on Highland Road,
1999 and the next photograph shows the entrance to my house, and the third photograph
2000 shows the area in question. You'll see that there's a large stone wall, and there's also a
2001 large border of hollies. It's behind this stone wall and this border of hollies, where I
2002 would propose to put the pool. The pool is to be sited twelve feet away from the house.
2003
2004 Ms. Dwyer - As I look at the aerial photograph, I believe there's a new
2005 house that's been built at 13 East Highland Road, and that faces East Highland.
2006
2007 Ms. Skelley - That one does face East Highland. It has about a two
2008 hundred foot driveway, so it's a ways off East Highland, but yes, it does face East
2009 Highland.
2010

2011 Ms. Dwyer - And the others, it appears at least from the aerial photograph
2012 that 19 East Highland also faces East Highland. How about 15?
2013
2014 Ms. Skelley - Fifteen does not face East Highland; fifteen you can see if
2015 they skew over a little bit, that one is on an east/west access, as opposed to a
2016 north/south, which would face it towards East Highland.
2017
2018 Ms. Dwyer - Mr. Blankinship, what are the circumstances of changing the
2019 road Crescent to East Highland. Why was that done, and did Crescent not used to be a
2020 public road, and East Highland now is, or
2021
2022 Mr. Blankinship - I don't know why the name of the road was changed. As far
2023 as I know, it's always been public.
2024
2025 Ms. Skelley - I could address that if you'd like. Yes, it's always been
2026 public. It's a small access road.
2027
2028 Mr. Clark - It's a dead end.
2029
2030 Ms. Skelley - It's a dead end, right. And they changed the name because
2031 there was a problem with numbering. It seemed that by fitting that new house in, they
2032 ran out of numbers, and it was proposed to make it 13 ½, which would have been a
2033 problem because I'm 13, but I never disputed it. It seems the County no longer uses
2034 half numbers, so there was just no way to fit a number in, so they changed the name of
2035 the road.
2036
2037 Ms. Dwyer - To distinguish it from your road.
2038
2039 Ms. Skelley - To distinguish it, exactly. Crescent Avenue had never been
2040 marked; there was never any mark there. It had never been used. In fact, none of the
2041 neighbors used Crescent Avenue as an address. They all used Highland Road as an
2042 address. Therefore, that's the problem. The next neighbor over was 15 Highland Road,
2043 so there was no number to give them between 13 and 15.
2044
2045 Mr. Wright - Mr. Blankinship, where is the rear yard?
2046
2047 Mr. Blankinship - The rear yard, according to the definition of the Code, would
2048 be the north property line, adjoining 11 Highland Road.
2049
2050 Mr. Wright - That would be their driveway, wouldn't it?
2051
2052 Mr. Blankinship - Yes.
2053
2054 Mr. Wright - You said here that there's adequate room in the rear yard for
2055 the pool, but they'd have to put the pool in the middle of the driveway.
2056

2057 Mr. Kirkland - Is that correct?
2058

2059 Mr. Wright - There's no room back there, other than, it looks like a
2060 driveway, a paved area, for access to the garage.
2061

2062 Ms. Skelley - Correct. If I put a swimming pool in my driveway, I would not
2063 be able to access my garage. This house was built in 1969, but even the house before
2064 1969 was sited in the same way. If you would like to hear from Mr. Clark, who has been
2065 at that address for 40 years.
2066

2067 Mr. Clark - Thank you. My wife and I have been at 11 since 1966.
2068 When we moved there, there was a big two-story Colonial brick home at number 13.
2069 The two elderly ladies who lived there passed away. Their heirs sold the house and
2070 land to Edward and Virginia Gunst. They had the house removed and built the current
2071 house. They placed it with the front of the house facing the side of my property, and the
2072 back of the house facing what was Crescent Lane, which became Highland Road,
2073 which became East Highland Road. Of course that's a corner lot. Where Ms. Skelley is
2074 proposing to put the pool, is at the back of the house – the Gunsts built that house to
2075 even have a greenhouse onto it, which Ms. Skelley has removed from the back, but that
2076 was the back of the house, and now, as she mentioned, that area is shaded from view
2077 by the wall and by the large hollies that go down East Highland Road, so that if she puts
2078 a pool and anything else she wants to back there, it will be totally covered, hidden from
2079 view by anyone coming up either of the corners from East Highland Road to Highland
2080 Road, so it will be totally out of view. I don't see any reason why in the world that she
2081 can't put a pool or whatever she wants to back there.
2082

2083 Ms. Dwyer - Mr. Blankinship, how is it the County determines front yard
2084 versus rear yard, and I assume that how it's actually used has no relation to that
2085 definition.
2086

2087 Mr. Blankinship - Right, the Code states that on a corner lot the shorter of the
2088 two street frontages shall be the front. How the house is oriented is a different issue
2089 from the lot. The front of the lot is on East Highland Road, no matter where the front of
2090 the house is.
2091

2092 Mr. Clark - There has never been an access from East Highland Road
2093 to the property. It has always been on Highland Road as shown in this picture.
2094

2095 Ms. Dwyer - I guess it's not unusual for a corner lot to have access from a
2096 side street or the street that is not actually the front of the house. What Mr. Blankinship
2097 is explaining is what the County Code determines by definition, what is the front yard
2098 and what is the rear yard, and according to the County Code, the front yard is East
2099 Highland, even though it's not used as a front yard.
2100

2101 Mr. Clark - The address is Highland, 13 Highland, not 1 East Highland,
2102 and it was never Crescent. It's always been Highland Road, even though there's never

2103 been an access from the other side.
2104
2105 Ms. Dwyer - True. That's why I was trying to explore the history of East
2106 Highland and its name change. And East Highland is a public road and has been since
2107 this house was built?
2108
2109 Mr. Blankinship - To the best of my knowledge. It doesn't look like it was built
2110 all the way through; it's built at both ends, but didn't connect all the way through.
2111 Whether it's maintained by the County, I'm not sure, but it does show as public right-of-
2112 way.
2113
2114 Mr. Clark - It is **(unintelligible)**, and it is maintained by the County
2115
2116 Mr. Wright - Mr. Blankinship, the County has no latitude, no discretion as
2117 to consider other things in determining where the front of the property is?
2118
2119 Mr. Blankinship - No sir.
2120
2121 Ms. Skelley - Meaning that if you buy a corner lot, you always will have to
2122 site your house to the smaller

2123
2124 Mr. Blankinship - You can site your house however you want, but the shorter
2125 of the two street frontages is going to be the front, and so accessory structures can only
2126 be in the rear, as defined.
2127
2128 Ms. Skelley - It really limits the property – are you saying there's no way to
2129 have a variance on that, even though it wouldn't disturb anyone. No one is here
2130 contesting it. I only have neighbors who are in favor of it.
2131
2132 Mr. Blankinship - If the application of the Code prohibited you from making any
2133 reasonable use of your property, then a variance would be an appropriate relief.
2134
2135 Ms. Skelley - That's what I'm doing here today, am I not?
2136
2137 Ms. Dwyer - What we're wrestling with is the Supreme Court case that
2138 has been very clear in limiting BZA authority, and that case says that if without the
2139 variance, the homeowner still has reasonable use of their property, then this Board does
2140 not have jurisdiction to grant a variance.
2141
2142 Ms. Skelley - But in this case, I don't have reasonable use, because as
2143 you can see by the illustration, the driveway takes up the entire north side, which by the
2144 definition of the County would be my back yard, so there is no way to use the back yard.
2145
2146 Ms. Dwyer - If you can use it as a residence, that's considered
2147 reasonable use.
2148

2149 Ms. Skelley - It limits the use of that back yard totally, and I really would
2150 like to appeal to you that it does limit that back yard/front yard use.
2151
2152 Ms. Dwyer - It basically prevents you from putting anything between your
2153 house and East Highland, any sort of structure, other than landscaping.
2154
2155 Ms. Skelley - And there's no way to appeal that?
2156
2157 Ms. Dwyer - Not that I'm aware of.
2158
2159 Ms. Skelley - The argument that I'm not able to use the northern side
2160 doesn't hold?
2161
2162 Ms. Dwyer - The Supreme Court case has addressed this precisely and
2163 says if you have use of the residence without the variance, that is reasonable use of the
2164 property.
2165
2166 Mr. Wright - And that is stated so clearly that we can't get around it.
2167
2168 Mr. Clark - Her address is wrong.
2169
2170 Ms. Harris - You can appeal anything. We've been appointed by the
2171 Circuit Court. We have the jurisdiction that was outlined in the Code.
2172
2173 Ms. Skelley - But like Mr. Clark had just said, that my address is wrong,
2174 because my address goes to Highland Road, not East Highland Road, so therefore is
2175 there something we could address there, the fact that my number is on Highland Road?
2176
2177 Mr. Clark - They'll make you change your number.
2178
2179 Mr. Blankinship - The addresses are set so that emergency vehicles can find
2180 your home; that's the important thing there, and they need to make the turn off of
2181 Highland to get to you in case of an emergency, so we want the address to reflect that.
2182
2183 Mr. Wright - Looks like to me it's sort of inconsistent.
2184
2185 Ms. Skelley - It does seem to be inconsistent here.
2186
2187 Mr. Wright - I think it goes back to determining what your front yard is,
2188 and that's going to be the key here.
2189
2190 Ms. Skelley - That's why I feel that there's sort of a loop-hole, is because
2191 this house historically has always been sited this way, for as long as we can remember.
2192 Mr. Clark has lived there for forty years. I understand what the ruling is on the Supreme
2193 Court; however, that would hold if my address was East Highland, but my address has
2194 never been East Highland. Historically, no house has been on East Highland or

2195 Crescent Avenue. That's why I feel that we have a little room here.
2196
2197 Mr. Blankinship - Let me read you the definition of "Lot Line, Front," from
2198 Section 24-3 of the County Code. "The front lot line is the line separating the lot from a
2199 street on which it fronts. On a corner lot, the front shall be deemed to be along the
2200 shorter dimension of the lot."
2201
2202 Ms. Skelley - When was that Code written?
2203
2204 Mr. Blankinship - 1960.
2205
2206 Mr. Clark - I think you ought to get an appeal.
2207
2208 Ms. Skelley - Yes, how do I appeal this? Particularly since no one is
2209 arguing this; it's so clearly the back yard. It just really limits, not only my property and
2210 my use of it, but quite frankly, it limits my ability to sell the property because it makes
2211 the back yard useless. This is a house that's invited to be on Garden Tour; this is a
2212 historic house; this is a very high-end house. I have architectural drawings; this is a
2213 very expensive pool going in. This is clearly something that would enhance the
2214 neighborhood.
2215
2216 Mr. Wright - I'm sure there's no question about that, but what you're
2217 asking us to do, in addition, is to amend the County Ordinance, and you might pursue
2218 with the Board of Supervisors to amend the Ordinance or something like that, but that's
2219 the second phase of it. We don't have the authority to amend the County Ordinance.
2220
2221 Ms. Skelley - That just seems so sad, because the truth is half the cases
2222 that I've seen here, you haven't really been able to hear them, and yet you're the people
2223 who are really helping our community to remain beautiful and organized,
2224
2225 Mr. Wright - We try.
2226
2227 Ms. Skelley - but this law that's on the books from so long ago
2228 seems so indiscriminate. If you look up on that drawing, you're looking at five lots. Of
2229 the five lots, three houses do not face the way that the County says that the back yards
2230 and front yards should be. More than half of the properties aren't even complying right
2231 now, and it just seems there should be some way to go around, and it seems we're
2232 cutting our own Board off at the knees, and that's a real shame. I'll do whatever it
2233 takes. If you want me to appeal higher up, I will do that. It just seems a shame.
2234
2235 Mr. Wright - I don't think there's any question; you certainly have a right
2236 to appeal the decision of this Board to the Circuit Court of Henrico County. You ought
2237 to discuss it with a lawyer before you go to that expense. I think there are other ways.
2238 Normally, people go to their Supervisor when they have problems like this, and things
2239 begin to happen, if enough people do it.
2240

2241 Ms. Skelley - Could you help me? In other words, you're suggesting my
2242 next step is to talk to the Supervisor.
2243
2244 Mr. Wright - It would be Ms. O'Bannon.
2245
2246 Ms. Skelley - In fact I did talk to him when I first came in.
2247
2248 Mr. Wright - Her -- Mrs. O'Bannon. Tuckahoe.
2249
2250 Ms. Skelley - Oh, okay.
2251
2252 Ms. Dwyer - There would need to be a change to the County Ordinance,
2253 perhaps related to pool location, for example, permitting that in a different portion of the
2254 property.
2255
2256 Mr. Wright - Or to leave this Board some discretion in determining
2257 whether it impacts on the neighborhood, but we don't have that discretion. It's
2258 unfortunate.
2259
2260 Ms. Skelley - Thank you for hearing me, and I'll follow through. It is
2261 unfortunate. I appreciate it.
2262
2263 Mr. Wright - A-69-2005.
2264
2265 Ms. Dwyer - Mr. O'Kelly, did you see any opportunity to do additional
2266 research on this question of the roadways and the designation of the front yard because
2267 of the changing of the name of the roadways – do you see any reason to defer this case
2268 and do any research on that question?
2269
2270 Mr. O'Kelly - That's a good question, Ms. Dwyer. I'd have to defer to Mr.
2271 Blankinship. It looks like he has studied the existing conditions pretty carefully in the
2272 past six weeks.
2273
2274 Mr. Blankinship - The original plat shows it as a platted street; they testified
2275 that the County does maintain the street, which makes it in my mind, I don't see any
2276 question but that it's a public street.
2277
2278 Ms. Dwyer - I move that we deny A-69.
2279
2280 Ms. Harris - Second.
2281
2282 Mr. Wright - Motion's made and seconded that we deny A-69. Any
2283 discussion?
2284
2285 Ms. Dwyer - The basis for the denial would be that the homeowner in this
2286 case has reasonable and beneficial use of this property as a residence without the

2287 granting of this variance, which means that this Board does not have the authority to
2288 grant a variance in this case.

2289
2290 Ms. Harris - To me, if they differ with the Code as to rear and front yard
2291 requirements, they probably need to investigate that further, but not with this body.

2292
2293 Ms. Dwyer - I think that looking at it outside the law, that this would be a
2294 wonderful addition to this home and to this neighborhood. I see that there's no
2295 detriment whatsoever; unfortunately, the law, as I think Mr. Blankinship has indicated, is
2296 quite clear as to which portion of the property is considered the front yard, and Cochran
2297 is quite clear as to the authority of this Board, so I see no way around it under the law
2298 as it currently is written.

2299
2300 Mr. Wright - If they were to pursue that and get the front yard changed,
2301 they wouldn't need a variance.

2302
2303 Mr. Kirkland - It would be in the side yard though.

2304
2305 Mr. Wright - It can't be in the side yard, either way you cut it, so they
2306 would have to put it in the back yard..

2307
2308 Ms. Dwyer - One option might be to change the ordinance, with regard to
2309 placement of pools or accessory structures in general.

2310
2311 Mr. Wright - They should go to the Board of Supervisors.

2312
2313 Mr. O'Kelly - One other option is to suggest that the location of accessory
2314 structures may be located in other yards by approval of a conditional use permit, or a
2315 special exception, which would leave it with the Board of Zoning Appeals.

2316
2317 Mr. Wright - The motion's made and seconded. All in favor of denial, say
2318 aye. All opposed, no. It's denied.

2319
2320 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.
2321 Harris, the Board **denied** application **A-69-2005** for a variance to build an in-ground
2322 pool and gazebo at 13 Highland Road (Westham) (Parcel 759-731-8984).

2323
2324 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

2325 Negative: 0

2326 Absent: 0

2327
2328 The Board denied your request as it found from the evidence presented that there was
2329 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
2330 Virginia to justify a variance.

2331
2332 Mr. Wright - Next case.

2333
2334 **UP-11-2005** **WESTHAMPTON MEMORIAL PARK** requests a conditional use
2335 permit pursuant to Section 24-52(h) to replace an existing
2336 maintenance building at 10000 Patterson Avenue (Parcel 744-742-
2337 5871), zoned A-1, Agricultural District and R-1, One-family
2338 Residence District (Tuckahoe).
2339

2340 Mr. Wright - Does anyone else desire to speak with reference to this
2341 case? Would you raise your right hand and be sworn please?
2342

2343 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2344 truth, the whole truth, and nothing but the truth, so help you God?
2345

2346 Mr. Keith - Mr. Chairman, my name is Jeff Keith, President of Keith
2347 Engineering, a firm in Crozier, Virginia. We're representing the Westhampton Memorial.
2348 They have a small maintenance building, about 900 square feet, which is not useful,
2349 kind of difficult to get into, and it's small, and they want to replace it with an 1800 square
2350 foot building that's built at ground level, so that a lot of the outside storage material will
2351 be able to be put inside this building. We're about 55 feet from the property line, and
2352 there's a large growth of trees between there and where we propose to put the building.
2353 The recommendations here from staff are that we plant trees, that we move the doors of
2354 the building so that they're not open to the residential area, so they open in towards the
2355 cemetery, and then we can do a lighting and landscaping plan for the staff. We're in
2356 agreement with all these comments.
2357

2358 Mr. Wright - You're saying that you're willing to change the entrance to
2359 the southwest side from the northwest. Would that be one of your conditions, Mr.
2360 Blankinship?
2361

2362 Mr. Blankinship - Yes sir, we had recommended that.
2363

2364 Ms. Dwyer - How far is the existing house from the property line where
2365 the residences are?
2366

2367 Mr. Keith - Fifty-five feet. The nearest corner the other way is a lot
2368 more, but it's fifty-five feet to the property line.
2369

2370 Ms. Dwyer - What will the building be used for?
2371

2372 Mr. Keith - Maintenance, maybe maintenance of the backhoes, and
2373 storage of some of their equipment. Now you can't put a backhoe in their maintenance
2374 building, and a lot of equipment is not very accessible, so this would be accessible, so a
2375 lot of the outside material that you see there now that's sensitive to the weather, will be
2376 kept in this building.
2377

2378 Ms. Dwyer - How high does a building have to be to accommodate a

2379 backhoe?
2380
2381 Mr. Keith - How high? I think I would need about ten or twelve feet. It's
2382 a sixteen-foot building.
2383
2384 Ms. Dwyer - These buildings are visible from the residences behind,
2385 when the trees lose their leaves.
2386
2387 Mr. Keith - If you went today, you absolutely wouldn't see anything.
2388 When the leaves are off the trees, you will see the building, so that's why we would
2389 agree to put a line of trees in there.
2390
2391 Ms. Dwyer - A line of evergreens?
2392
2393 Mr. Keith - Yes.
2394
2395 Ms. Dwyer - The reason I asked, because when I visited the site, some of
2396 the neighbors were concerned about the spraying of creosote in this area, and that it
2397 drained down as the water flowed from this property, which is uphill from their homes.
2398 The smelling of creosote was draining into their yards.
2399
2400 Mr. Keith - I don't know that they're spraying creosote, but I'm thinking
2401 that the water flows down the other way, down towards the cemetery. There are
2402 ordinances against whatever they would use, but I don't know of anything they would
2403 use that would be different from what they're doing now.
2404
2405 Ms. Dwyer - Will this building have a floor, or will it be dirt?
2406
2407 Mr. Keith - It will be concrete slab. You'll be able to drive into it.
2408
2409 Ms. Dwyer - So it will be used for storage and materials and vehicles, but
2410 no spraying of creosote or anything like that will be done inside the building?
2411
2412 Mr. Keith - No.
2413
2414 Ms. Dwyer - You don't know where or how that's done now?
2415
2416 Mr. Keith - No, I have no idea how that's done now. What they're
2417 looking for is just more room to store inside and do maintenance work.
2418
2419 Ms. Dwyer - What color will it be?
2420
2421 Ms. Keith - I don't know that they've selected a color, probably a beige
2422 or some color that's
2423
2424 Mr. Wright - We could have a condition to regulate the color.

2425
2426 Ms. Dwyer - Probably a dark green or brown would be less visible.
2427
2428 Mr. Keith - I don't think they would object to any color that you would
2429 suggest.
2430
2431 Mr. Kirkland - Is this a pre-fab metal building?
2432
2433 Mr. Keith - Yes, pre-engineered metal building.
2434
2435 Mr. Kirkland - What brand is this? What brand do you suggest?
2436
2437 Mr. Keith - They're looking; I don't think they've placed the order, but
2438 Morton is the one.
2439
2440 Mr. Kirkland - I know a lot of them come in several colors.
2441
2442 Mr. Keith - This one comes in a lot of different colors.
2443
2444 Mr. Kirkland - Is this going to be insulated, so noise wouldn't be a problem
2445 if they're in there working on equipment, banging with hammers.
2446
2447 Mr. Keith - No, especially if you move the doors the other way. If the
2448 doors were open toward the residences, you might hear some noise, but if you turn it
2449 around the other way, all the noise will go towards the cemetery.
2450
2451 Ms. Harris - We don't have an expiration date on this use permit. Is it
2452 possible that we could put an expiration date? I'm thinking that whereas there are no
2453 complaints or persons speaking against this use, but to give ourselves some leeway as
2454 far as future complaints. We've been told that the conditions are satisfactory to the
2455 contractor, but if residents do have a complaint who live 55 feet away, we're not giving
2456 ourselves any type of comeback on this.
2457
2458 Mr. Wright - I think that would be very difficult. Once you grant
2459 something like this, to put a limit on it; we're supposed to determine that at the time it's
2460 granted.
2461
2462 Ms. Harris - Before it's granted, I'm asking can we have a

2463
2464 Mr. Wright - I know that, but we should determine all this before it's
2465 granted, that it would not impact on the neighbors and put whatever conditions we want.
2466 If they violate these conditions, then they would be subject to revocation.
2467
2468 Mr. Blankinship - Mr. Keith, can you give us some idea of how much money
2469 they will be investing in this – just a ball park figure.
2470

2471 Mr. Keith - Probably around \$40-50,000, that range. It's an 1800
2472 square foot building, and it's \$20 a square foot, so \$40-50,000.
2473
2474 Ms. Harris - Okay, I'm still here.
2475
2476 Mr. Blankinship - If it were rescinded after a year, that money would be gone,
2477 and they would have no recourse.
2478
2479 Ms. Harris - I know in other cases we do have a health and safety type
2480 statement; I'm just wondering if we need to do that.
2481
2482 Mr. Wright - We could put all the conditions we want. That's what we
2483 need to do, to insure that when we grant it, that it doesn't cause any problems, but I
2484 don't have any problem with that. We could put some additional language that it would
2485 not impact on the health and safety of the vicinity – I think that's a good idea.
2486
2487 Mr. Keith - That would be true of almost any building you built
2488 anywhere.
2489
2490 Mr. Kirkland - You will be getting a building permit for this, correct?
2491
2492 Mr. Keith - Yes.
2493
2494 Ms. Dwyer - Is there any reason why the building couldn't be put on the
2495 opposite side of this little access drive that's drawn in here – it's not really a paved road.
2496
2497 Mr. Keith - It could be, but that's where they have all their equipment.
2498 That's where their storage building is now, and it might infringe some on the use of the
2499 cemetery if you put it somewhere else. They've sold out part of that property, and they
2500 have enough to do for quite a few years for a cemetery, but that would take some
2501 evaluation if you moved that. They're using the existing well and septic tank.
2502
2503 Ms. Dwyer - The well and septic that are there for the existing house?
2504
2505 Mr. Keith - Yes.
2506
2507 Ms. Dwyer - Is your testimony that the building couldn't be any lower?
2508
2509 Mr. Keith - I would say to make it functional, I wouldn't make it any
2510 lower than that.
2511
2512 Ms. Dwyer - Because

2513
2514 Mr. Keith - Because if you get a backhoe in, you might have to raise it
2515 inside to do repairs on it, or a lot of the equipment, you might have to get a lift in there to
2516 work on it. You need the ceiling height.

2517
2518 Ms. Dwyer - What about the noise factor for doing mechanical work
2519 inside a metal building? It sounds to me that might create a lot more noise for the
2520 neighbors than the existing house.
2521
2522 Mr. Keith - It will be an insulated building, because we're going to heat
2523 it. The insulation will be part of the noise barrier.
2524
2525 Ms. Dwyer - Will the ceiling be insulated, or just the walls.
2526
2527 Mr. Keith - Ceiling and walls. Now all this work that we're talking about,
2528 most of it goes on outside right now, so we know it will be better.
2529
2530 Mr. Wright - Also, we could put a condition about noise.
2531
2532 Mr. Wright - Any further questions of the Board? Is anyone here in
2533 opposition to this request? Hearing none, that concludes the case. UP-11-2005.
2534
2535 Mr. Kirkland - I move we approve it.
2536
2537 Ms. Harris - Second the motion.
2538
2539 Mr. Wright - Motion's been made and seconded. Any discussion?
2540
2541 Ms. Harris - This is UP-11, right? Please add a condition having to do
2542 with noise, nuisance, health and safety, so we can head off a lot of neighbors coming in
2543 and complaining at a later date.
2544
2545 Mr. O'Kelly - Ms. Harris, how about if we added a condition that limited
2546 the hours of operation, rather than some indisputable noise level, or you could put both.
2547
2548 Mr. Wright - We need to address this, as Ms. Harris said, so that we can
2549 insure that the operation will not be detrimental to the surrounding properties now, and
2550 give us some out if they do something like that. Then we could call them in like we did
2551 the Quarry.
2552
2553 Ms. Dwyer - So typically, our hours of operation limitations, Mr. O'Kelly,
2554 would be 7:00 to 6:00, Monday through Friday?
2555
2556 Mr. O'Kelly - I think that would be reasonable based on this type of use.
2557
2558 Mr. Kirkland - **(Unintelligible)** if they've got the backhoe parked inside the
2559 maintenance shed, and they need to get stuff out for a funeral on Sunday or Saturday.
2560 They've got to open the building up, and it would be used at that time.
2561
2562 Ms. Harris - They may have a need to use it.

2563
2564 Mr. Kirkland - We might have to do it Monday through Saturday or
2565 something like that.
2566
2567 Ms. Dwyer - Sunday too.
2568
2569 Mr. Kirkland - Yes, because they might have to get it out to dig the graves,
2570 have it ready for Monday morning, so you never know.
2571
2572 Ms. Dwyer - It's a seven-day-a-week possible operation.
2573
2574 Mr. Kirkland - People don't stop on the weekends.
2575
2576 Ms. Dwyer - No one was here from the cemetery to answer those kinds of
2577 questions, but other faiths might have funerals on Sunday. Non-Christian faiths. So
2578 perhaps limit the hours but not the days.
2579
2580 Mr. Wright - What are we agreed upon not as far as conditions? 7:00 am
2581 to 6:00 pm, limit the operation, seven days a week. Do you want to put something in for
2582 noise and welfare and safety?
2583
2584 Ms. Dwyer - Something about no activity conducted on the premises will
2585 negatively affect the health, safety, and welfare of the adjacent neighborhood or be a
2586 nuisance to the neighborhood.
2587
2588 Mr. Blankinship - I see a Show Cause Hearing coming on.
2589
2590 Ms. Dwyer - They did commit that the building would be insulated. I'd like
2591 to note that somewhere.
2592
2593 Mr. Wright - Put that in the conditions, insulated walls and roof.
2594
2595 Ms. Dwyer - In terms of color, I don't know what you think about that, but I
2596 think it is visible from the adjacent neighbors. I could see that it was, although not as
2597 much in the summertime with the leaves out. With the building to be dark green or dark
2598 brown in color, and that would make it, but you know, if they have a bright aluminum
2599 building and the sun shines off it

2600
2601 Mr. Kirkland - Make it bright red.
2602
2603 Mr. Nunnally - They did say something about green, didn't they?
2604
2605 Ms. Dwyer - Either dark green or dark brown, and that would not be as
2606 reflective, because it is going to be quite a bit taller and quite a bit larger than the
2607 existing building. The only other thought that I had would be moving it farther away
2608 from the existing location, but if they're going to be planting evergreens and having the

2609 building that color, I think it's because they wanted to use the existing septic system.
2610
2611 Mr. Blankinship - Did we say anything about lighting in the suggested
2612 conditions?
2613
2614 Ms. Dwyer - No.
2615
2616 Ms. Harris - Oh yes we did.
2617
2618 Ms. Dwyer - A landscape and lighting plan has to be submitted.
2619
2620 Mr. Kirkland - You can work that out.
2621
2622 Mr. Wright - I don't know why they need any lighting, except inside the
2623 building.
2624
2625 Mr. Blankinship - We just want to make sure they don't put out the twenty-foot
2626 pole light.
2627
2628 Mr. Wright - They didn't ask for any lighting outside the building, did
2629 they?
2630
2631 Mr. Blankinship - Not specifically.
2632
2633 Mr. Wright - We didn't approve any.
2634
2635 Ms. Dwyer - But they could put it in there, presumably, if we approve it.
2636 One other question, Mr. Blankinship. The neighbors were concerned about this
2637 spraying of creosote and the draining onto their property of water that included or
2638 smelled of creosote.
2639
2640 Mr. Kirkland - Creosote's been illegal since the '70's.
2641
2642 Ms. Dwyer - It may not be creosote, it may just be something that smells
2643 like tar or creosote.
2644
2645 Mr. Kirkland - What it is, is the parging that they put on the vaults that go
2646 down in the ground. A lot of times they prep them on site, and they just smear this tar
2647 all on it to make it waterproof, and that's probably what they're smelling.
2648
2649 Mr. Wright - That hasn't got anything to do with this building though.
2650
2651 Ms. Dwyer - It doesn't have anything to do with the condition. I'm just
2652 asking that since we've been made aware of it, we refer it to the appropriate County
2653 enforcement arm and have them look into that situation.
2654

2655 Mr. Wright - Do we have all the conditions straight, Ben?
2656

2657 Mr. Blankinship - I have hours of operation limited to 7:00 am to 6:00 pm; a
2658 statement that no operations on the property shall endanger the public health or safety;
2659 or create a nuisance; the walls and roof shall be insulated or otherwise soundproofed;
2660 and that the color should be dark green or brown.
2661

2662 Mr. Wright - Does that about satisfy? All in favor, say aye. Opposed, no.
2663 It's approved with those conditions.
2664

2665 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
2666 Harris, the Board **granted** application **UP-11-2005** for a conditional use permit to
2667 replace an existing maintenance building at 10000 Patterson Avenue (Parcel 744-742-
2668 5871). The Board granted the use permit subject to the following conditions:
2669

2670 1. Only the improvements shown on the plan filed with the application may be
2671 constructed pursuant to this approval. Any additional improvements shall comply with
2672 the applicable regulations of the County Code. Any substantial changes or additions
2673 may require a new conditional use permit.
2674

2675 2. A detailed landscaping and lighting plan shall be submitted to the Planning
2676 Department with the building permit for review and approval. The tree line north of the
2677 building shall be supplemented with evergreen screening, such as Cryptomeria
2678 japonica. Any lighting shall be shielded to protect the adjacent residences.
2679

2680 3. The overhead doors shall not be oriented towards the northwest or northeast.
2681

2682 4. [ADDED] Hours of operation in and around the maintenance building shall be
2683 limited to 7:00 am to 6:00 pm.
2684

2685 5. [ADDED] No operations on the property shall endanger the public health or
2686 safety, or create a nuisance.
2687

2688 6. [ADDED] The walls and roof shall be insulated or otherwise soundproofed.
2689

2690 7. [ADDED] The building shall be dark green or brown in color.
2691

2692 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

2693 Negative: 0

2694 Absent: 0
2695

2696 The Board granted the request because it found the proposed use will be in substantial
2697 accordance with the general purpose and objectives of Chapter 24 of the County Code.
2698

2699 **A-70-2005** **THAGARD DEAN** requests a variance from Section 24-9 to build a
2700 one-family dwelling at 6079 White Oak Road (Parcel 858-708-1205

2701 (part)), zoned A-1, Agricultural District (Varina). The public street
2702 frontage requirement is not met. The applicant has 0 feet public
2703 street frontage, where the Code requires 50 feet public street
2704 frontage. The applicant requests a variance of 50 feet public street
2705 frontage.
2706

2707 Mr. Wright - Does anyone else desire to speak with reference to this
2708 case? Would you raise your right hand and be sworn please?
2709

2710 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2711 truth, the whole truth, and nothing but the truth, so help you God?
2712

2713 Mr. Dean - Yes I do. The spelling of the first name is incorrect; it's
2714 spelled Thhagard. I'd like to build a single-family dwelling on what I consider home. This
2715 parcel of land in 1950 was acquired by my grandfather, Lee O. Dean; in 1970 my father
2716 acquired it, you granted my brother a right-of-way to it, I don't remember when. I plan
2717 on moving back to the house where I was raised in Henrico County and build a house
2718 that my family can live in.
2719

2720 Mr. Nunnally - Now you live on a 3-acre lot?
2721

2722 Mr. Dean - It's 3.46, I believe, which will have a fifty-foot right-of-way,
2723 which the road is about 1700 feet.
2724

2725 Mr. Nunnally - You say your brother lives back in there?
2726

2727 Mr. Dean - Yes sir, if you look where the proposed right-of-way goes in
2728 an angle, you can see John Aylett and Carol Dean – they own that piece right there,
2729 which is a parcel of the original 76 acres that my father, Arthur Dean, owns right now.
2730 What we're after here – my father has three sons. It's one of the largest tracts that
2731 hasn't been developed in the Elko area, where the new middle school's coming and the
2732 high school, etc. All we're really after is to keep the farm in the family. I believe that's
2733 our right, and my father is getting up in age. He can't maintain; it's a lot of land to take
2734 care of. This was my lifelong dream; I never have really moved out of that area right
2735 there. I'm in White Oak Hills, which is less than two miles from my parents' house right
2736 now, but I'm in a position right now where I've built two houses and gradually moved
2737 and moved until I can come back home without in the future, wanting to move, and
2738 maybe pass this land back to my kids. Everybody in this room knows land is going out
2739 of this world. This whole set-up right here, what I'm proposing is to keep it in the family.
2740 That's one thing that my father said when he gave me the land, was "You keep it."
2741 That's all we're after here right now.
2742

2743 Mr. Nunnally - How much land do you have now?
2744

2745 Mr. Dean - I guess the aerial photo will say about 76 acres.
2746

2747 Ms. Dwyer - The staff report says that this 3.46-acre lot was split off from
2748 a 68.66-acre parcel.

2749
2750 Mr. Dean - That is correct if you look at the new subdivision right there
2751 in yellow. Last year my father sold ten acres of that land right there which was of no
2752 use to him whatsoever. It was not accessible; there is a creek that runs right down
2753 through there. The aerial photo gives you a better look at what that is right now; it's
2754 nothing but woods.

2755
2756 Ms. Dwyer - I guess my concern right now is that as we begin to splinter
2757 off isolated pieces of land, so far from a public road, it diminishes the land's value to be
2758 developed in a concerted way. You may intend to keep it in the family, but fifty years
2759 from now, there may be a demand to have, probably sooner than that, but certainly fifty
2760 years from now we can't predict what will happen. Whatever we do today runs with the
2761 land forever. This is a very large piece of land that could be developed in a
2762 coordinated, planned way in the future, and we might be detracting from that by
2763 splintering off isolated parcels that are located so far from a public road.

2764
2765 Mr. Dean - It would be an immediate family member, which we came to
2766 the hearing when you were planning on going to 10-acre lots, switching over from our A-
2767 1 zoning. I specifically came before you and asked the Board if this would hinder me
2768 from building a house on it. They said it wouldn't; I would be grandfathered in, that I
2769 could build a house on my father's property.

2770
2771 Ms. Dwyer - That ordinance wasn't passed.

2772
2773 Mr. Dean - That's what I'm saying; that's what I was told, and that's why
2774 I've gone through the process, and I've gotten in touch with Ray Jernigan, who is on the
2775 Board of Planning. He advised me of the steps to take to come to you right now. Have
2776 the land surveyed; have the soil analysis done, and then present this to you to show you
2777 what I'm after.

2778
2779 Ms. Dwyer - Family divisions are excepted from the regular zoning
2780 requirements, but that doesn't entitle you necessarily to a variance.

2781
2782 Mr. Dean - I understand that. That's why I'm here asking.

2783
2784 Mr. Wright - Of course down the road, if somebody wanted to get all that
2785 property together, they could acquire this and put it in a development. That doesn't
2786 prohibit somebody from acquiring this and adding it to the development area.

2787
2788 Ms. Dwyer - It's hard to predict the future, but the more little pieces. We
2789 see so much of this; we've seen it in several cases today; so many little pieces that are
2790 pulled out from large parcels have no road frontage, and it will affect future
2791 development. Just that little reserve piece that caused such a controversy today is an
2792 example of what can happen in the future.

2793
2794 Mr. Wright - You've got to weigh that against the right of the person who
2795 owns the property today, uses the property now, down to somewhere fifty or a hundred
2796 years from now.
2797
2798 Mr. Dean - I totally agree with you sir.
2799
2800 Mr. Wright - Any further questions of the Board? Is anyone here in
2801 opposition to this request? Hearing none, that concludes the case.
2802
2803 Mr. Dean - When would I know what the outcome is?
2804
2805 Mr. Wright - We're going to decide it at the end of the docket today. You
2806 can call the Planning Office this afternoon. A-70-2005.
2807
2808 Mr. Nunnally - Move we approve it.
2809
2810 Mr. Wright - Motion's made we approve. Is there a second?
2811
2812 Mr. Kirkland - Second.
2813
2814 Mr. Wright - Any discussion? All in favor, say aye. Opposed, no. Four
2815 ayes, one no.
2816
2817 Mr. Blankinship - Is there an explanation on that one, Mr. Chairman?
2818
2819 Ms. Harris - This is a family division.
2820
2821 Ms. Dwyer - The family division allows them to divide the property without
2822 rezoning it, but it doesn't necessarily entitle them to a variance for the road frontage, is
2823 that correct, Mr. Blankinship?
2824
2825 Ms. Harris - When else would we apply this Code that allows them to
2826 divide it?
2827
2828 Ms. Dwyer - They can have a family division that has sufficient road
2829 frontage, and they wouldn't have to rezone.
2830
2831 Ms. Harris - It's not very realistic when you look at all the land that's in
2832 Varina District and the other rural areas; there's so much acreage that I think the Code
2833 was written for cases like this.
2834
2835 Mr. Wright - They couldn't use it. Certainly looking at the property itself,
2836 there's no reasonable use once you have the lot. We voted on that, didn't we?
2837
2838 Mr. Kirkland - We discussed later.

2839
2840 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
2841 Kirkland, the Board **granted** application **A-70-2005** for a variance to build a one-family
2842 dwelling at 6079 White Oak Road (Parcel 858-708-1205 (part)). The Board granted the
2843 variance subject to the following conditions:

2844
2845 1. This variance applies only to the public street frontage requirement. All other
2846 applicable regulations of the County Code shall remain in force.

2847
2848 2. Approval of this request does not imply that a building permit will be issued.
2849 Building permit approval is contingent on Health Department requirements, including,
2850 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
2851 of a well location.

2852
2853 3. At the time of building permit application, the applicant shall submit the
2854 necessary information to the Department of Public Works to ensure compliance with the
2855 requirements of the Chesapeake Bay Preservation Act and the code requirements for
2856 water quality standards.

2857
2858 4. The applicant shall present proof with the building permit application that a legal
2859 access to the property has been obtained.

2860
2861 5. The owners of the property, and their heirs or assigns, shall accept responsibility
2862 for maintaining access to the property until such a time as the access is improved to
2863 County standards and accepted into the County road system for maintenance.

2864
2865 6. At the time of building permit application the owner shall demonstrate that the
2866 parcel created by this division has been conveyed to members of the immediate family,
2867 and the subdivision ordinance has not been circumvented.

2868
2869 Affirmative: Harris, Kirkland, Nunnally, Wright 4
2870 Negative: Dwyer 1
2871 Absent: 0

2872
2873 The Board granted this request, as it found from the evidence presented that, due to the
2874 unique circumstances of the subject property, strict application of the County Code
2875 would produce undue hardship not generally shared by other properties in the area, and
2876 authorizing this variance will neither cause a substantial detriment to adjacent property
2877 nor materially impair the purpose of the zoning regulations.

2878
2879 **A-71-2005** **EDWARD N. MILLER** requests a variance from Section 24-95(q)(5)
2880 to build a two-story addition at 5908 Park Forest Lane (Park Forest
2881 at Wyndham) (Parcel 742-778-1113), zoned RTHC, Residential
2882 Townhouse District (Conditional) (Three Chopt). The rear yard
2883 setback is not met. The applicant has 31 feet rear yard setback,
2884 where the Code requires 35 feet rear yard setback. The applicant

2885 requests a variance of 4 feet rear yard setback.

2886

2887 Mr. Wright - Does anyone else desire to speak with reference to this
2888 matter? Would you raise your right hand and be sworn please?

2889

2890 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2891 truth, the whole truth, and nothing but the truth, so help you God?

2892

2893 Mr. Miller - I do. My name is Edward Miller. We would like to build a
2894 two-story addition on the back of our house to accommodate our new family. In
2895 January I asked my father to ask what the setbacks were on the property so I could
2896 proceed with going ahead with doing an addition, and the answer that he got from the
2897 County was that there was a thirty-foot setback, so I continued on from that point with
2898 getting a survey done to show the proposed addition on the survey. You have a copy of
2899 the survey in there. The survey shows that the proposed addition, a 16 by 24 addition,
2900 would be 31 feet from the property line. I showed this plan to one of my proposed
2901 contractors. He also contacted the County to find out what the setback was. His
2902 answer was that it was thirty feet. So I proceeded to get the drawings made, and I put
2903 out proposals for several contractors to bid on this process. Once I ordered the
2904 contract, the permits were turned down, because they said that the setback was 35 feet,
2905 not 30 feet. There seems to be some confusion as to what the zoning on this piece of
2906 property is, and I propose that you give me a variance based on the misinformation that
2907 we've gotten here.

2908

2909 Mr. Wright - Where did you seek this information? Who did you ask?

2910

2911 Mr. Miller - Harold Ellis is the person in the Planning Department who
2912 gave us this information, twice.

2913

2914 Mr. Kirkland - Did he write anything down and hand it to you?

2915

2916 Mr. Miller - No, he did not. I called Mr. Blankinship after the fact that our
2917 permits were turned down, and asked him to look up the piece of property, and the first
2918 thing out of his mouth also was that it was a 30-foot setback, so there seems to be
2919 some confusion here, and I have made plans for my whole family, based on this
2920 misinformation. We have sold a house; I have gotten married; this is my wife Allyson;
2921 and we're bringing four children into this house that is frankly not large enough to live in
2922 right now, and I'm not pleased with the information that I've received.

2923

2924 Mr. Wright - Mr. Blankinship, did you say that you told him it was a thirty-
2925 foot setback?

2926

2927 Mr. Blankinship - He said "the first thing out of my mouth was 30." He had
2928 already warned me that it was an unusual case, so the second thing out of my mouth
2929 was, "but let me look it up," and doing the further research, it is a very complicated case.
2930 It is Townhouse zoning, and we no longer allow single-family detached dwellings in

2931 Townhouse districts, but at the time this was built, that was allowed. If you were
2932 building single families in the Townhouse District, you had to meet the R-3 standard.
2933 The R-3 standard would be a 40-foot setback, but this is also a Controlled Density
2934 development. I had never heard of a Controlled Density Townhouse Development; this
2935 is probably the only one we've got. That brings in a third Code Section, which is where
2936 we come up with the 30 feet.
2937

2938 Mr. Wright - Is there any way that you could interpret it to 35? Evidently
2939 he's been told by other people in the Planning Office that it was 35, I mean 30.
2940

2941 Mr. Blankinship - He was told 30; it is 35. I don't see how we could. Once you
2942 look it up and trace all the steps, you see which requirement does apply. It would either
2943 be 40 or 35. It would only be 30 if these were townhouses.
2944

2945 Ms. Harris - But the property is zoned for residential townhouses.
2946

2947 Mr. Blankinship - It's zoned for Townhouses, and we no longer allow detached
2948 dwellings in Townhouse Districts, but we did at this time.
2949

2950 Ms. Dwyer - Probably for this reason.
2951

2952 Mr. Wright - And there's nothing to the rear of this property; it's open
2953 area?
2954

2955 Mr. Miller - It's about 300 feet to the nearest house behind me, and it's
2956 all woods and creek.
2957

2958 Ms. Miller - We do have the signatures of all the neighbors indicating
2959 that they concur with the original zoning or the variance that we are seeking.
2960

2961 Mr. Kirkland - The wooded area that does separate your home from the
2962 home behind you, is that a conservation area, a reserved area, or what?
2963

2964 Mr. Miller - It is a flood plain.
2965

2966 Mr. Kirkland - A flood plain, so nothing can be built in there, is that correct?
2967

2968 Mr. Miller - That's correct.
2969

2970 Ms. Dwyer - Would there be any possibility of your acquiring some rear
2971 yard from that conservation area?
2972

2973 Mr. Miller - I have not investigated that. It is also set aside by the
2974 Wyndham neighborhood as a recreational area, so I would have to see about acquiring
2975 it from the Wyndham Foundation also.
2976

2977 Ms. Dwyer - I was just thinking if they were amenable to that, then you
2978 could agree to some sort of arrangement where you purchase the property, but there
2979 would be a permanent easement to the Foundation, granted over that extra five feet,
2980 some way that would accommodate both your needs and theirs. Just a thought.
2981

2982 Mr. Miller - Okay. I'm still going back to this original zoning here as
2983 being 30 feet, and you giving me some variance on that zoning. I understand that your
2984 Supreme Court hearings keep you from giving variances based on the setbacks, but
2985 this zone is a 30-foot zone.
2986

2987 Mr. Wright - Any further questions of the Board? Is anyone here in
2988 opposition to this request? Hearing none, that concludes the case. A-71-2005.
2989

2990 Mr. Nunnally - I move we approve it.
2991

2992 Ms. Harris - Second the motion.
2993

2994 Mr. Wright - Motion's made and seconded that we approve A-71-2005.
2995 Any discussion?
2996

2997 Ms. Harris - This is the case where we had the townhouse zoning
2998 requiring one thing, so I think we have an exception here.
2999

3000 Mr. Wright - A lot of confusion.
3001

3002 Ms. Harris - That we have an exception to this single home being built in
3003 this zoning district. The neighbors are consenting.
3004

3005 Mr. Wright - Any further discussion? All in favor of approval, say aye.
3006 Opposed, no.
3007

3008 Ms. Dwyer - No
3009

3010 Mr. Wright - One "no." It's approved.
3011

3012 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.
3013 Harris, the Board **granted** application **A-71-2005** for a variance to build two-story
3014 addition at 5908 Park Forest Lane (Park Forest at Wyndham) (Parcel 742-778-1113).
3015 The Board granted the variance subject to the following conditions:
3016

- 3017 1. This variance applies only to the rear yard setback. All other applicable
3018 regulations of the County Code shall remain in force.
3019
- 3020 2. The new construction shall match the existing dwelling as nearly as practical in
3021 materials and color.
3022

3023	Affirmative:	Harris, Kirkland, Nunnally, Wright	4
3024	Negative:	Dwyer,	1
3025	Absent:		0

3026
3027 The Board granted this request, as it found from the evidence presented that, due to the
3028 unique circumstances of the subject property, strict application of the County Code
3029 would produce undue hardship not generally shared by other properties in the area, and
3030 authorizing this variance will neither cause a substantial detriment to adjacent property
3031 nor materially impair the purpose of the zoning regulations.

3032
3033 **A-72-2005** **EDWIN HOUCHENS AND DIANA CHASE** request a variance from
3034 Section 24-94 to build a two-story addition at 203 Sunset Drive
3035 (Westham) (Parcel 757-735-8478), zoned R-1, One-family
3036 Residence District (Tuckahoe). The rear yard setback is not met.
3037 The applicants propose 42 feet rear yard setback, where the Code
3038 requires 50 feet rear yard setback. The applicants request a
3039 variance of 8 feet rear yard setback.

3040
3041 Mr. Wright - Does anyone else desire to speak with reference to this
3042 case? Would you raise your right hand and be sworn please?

3043
3044 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3045 truth, the whole truth, and nothing but the truth, so help you God?

3046
3047 Mr. Shearman - I do. My name is Michael Shearman. I'm the architect on
3048 the project, representing my client who couldn't be here today. Based on hearing some
3049 of the earlier cases, perhaps my argument on this case has changed a little. It seems
3050 that you are no longer granting variances on setbacks. I was here in January on
3051 another project and was granted a variance. Is this something that has happened
3052 since?

3053
3054 Mr. Wright - This has all developed since that time.

3055
3056 Mr. Shearman - This is a project that is proposing a first floor Florida room
3057 and second floor master bedroom extension to this house. As you can see, the size is
3058 trapezoidal in nature; it's much closer to the rear yard property line on one side than the
3059 other. The next question is, then why isn't the addition on the other side of the house,
3060 and that was something that we looked at very early on, but obviously nobody wants to
3061 go through applying for a variance, even when we knew one wasn't available, but
3062 functionally it doesn't work for the house. The children's bedrooms are on the other
3063 side of the house. They're very small, and it's not really possible to do it over there. So
3064 we looked at doing it on this side of the house; we do come eight feet into the setback
3065 line because of the nature of the site. That's a diagonal line that cuts across the back of
3066 the addition. One corner of the addition is actually inside the setback line, and this is a
3067 strict interpretation of the writing of the Code. It's 50 feet perpendicular to the property
3068 line itself, puts us eight feet inside the setback line if you actually go 50 feet

3069 perpendicular to the house, we're actually 53 feet from the property line. As you read
3070 the Code, being perpendicular to the property line, we are eight feet over. I don't know
3071 if that makes any difference at all.

3072
3073 Ms. Dwyer - Good thought.

3074
3075 Mr. Shearman - It's a try at least. There's nothing in this addition that is
3076 keeping them from using this house. It's an expansion of an existing house, which is
3077 too small for them now. They're either going to move or build this addition. We looked
3078 at putting the addition on the opposite side of the site, where it's deeper and wouldn't
3079 require a variance, but it just completely rearranges and destroys the house, really.

3080
3081 Ms. Dwyer - So from an architect's view, this is the best solution.

3082
3083 Mr. Shearman - Absolutely, not just functionally, but also aesthetically,
3084 because there's an addition on that side of the house that was done in 1999, that
3085 doesn't really keep the same character of the original Colonial Williamsburg house, and
3086 we're trying to cover some of that up and bring some of that character back, so it would
3087 actually present a better face to the neighbors than is currently there.

3088
3089 Ms. Dwyer - I've admired your work in the Westham area; I've seen some
3090 of it. You do a very good job.

3091
3092 Mr. Shearman - Do we have any argument here? Is there any possibility of
3093 an interpretation of the setback as being perpendicular to the house instead of being
3094 perpendicular to the property?

3095
3096 Mr. Blankinship - That would be a disaster.

3097
3098 Mr. Dwyer - We appreciate that it's a difficult lot with the trapezoidal
3099 shape, but there's just no way around our obligation to comply with the law.

3100
3101 Mr. Shearman - And so this Supreme Court – I'm going to need to relay this
3102 to my client, so I have a couple of questions. The Supreme Court decision, basically,
3103 means that you can't hear or consider setback variances of any kind?

3104
3105 Mr. Blankinship - You have to show that without the variance, you cannot
3106 make any reasonable use of the property.

3107
3108 Mr. Shearman - Presumably, if the property's already being used, then it's a
3109 pretty difficult argument to make.

3110
3111 Ms. Dwyer - As a practical matter, you're right. They didn't come out and
3112 say "no setbacks will ever be approved by a BZA," but in effect, that seems to be the
3113 practical result.

3114

3115 Mr. Shearman - The second question they're going to ask me is why this
3116 wasn't brought up when we filed for the variance, because they paid the \$300 fee, and it
3117 doesn't seem like a case that should even have been heard.
3118

3119 Mr. Blankinship - They should have been told.
3120

3121 Mr. Shearman - There's nothing in the evaluation that we received in the mail
3122 that even mentions this; in fact, it leads you to believe that this is a case that can be
3123 argued. It says that requests for additions into required setbacks are common. It says
3124 that the proposed addition's impact on neighboring properties should be somewhat
3125 mitigated by existing landscaping. There's nothing -- It just seems like

3126

3127 Mr. Blankinship - At the top of page two it says "if this variance were not
3128 granted, the applicant would still have use of the property as a one-family residence."
3129 Right above that it says that the Code of Virginia and the Henrico County Code
3130 authorize the Board of Zoning Appeals to grant a variance after making four findings. It
3131 says one of those four findings is that there has to be some clearly demonstrable
3132 hardship approaching confiscation, and our evaluation was that it does not.
3133

3134 Mr. Shearman - The other variances that I've brought before you in the past,
3135 that's a pretty standard statement.
3136

3137 Mr. Blankinship - That's true.
3138

3139 Mr. Shearman - Because that's always the case.
3140

3141 Mr. Wright - We've taken a little liberty before the Supreme Court came
3142 down on this issue, and there's no more question now. It's not open to interpretation.
3143

3144 Mr. Shearman - I understand that. It just seems this is a case that the
3145 application should never have been accepted. I just wanted to make that point.
3146

3147 Mr. Wright - We're trying to do all we can now to inform people that the
3148 chances are slim.
3149

3150 Ms. Dwyer - And that's one of the reasons we've taken the time today to
3151 explain, as cases have come up, the basis for our consideration, and to discuss the
3152 Supreme Court case, because as a Board, we would like to inform, to make sure that
3153 information gets out. My understanding is, after a meeting we had a week or two ago,
3154 that staff is

3155

3156 Mr. Blankinship -in 16-point type.
3157

3158 Ms. Dwyer -informing applicants as well.
3159

3160 Mr. Blankinship - Kate Teator took in that application, and I know that she has

3161 been telling people that since the first hearing when the Board discussed that case.
3162 She's been trying to persuade applicants not to apply, mostly without success.

3163
3164 Mr. Shearman - So this isn't a case that you're even going to vote on, right,
3165 so there's no point in me staying.

3166
3167 Mr. Blankinship - All votes will be taken at the end of the docket.

3168
3169 Mr. Wright - We'll vote on it, yes sir.

3170
3171 Mr. Shearman - But there's no way it'll be passed.

3172
3173 Mr. Wright - Thank you very much for appearing. A-72-2005.

3174
3175 Ms. Dwyer - My motion is that we deny the application.

3176
3177 Mr. Wright - Motion's made that we deny it. Second?

3178
3179 Mr. Kirkland - Second.

3180
3181 Mr. Wright - Do you want to give a basis for that?

3182
3183 Ms. Dwyer - The reason again is under the reading of the Cochran case;
3184 this applicant has reasonable use of the property as a residence without the variance.

3185
3186 Mr. Wright - Any further discussion? All in favor of denial, say aye.
3187 Opposed, no. It's denied.

3188
3189 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.
3190 Kirkland, the Board **denied** application **A-72-2005** for a variance to build a two-story
3191 addition at 203 Sunset Drive (Westham) (Parcel 757-735-8478).

3192
3193 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

3194 Negative: 0

3195 Absent: 0

3196
3197 The Board denied the request as it found from the evidence presented that there was
3198 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
3199 Virginia to justify a variance.

3200
3201 **A-73-2005** **COMFORT HOMES** requests a variance from Section 24-94 to
3202 build a one-family dwelling at 4160 E Williamsburg Road (Parcel
3203 849-712-4147 (part)), zoned A-1, Agricultural District (Varina). The
3204 lot width requirement is not met. The applicant has 50 feet lot
3205 width, where the Code requires 150 feet lot width. The applicant
3206 requests a variance of 100 feet lot width.

3207
3208 Mr. Wright - Does anyone else desire to speak with reference to this
3209 case? Would you raise your right hand and be sworn please?
3210
3211 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3212 truth, the whole truth, and nothing but the truth, so help you God?
3213
3214 Mr. Heath - I do. My name's Warren Heath; I'm with Comfort Homes.
3215 I'm contractor with Mr. Thomas Brown, who's here with me today, to buy this piece of
3216 property at 4160 East Williamsburg Road, and we're requesting a variance for the front
3217 setback line.
3218
3219 Mr. Nunnally - What's the size of the lot you're buying?
3220
3221 Mr. Heath - It's 3.93 acres.
3222
3223 Ms. Dwyer - Is this a family division of property?
3224
3225 Mr. Heath - I don't believe so. Mr. Brown, it's not a family division, is it?
3226
3227 Mr. Brown - No.
3228
3229 Ms. Dwyer - If this property were rezoned to Residential zoning, then this
3230 variance would not be required, is that correct?
3231
3232 Mr. Blankinship - Yes ma'am, that's correct.
3233
3234 Ms. Dwyer - It does have 50 feet lot width. Is that sufficient for an R-3?
3235
3236 Mr. Blankinship - No, they'd need 80, but they could divide it differently.
3237
3238 Mr. Nunnally - Are you buying this land for Mr. Brown for
3239
3240 Mr. Heath - That's correct. I'm under contract with Mr. Brown, who's the
3241 property owner.
3242
3243 Mr. Nunnally - And you're going to build a spec house on it?
3244
3245 Mr. Heath - Yes sir. Single family dwelling on that property. It appears
3246 to be a flag lot.
3247
3248 Ms. Harris - Who lives at 4150?
3249
3250 Mr. Heath - Mr. Brown owns that property as well. I'm purchasing that
3251 also.
3252

3253 Ms. Dwyer - So what are your plans? You're just going to put two
3254 houses, there are just going to be two houses on this entire parcel?
3255

3256 Mr. Heath - At this point, that's the proposal. We're purchasing this
3257 existing dwelling on 4150 and then the 3.93 acres, we're proposing to purchase that,
3258 and at this point, just want to make sure we can get one single family dwelling on there.
3259

3260 Ms. Dwyer - If you rezoned it, you wouldn't have an issue either dwelling
3261 or perhaps more dwellings. Have you thought about that?
3262

3263 Mr. Heath - Yes ma'am.
3264

3265 Ms. Dwyer - Why have you opted not to rezone the property, to
3266 accurately reflect its

3267

3268 Mr. Heath - I don't own the property, so that would be something that ...
3269

3270 Ms. Dwyer - But as the contractor, why would that not be an option that
3271 you would choose?
3272

3273 Mr. Heath - In order to get more than one home on that property?
3274

3275 Ms. Dwyer - Well, that's a possibility. That may happen anyway if you get
3276 these two, and then you could come in later and ask for another lot -- that's certainly a
3277 possibility. It seems to me that when the zoning doesn't accurately reflect what's
3278 happening, what we have here is a single-family development, it seems to me more
3279 appropriate that it be zoned properly, and then we don't have the problems that we had
3280 in the last case for example, when it was zoned RTH, but a single family home was built
3281 on it, and then we get very confused about what setbacks are and how the property can
3282 be developed.
3283

3284 Mr. Heath - As a builder, I wanted to make sure that this lot would be
3285 useable, of course. That's why we're here today, to insure that the lot is going to be at
3286 least capable of building one home on. If the property could be rezoned to accept more
3287 property, that would be something that I would look into at a later date.
3288

3289 Mr. Kirkland - On the home you plan to build, are you going to be on well
3290 and septic?
3291

3292 Mr. Heath - Yes sir.
3293

3294 Mr. Kirkland- So any future homes would also have to be on a well and
3295 septic system, is that what you're saying?
3296

3297 Mr. Heath - Yes sir, that is correct.
3298

3299 Mr. Kirkland - Is there any public water and sewer in the area?
3300
3301 Mr. Heath - The property owner says there is not.
3302
3303 Mr. Kirkland - So that would limit the number of homes that you could build
3304 back there, because you need drainfield, so many feet for a well.
3305
3306 Mr. Heath - Yes sir, that is correct, so it would probably be a stretch to
3307 think that you could get more than two, even if it was rezoned.
3308
3309 Ms. Dwyer - The Board of Supervisors eliminated flag lots from
3310 developments several years ago – were you aware of that?
3311
3312 Mr. Heath - I was not, no.
3313
3314 Mr. Wright - Any further questions of the Board? Is anyone here in
3315 opposition to this request? Hearing none, that concludes the case.
3316
3317 Mr. Wright - A-73-2005.
3318
3319 Mr. Nunnally - Move we deny it.
3320
3321 Mr. Kirkland - Second
3322
3323 Mr. Blankinship - Motion to deny by Mr. Nunnally; second by Mr. Kirkland.
3324
3325 Mr. Wright - Any discussion? Hearing none, all in favor of denial, say
3326 aye; opposed, no. It's denied.
3327
3328 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
3329 Kirkland, the Board **denied** application **A-73-2005** for a variance to build a one-family
3330 dwelling at 4160 E Williamsburg Road (Parcel 849-712-4147 (part)).
3331
3332 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
3333 Negative: 0
3334 Absent: 0
3335
3336 The Board denied your request as it found from the evidence presented that there was
3337 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
3338 Virginia to justify a variance.
3339
3340 **A-74-2005** **D. KEITH WELLS** requests a variance from Section 24-94 to build
3341 a two-story addition at 806 Colony Bluff Place (Riverlake Colony)
3342 (Parcel 741-740-2440), zoned R-1, One-family Residence District
3343 (Tuckahoe). The minimum side yard setback is not met. The
3344 applicant proposes 15 feet minimum side yard setback, where the

3345 Code requires 20 feet minimum side yard setback. The applicant
3346 requests a variance of 5 feet minimum side yard setback.

3347
3348 Mr. Wright - Does anyone else desire to speak with reference to this
3349 case? Would you raise your right hand and be sworn please?

3350
3351 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3352 truth, the whole truth, and nothing but the truth, so help you God?

3353
3354 Mr. Phillos - I do. Angelo Phillos, the architect, and

3355
3356 Mr. Wells - and Keith Wells. Can I start by asking one
3357 question? I'm not wordsmithing, but the Supreme Court ruling – can you repeat that to
3358 me? There's been "reasonable" placed in a couple of different sections as it's been
3359 repeated today. As I present, I understand your interpretation of the "reasonable" use of
3360 property and residence.

3361
3362 Mr. Wright - The Supreme Court left nothing up in the air, no indecision
3363 on this. The decision says that if all reasonable uses of the property can be made,
3364 taken as a whole, without the variance, then this Board of Zoning Appeals has no
3365 authority to grant the variance to reasonable uses of the property taken as a whole. If
3366 you have a residence that's already on the property, that you've been using as a
3367 residence, occupying as a residence, then that is a reasonable use of the property, and
3368 therefore you would not be able to get a variance to do something, add something
3369 additional, add something to the front, back or side yard, because you've already got a
3370 reasonable use of the property.

3371
3372 Mr. Wells - Does size of a family, or growth of a family, have any input
3373 on the "reasonableness"?

3374
3375 Mr. Wright - No, the Supreme Court didn't look at that. They just came
3376 out and said "That's it."

3377
3378 Mr. Blankinship - Do you have a 3500 square foot home, is that accurate?

3379
3380 Mr. Wells - Yes sir.

3381
3382 Mr. Wright - That unfortunately is the way it's come down, and not only
3383 did they say that, they said the Board of Zoning Appeals has no authority. They left
3384 nothing to your imagination or any discretion or any determination. We've had a
3385 meeting with our legal counsel of the County to review all of this and insure that this is
3386 the interpretation which has been applied to this, and it's being applied to all
3387 surrounding counties in the same way.

3388
3389 Mr. Wells- My thought process was really on reasonable use size and
3390 how that interpretation goes, and so I'll present my case. I am a widowed father of

3391 three sons. I have a live-in aupair, and I have my three boys. I bought the house and
3392 lot in 1995, built the house, and family has changed since I built the house in this
3393 location. I am restricted in use on my south side by a gas line that goes right along
3394 through my property where there's an easement, and I am at that stage of my family,
3395 where my family's needs are for a playroom plus an extra bedroom, as I look to grow
3396 my family. The current situation is with another lady and two more kids, so it's a
3397 situation of size, functional use of my house, plus fitting into the neighborhood and the
3398 design I looked at, and I hired an architect to look at trying to go in the rear of the house.
3399 I actually spent a lot of money to have that planned, but by the time we got through it,
3400 the functionality of having to move out of the house for a couple of months with school-
3401 age children, was not reasonable in terms of what I needed to do to maintain the
3402 continuity for my kids, as we live in this neighborhood, and they go to elementary
3403 school. What we did was look at the next best alternative, which was to go to the right
3404 side, the north side of my house, where there is a tree-lined buffer with 9901 Carrington
3405 Place, and design a wing that matches aesthetically with the front of my house, so that it
3406 goes on the left hand to the right hand, and build a first-floor master bedroom with a
3407 playroom above it, so that the house would be reasonably functional for my use in this
3408 location, so that I would not be put into a position of having to move three children, who
3409 have had a lot of trauma in their lives, out of their existing location and potential
3410 neighborhood, to accommodate a growing family situation. My architect is here; if there
3411 are any other questions, we've designed what we feel fits the neighborhood. My house
3412 at 3500 square feet, is actually small for the neighborhood. My neighbor at 9901 has
3413 verbally told me he has no problems with the encroachment. I guess the last question I
3414 would ask within the Tuckahoe District is the 20-foot setback, is that throughout the
3415 whole Tuckahoe District on a side yard setback?

3416
3417 Ms. Dwyer - Throughout the County, for property zoned R-1. It just
3418 depends on the zoning, but the zoning applies County-wide.

3419
3420 Mr. Wells - Is there, as the previous architect had asked, a situation
3421 whereby two months ago before the Supreme Court came out and stated that you no
3422 longer have that power to provide, but is there not a precedent, and is there not actually
3423 a situation where it has been routinely given within certain neighborhoods or with certain
3424 areas, and now to basically stop that, is there not an unfairness doctrine that is imposed
3425 on me as a resident, homeowner, have I not been jeopardized by the change or the
3426 reinterpretation whereas we've consistently gone on. A couple months back, just as the
3427 previous architect had said, I have been told for the last two and a half, or three, or four
3428 months, as I've gone through these different plans and met with architects and spent a
3429 lot of money, that my opportunity to come in here and present this was a normal course
3430 of business.

3431
3432 Mr. Blankinship - If you had felt aggrieved by a previously approved variance,
3433 you would have had the right to appeal that, if you felt that a variance the Board granted
3434 three or four months ago was inappropriate or caused you some harm, you could have
3435 appealed that.

3436

3437 Mr. Wells - Would it not have caused me some harm if it was approved
3438 and now in the same process, you have been stripped of the power to continue to
3439 approve a consistent use, and I would believe there is a consistency doctrine that within
3440 my neighborhood or the whole County or Tuckahoe District, I have been harmed by a
3441 change in a consistent use or consistent approval basis, of a side yard variance,
3442 whereas, without this Supreme Court, if there was the likelihood of your approving it
3443 was, as I was assured by builders in this County, and architects who work in this
3444 County, just a matter of course. There has been a change, just in the interpretation, not
3445 in the law, not in the ordinances.

3446
3447 Mr. Wright - The law has been the same all along. Unfortunately, we're
3448 presumed to know the law. That gets into a very difficult area. It's just the fact that the
3449 Supreme Court has now interpreted the law so clearly. In the past, we thought we had
3450 some discretion. And they say it wasn't there to start with. It's just unfortunate that
3451 we're bound with this now. As I've told folks, if you talk with your supervisor, and to
3452 your legislator, there could be some relief if the statute were amended to permit this
3453 Board some discretion in this type of cases. Right now we don't have any. It's just
3454 unfortunate, but we're bound by this ruling, this decision of the Supreme Court, and it's
3455 just so clear, it's just unfortunate that it's come down this way. Those in the past that
3456 were approved, they were lucky. They were just fortunate to get it in.

3457
3458 Mr. Wells - Didn't you state yourself that you have the opportunity to
3459 determine "reasonable"?

3460
3461 Mr. Wright - No. The Supreme Court has determined that in the cases
3462 that were before it were very similar to this. It clearly stated that if you have been using
3463 this property over several years, that is considered a reasonable use, and to add
3464 something to it, doesn't take away from that. It enhances it, but still, you've had a
3465 reasonable use of the property, and that is what they consider "taken as a whole."

3466
3467 Ms. Dwyer - Looking at the case, the Supreme Court says that our
3468 responsibility is to prevent an unconstitutional result, which would be taking of the
3469 property without compensation, and "no taking occurs, in circumstances unless the
3470 regulation that is the zoning law that sets the setback, interferes with all reasonable,
3471 beneficial uses of the property, taken as a whole." You'd have to show that reasonable
3472 uses of your property are taken away, which is not the case, because it can still be used
3473 as a residence, smaller than you might desire, but still a beneficial use. So all
3474 reasonable, beneficial uses must be taken away in order for us to step in and prevent
3475 that unconstitutional result.

3476
3477 Mr. Wells - Don't you think that eliminates the current owner's
3478 opportunity to present what's reasonable? Really what you're saying is, anyone who
3479 can live in it reasonably, essentially eliminates the option of being able to present that
3480 you no longer can live there reasonably.

3481
3482 Ms. Dwyer - If there's any reasonable use, by this applicant or anybody

3483 else, and he has a reasonable, beneficial use, he can live there, in a home, not maybe
3484 as large as he might like, but he can live in there and use it as a home. If we were
3485 going to put a road through his property and prevent him from living in his home, we
3486 would be taking his property. That would be an unconstitutional act by the government.
3487 The Zoning Ordinance, as it applies now, does not prevent him from living there and
3488 using it as a residence.

3489
3490 Mr. Wells - I respectfully disagree, because you're eliminating his
3491 specific situation from the equation, which makes it really easy. There's really nothing
3492 to discuss. If you eliminate his specific As you can see from the gas
3493 easement, I think there is yet another special situation, and I don't know if that fits in at
3494 all, but I am restricted.

3495
3496 Mr. Wright - You knew that when you bought the property.

3497
3498 Mr. Wells - I did.

3499
3500 Mr. Blankinship - If you believe that the Board is applying the law incorrectly,
3501 and they do in fact, of course no decision has been made yet, if they were to deny this
3502 variance and you believe they took the wrong view of the law, then you would be able to
3503 appeal that to the Circuit Court.

3504
3505 Mr. Wright - You've got relief, but

3506
3507 Mr. Wells - My intent is to work with you, and to provide within the
3508 "reasonableness doctrine," the opportunity for you to interpret the variance, even within
3509 the Supreme Court's view, because of extenuating circumstances. Our attempt is to
3510 work with you and provide opportunities or angles so that it makes a decision that you
3511 can make to assist us in the variance change. Thank you very much.

3512
3513 Mr. Wright - We understand, and we are sympathetic, but unfortunately,
3514 we are bound by the law.

3515
3516 Mr. Wells - The degree of variance has no bearing, does it, once you
3517 exceed the minimum setback. It doesn't matter if it's one foot, two feet, or four feet,
3518 there are no degrees?

3519
3520 Mr. Blankinship - If there were a hardship, then that would be the next
3521 question. The thing about the Supreme Court's decision that I felt was a change in the
3522 law, was that they said the hardship was now a threshold question. If the Board does
3523 not make the finding of a hardship, then they should not go any farther. If they did find a
3524 hardship, then they would start looking into the other questions about exceptional
3525 conditions, what is the least that you could get by with, and those questions would then
3526 be germane.

3527
3528 Mr. Wells - In one light, the "reasonableness doctrine," I can clip off the

3529 corner of my house, of the new addition, so that it has a knocked-off corner, so that it is
3530 right on the twenty-foot setback

3531
3532 Mr. Blankinship - Or you could move the addition, or you could abandon the
3533 project.

3534
3535 Mr. Wright - That's what they said, "you could abandon the project."

3536
3537 Mr. Blankinship - That's the language the Supreme Court used, in all three of
3538 the variances that they threw out.

3539
3540 Mr. Wells - So I could build it without the variance change and have a
3541 clipped off corner, and everybody in the neighborhood, and "reasonableness," and tax-
3542 based, it wouldn't be a good decision to do.

3543
3544 Mr. Kirkland - It would be unique. Case in point, there's a house in the
3545 west end that's trapezoidal just for that reason. The house is eight feet on one end and
3546 27 feet on the other, and the roofline looks really unique, but there is one like that, just
3547 because they built right to the setback lines.

3548
3549 Mr. Wells - I appreciate your consideration.

3550
3551 Ms. Harris - I'm processing this too, brand new, but I have to keep in
3552 mind that we can't re-write the Zoning Ordinance from this Board, and that's what so
3553 many people are asking us to do, to change the law, but that's not within our authority. I
3554 think that what's in your authority, however, is to be very creative in conforming to the
3555 ordinance, and I'm sure you have a good architect who can probably do that for you.

3556
3557 Mr. Wright - A-74-2005.

3558
3559 Ms. Harris - I move that we deny.

3560
3561 Ms. Dwyer - Second. In reading the Cochran versus Fairfax BZA case,
3562 this particular landowner has reasonable, beneficial use of the property without the
3563 variance. It can be used and in fact, is being used, as a residence.

3564
3565 Mr. Wright - Any further discussion? All in favor, say aye. Opposed, no.
3566 It's denied.

3567
3568 After an advertised public hearing and on a motion by Ms. Harris, seconded by Ms.
3569 Dwyer, the Board **denied** application **A-74-2005** for a variance to build a two-story
3570 addition at 806 Colony Bluff Place (Riverlake Colony) (Parcel 741-740-2440).

3571
3572 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

3573 Negative: 0

3574 Absent: 0

3575
3576 The Board denied your request as it found from the evidence presented that there was
3577 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
3578 Virginia to justify a variance.

3579
3580 Mr. Wright - Next case.

3581
3582 **A-75-2005** **CLINTON S. CARTER, JR.** requests a variance from Section 24-94
3583 to build a one-family dwelling at 120 N Cedar Avenue (Highland
3584 Springs) (Parcel 822-726-9040 (part)), zoned R-4, One-family
3585 Residence District (Varina). The total lot area requirement is not
3586 met. The applicant has 5,000 square feet total lot area, where the
3587 Code requires 6,000 square feet total lot area. The applicant
3588 requests a variance of 1,000 square feet total lot area.

3589
3590 Mr. Wright - Does anyone else desire to speak with reference to this
3591 case? Would you raise your right hand and be sworn please?

3592
3593 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3594 truth, the whole truth, and nothing but the truth, so help you God?

3595
3596 Mr. Carter - Yes. Clinton Carter. I have a lot that's 50 by 100, and I sent
3597 pictures and things in here. I think you can see the other ones around are all the same
3598 size lots. There's nothing else to do with the piece of property. Right now it's just
3599 vacant, and people throw trash and stuff in it a lot.

3600
3601 Mr. Nunnally - Are you going to build this home for yourself, Mr. Carter?

3602
3603 Mr. Carter - No sir.

3604
3605 Mr. Nunnally - Are you a builder?

3606
3607 Mr. Carter - I renovate houses and re-sell them. I'm in the construction
3608 business.

3609
3610 Mr. Wright - Are there any other 50-foot lots on this street in this area?

3611
3612 Mr. Nunnally - I counted them the other day; there are about fifteen other
3613 houses on that one block that are on 50-foot lots.

3614
3615 Mr. Carter - I also sent pictures. We took pictures of the lot and the
3616 houses beside it and across from it, and we're going to put the same type of house, with
3617 the same setbacks that are required, just like the other houses are.

3618
3619 Mr. Kirkland - In other words, you have an option to purchase this lot,
3620 pending the variance, is that correct?

3621
3622 Mr. Carter - No, I already own it.
3623
3624 Mr. Kirkland - You already own it?
3625
3626 Mr. Carter - Yes.
3627
3628 Mr. Blankinship - And do you own the adjoining lot behind it?
3629
3630 Mr. Carter - Yes.
3631
3632 Ms. Dwyer - So six out of the 36 lots in this neighborhood are 50-foot lots,
3633 is that correct, according to the staff report?
3634
3635 Mr. Nunnally - How many? There are fifteen lots over there with the
3636 houses on them on that one block; they originally were 25-foot lots, then built on 50 feet.
3637 That water tank up on the corner of Cedar Avenue takes up about a quarter of the
3638 block. Have you checked on that lot across the street from you?
3639
3640 Mr. Carter - No, I haven't.
3641
3642 Mr. Nunnally - There's one 50-foot lot over there and houses on each side
3643 of it, that the people cut the grass right up to the line, and that one lot has grass about
3644 15 inches tall right now.
3645
3646 Mr. Carter - I started to check on that. I'm not sure if one of the
3647 neighbors own that, because sometimes people would have double lots beside them.
3648 Someone's keeping that one groomed, and it's cleared really nice.
3649
3650 Mr. Wright - Any further questions of the Board? Is anyone here in
3651 opposition to this request? Hearing none, that concludes the case.
3652
3653 Mr. Wright - A-75.
3654
3655 Mr. Nunnally - I move we approve it.
3656
3657 Mr. Wright - Motion's made that we approve A-75-2005. Is there a
3658 second?
3659
3660 Ms. Harris - Second.
3661
3662 Mr. Blankinship - Motion to approve by Mr. Nunnally, second by Ms. Harris.
3663
3664 Mr. Wright - Any discussion? All in favor, say aye. Opposed, no. It's
3665 approved.
3666

3667 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.
3668 Harris, the Board **granted** application **A-75-2005** for a variance to build a one-family
3669 dwelling at 120 N Cedar Avenue (Highland Springs) (Parcel 822-726-9040 (part)). The
3670 Board granted the variance subject to the following conditions:

3671
3672 1. This variance applies only to the total lot area requirement. All other applicable
3673 regulations of the County Code shall remain in force.

3674
3675 2. The proposed dwelling shall be set back 35 feet from the right-of-way of N Cedar
3676 Avenue, as shown on the sketch submitted with the application.

3677
3678 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
3679 Negative: 0
3680 Absent: 0

3681
3682 The Board granted this request, as it found from the evidence presented that, due to the
3683 unique circumstances of the subject property, strict application of the County Code
3684 would produce undue hardship not generally shared by other properties in the area, and
3685 authorizing this variance will neither cause a substantial detriment to adjacent property
3686 nor materially impair the purpose of the zoning regulations.

3687
3688 Mr. Wright - Next case.

3689
3690 Mr. Blankinship - Mr. Chairman, the next two cases are companions. I'm
3691 going to call them together, but we definitely need to vote on them separately when the
3692 time comes, but I think we can have one hearing.

3693
3694 **UP-12-2005** **ROSS RUN LLC** requests a conditional use permit pursuant to
3695 Section 24-12(b) to Operate a private nonprofit recreation facility at
3696 Kidwelly Lane (Castleton) (Parcel 825-692-8035 (part)), zoned R-
3697 3AC, One-family Residence District (Conditional) (Varina).

3698
3699 **A-76-2005** **ROSS RUN LLC** requests a variance from Section 24-96(c) to park
3700 in the front and side yards at Kidwelly Lane (Castleton) (Parcel 825-
3701 692-8035 (part)), zoned R-3AC, One-family Residence District
3702 (Conditional) (Varina). The parking lot location requirement is not
3703 met. The applicant proposes parking in the front and side yards of
3704 the proposed recreation center, where the Code allows parking in
3705 the rear yard.

3706
3707 Mr. Wright - Does anyone else desire to speak with reference to this
3708 case? Would you raise your right hand and be sworn please?

3709
3710 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3711 truth, the whole truth, and nothing but the truth, so help you God?

3712

3713 Mr. Merner - I do. My name is Kenneth Merner; I'm with Boyd Homes.
3714 We're the developers of the property, which is Ross Run LLC. I'm glad I'm not here to
3715 ask for a variance on a setback. We do have two cases here. We have a power point
3716 presentation, if I can figure out to use it on here, that I'd like to go through. We are the
3717 developers of a planned subdivision or community, known as Castleton. It's a little over
3718 200 acres, with a 494-lot development, of various size lots. The property was rezoned
3719 in 1989 and 1990 by a developer, and we had purchased it within the past year to re-
3720 develop it as a single-family subdivision.

3721
3722 Ms. Dwyer - When you say re-develop it, what does that mean?
3723

3724 Mr. Merner - It was an agricultural piece of property; it was rezoned in
3725 1989 and 1990, right about that time, about four rezoning cases. A little piece of it was
3726 business, but the majority of the property was R-2A and R-3A, which I believe was 9500
3727 square for lots of about 1300, 1305, around that range. In my presentation I'll show you
3728 a little bit about the development before we actually go into why we are here. We're
3729 here for a conditional use permit to build a private non-profit recreational facility in a R-
3730 3A zoning district, and also a variance to allow parking in the front and side yards in the
3731 Residential District. The drawings I'll show you a little bit later.
3732

3733 This is the proposed subdivision; it's located at the intersection of Doran Road, Four
3734 Mile Creek, I-295, and Darbytown Road. This location is where the recreational facility
3735 is defined as. This is a master plan. The overall development that was set up and
3736 approved through Planning Commission and the Board of Supervisors to develop this
3737 entire community. As you see, the location of the recreational facility is located down
3738 here. We are bounded by Four Mile Creek, which is a substantial amount of wetlands.
3739 We are bounded by I-295 here, Doran Road, and Darbytown Road to the right side.
3740

3741 The sections you see in here are identified as sections 1-7. This is a 7-section
3742 development, which as you see, numerated per the development as we're going to
3743 build. Second one, as identified here, which gets us a roadway that we're going to be
3744 connecting from Doran Road straight in through this development. By the way, the
3745 smaller lots and then the larger lots are on this side of Four Mile Creek that comes up.
3746 Section 1 gets us into here, building this development. In addition to that, we're building
3747 the recreational facility almost simultaneously, or if not, the entire recreational facility will
3748 be bonded to get approval for Section 1.
3749

3750 Section 2 carries us out because of a loop connection over 50 lots, which will tie into
3751 Doran, which doesn't show on here, but is basically running in this particular location.
3752

3753 Section 3 happens to be the larger lots over in this particular development. Part of the
3754 development that we have, we are building about two miles of off-site sanitary sewer.
3755 This particular piece of property does not have gravity sewer, except for one little
3756 portion over in this particular development. We're working with the County now. The
3757 County is building a pump station on the south side of Route 5, and we're taking it from
3758 Route 5, which is down here, up through some wetlands, over to a sanitary sewer stub

3759 that is provided around the creek. Right at the creek we were crossing it and running it
3760 up in the property to serve this property and approximately 3,000 acres, so we're talking
3761 substantial line, approximately 24 to 36-inch sanitary sewer line. We've been in the
3762 works with this for the last couple of years. We're working with staff, and we're working
3763 with Utilities on making that happen.

3764
3765 Ms. Dwyer - Did you say how many lots were in Castleton?

3766
3767 Mr. Merner - This subdivision is 494 lots.

3768
3769 Ms. Dwyer - And you only have two access points?

3770
3771 Mr. Merner - Two access points, that's correct. We at one particular point
3772 were going to have three, over in the Windsor Oaks Subdivision, over here, but when
3773 we went into the rezoning, the Windsor Oaks community did not want us to tie to them.
3774 They wanted to feel more independent, and that's why you see this odd cul-de-sac in
3775 here, because the road comes in as a temporary cul-de-sac right there now on the
3776 property, so we could not make the connection. It was a recommendation by Planning
3777 Commission to put this cul-de-sac in and not make the connection for approval. We
3778 have a main entrance connection feature in here, a little boulevard effect on both ends
3779 of the property. You can see on this particular plan this is the location of the
3780 recreational facility. Again, this layout was primarily approved by the Planning
3781 Commission of the Board of Supervisors at the location.

3782
3783 Additional features that are unique to this community that were somewhat proffered, but
3784 since this is an old case, some of these things were not, we are actually providing
3785 several features, such as some streetscapes, street lighting. The streetscapes that we
3786 are providing consist of street trees, about two per every lot that front the street, and
3787 then there will be a light about every other lot line, which will be unique to this
3788 development, because most subdivisions do not require street trees. We're also doing
3789 lot landscaping that we provided in the front yards that are devoid of any of the trees,
3790 pedestrian and bicycle paths throughout the roadway systems.

3791
3792 Mr. Wright - I'm having difficulty here. We're not here to approve
3793 anything with respect to this subdivision. I want to hear something about your use of
3794 this use permit.

3795
3796 Mr. Merner - I can speed forward through all this, but I wanted to give you
3797 an idea. Well, here we are, recreational facility. The zoning case mandated the
3798 requirement of a recreational facility on the property. Unfortunately, it sits in the R-3A
3799 zoning exception, which requires a conditional use permit. We are here to provide a
3800 non-commercial recreational facility, which includes, but is not limited to a swimming
3801 pool, tennis complex, play field, and passive recreational area. That's the zoning case.

3802
3803 Here's a picture of the potential location of the clubhouse and parking lot. We're here
3804 for two things, one for the conditional use permit to allow it; the second is to allow us to

3805 build a parking lot in the front yard of the lot. The lot's over six acres. The front yard –
3806 this is Section 1 subdivision, which comes up and dead ends right now with the
3807 roadway. We're going to be building a cul-de-sac at this particular location, but the
3808 property is encumbered. There's the parking lot. Here's the multi-purpose field, that
3809 we're building for soccer fields, basically a regulation sized soccer field for the
3810 community. Here are the tennis courts, recreation facility with pool and tot lot, all
3811 required.

3812
3813 The reason why we're here is also for the location of the parking. We're encumbered by
3814 this Dominion Power easement. We also have a Colonial Pipeline easement through
3815 this particular location. We have substantial topography over on this side of the
3816 property, which is also Four Mile Creek. We are restricted by the RPA and buffers and
3817 by this 50-foot buffer that we have along the interstate.

3818
3819 I understand that there are several conditions that we need to meet, which requires the
3820 variance to be – if it's substantial detriment to the adjacent property and the character of
3821 the district, will not be changed. Since the site is bounded by all these restrictions, we
3822 feel that the location of that clubhouse will be more desirable as we show it, so that we
3823 can have the use of the parking underneath the power line easement and the Colonial
3824 Pipeline easement. We've had some conversations with Dominion Power to build the
3825 parking lot underneath the power lines; they don't have any problem with it, as long as
3826 we keep 25-30 feet away from their transmission tower, which dictates the shape of that
3827 parking lot, as you see. You can kind of see the tower in the middle of that circular area
3828 where the parking has been provided. We are not sure about the hours of operation of
3829 the facility at this particular point. There is going to be a homeowners association on
3830 this, which will dictate the hours of operation.

3831
3832 Mr. Wright - We dictate the hours, based on this type of facility. Mr.
3833 Clark, I have to question # 3. Hours of operation shall be limited to 6:00 am to 10:00 pm
3834” – that's standard, isn't it, that we use for these recreation associations?

3835
3836 Mr. Blankinship - Yes sir, we just took the standard conditions from the last
3837 two or three that we've approved.

3838
3839 Mr. Wright - Did we allow to go to 12:00 midnight for indoor activities?

3840
3841 Mr. Blankinship - In some cases you have; in some cases you've allowed it till
3842 11:00 at night. It depends on the surrounding property.

3843
3844 Mr. Kirkland - Then we did the weather thing in the most recent case.

3845
3846 Ms. Dwyer - So we would want to give this organization the same
3847 opportunities to operate later for swim meets, for example, if there were delays, or the
3848 option to operate till midnight – isn't that what we did in the last case?

3849
3850 Mr. Blankinship - I took the last case to have been somewhat of an anomaly

3851 because of the history of the property. There were some houses; then there was the
3852 recreation center; then there were more houses; and then changes to the recreation
3853 center. There seemed to be more give and take. Here, where the recreation center is
3854 being built early as a part of this development and is serving these neighbors, I just
3855 went back to what you had done in the past.

3856
3857 Mr. Kirkland - The neighbors that back up to this recreation area are going
3858 to be right on top of it, so we should think about them in the future. 12:00 o'clock is a
3859 long time.

3860
3861 Mr. Blankinship - I got out of a swim meet at 11:05 last night because we had
3862 a weather delay.

3863
3864 Ms. Dwyer - It's only four times a year for swim meets. I didn't read
3865 ahead. I'm looking at paragraph # 4 now. It's only four times a year for swim meets.

3866
3867 Mr. Merner - I also read that condition. Is that a normal condition to put in
3868 for standard?

3869
3870 Mr. Kirkland - Yes it is.

3871
3872 Mr. Blankinship - The last case they approved last month, they didn't use the
3873 standard condition. They chose to make it a little more limited, a little tighter than they
3874 had done previously.

3875
3876 Mr. Wright - We said 11:00 o'clock except where weather caused a delay
3877 or something, of the meet, and then they could extend it beyond that till 12:00.

3878
3879 Mr. Merner - Would that just be for swim meets. What about other
3880 events? So for just swim meets it's open four times from 10:00 to midnight. If there's
3881 any other type of function, like a community party that they may have, they're not
3882 allowed

3883
3884 Mr. Nunnally - Condition 4 is what we're talking about, up to four times a
3885 year, extend it to 12:00 midnight for swim meets.

3886
3887 Mr. Merner - But that was only for swim meets. So if there was a
3888 community gathering, that they wanted to use the pool, from 10:00 pm to midnight, they
3889 could not. Just for the meets.

3890
3891 Mr. Blankinship - 10:00 o'clock for outdoor and midnight for indoors.

3892
3893 Mr. Merner - And that's a County standard? So we're not being restricted
3894 by anything different than what the County standard normally is?

3895
3896 Mr. Kirkland - No, you're getting the same thing everybody else got.

3897
3898 Mr. Merner - Item # 9 in here also restricts the height of the privacy fence
3899 for the swimming pool. I wouldn't want to restrict that to six feet high. I'd want to restrict
3900 that to whatever the County Code is.
3901
3902 Mr. Blankinship - That is six feet.
3903
3904 Mr. Merner - It is six feet, not 54 inches or something like that?
3905
3906 Mr. Blankinship - For enclosing the swimming pool, it's actually a building
3907 code requirement.
3908
3909 Mr. Merner - So it's no less than six feet?
3910
3911 Mr. Blankinship - Right.
3912
3913 Mr. Merner - Okay, this specifically says it has to be six feet. Is it possible
3914 to change it to say "no less than six feet," so we may want to put up a seven foot on the
3915 back side for buffer. I just don't want to be limited to something that exactly says six
3916 feet if we could.
3917
3918 Mr. Wright - Is there any problem with saying "no less than six feet," Mr.
3919 Blankinship?
3920
3921 Mr. Blankinship - As far as I know, that would be fine, Mr. Chairman.
3922
3923 Ms. Dwyer - There may be some limitations about fence height in side
3924 yard, front yard, depending on where that is located on this property, so this is not giving
3925 you permission to violate a standard requirement. It just says that you need to have it at
3926 least six feet tall.
3927
3928 Mr. Merner - Similar to the tennis courts. We're not sure if we're going to
3929 put in a ten-foot or twelve-foot high fence to go around the tennis courts, or for that
3930 purpose, the tot lot may have a fence around it.
3931
3932 Ms. Dwyer - I just want to be clear that this is not giving you permission to
3933 build a fence that's prohibited in some other way.
3934
3935 Mr. Merner - Yes ma'am, it's clear. I also have provided an architectural
3936 elevation of what the building is going to look like, if anyone would like to see that. It's
3937 basically a color rendering of it.
3938
3939 Mr. Wright - I want to address the footing, the parking lot in the front yard.
3940 I take it that the Planning Commission approved the location of this facility, is that
3941 correct?
3942

3943 Mr. Merner - Yes sir. This plan is substantially in conformance with that
3944 plan that was submitted to Planning Commission by the Board of Supervisors.
3945

3946 Mr. Wright - And the location of the building at this location requires the
3947 parking lot to be in the front yard, is that what you're saying?
3948

3949 Mr. Merner - In this particular layout that we have shown here, I guess in
3950 the R-3A or R-2A zoning district, you're not allowed to park in the front yard or side yard
3951 of your lot.
3952

3953 Mr. Wright - I understand that.
3954

3955 Mr. Merner - So this configuration of parking was shown at that location,
3956 same with the building. No matter if you turn the building around and still park there,
3957 that's still your front yard.
3958

3959 Ms. Dwyer - Is there another zoning category that this recreational facility
3960 could be in that would allow parking in the location that they've selected?
3961

3962 Mr. Blankinship - Not that would be consistent with the subdivision.
3963

3964 Ms. Dwyer - It appears that they've selected a piece of property that has
3965 so many limitations that it's almost a self-imposed problem.
3966

3967 Mr. Blankinship - In any R District, that applies.
3968

3969 Mr. Wright - What I'm getting at, could there be a reasonable use of this
3970 property for this purpose without putting the parking in the front yard?
3971

3972 Mr. Merner - I would say yes – you could always orient a building in a
3973 different location, move the building possibly up by a power line, and then you'd park in
3974 the rear of the building, but you couldn't park on the side. When you restrict it by the
3975 interstate and the easement, and you're trying to accommodate the tennis courts, the
3976 play field, and everything else that's required, you'll have to walk a great deal longer to
3977 get to the recreational facility that you're adjacent to if you re-orient the building
3978 somewhere else. You'll also get that building and pool closer to the other residential
3979 lots that are part of the subdivision.
3980

3981 Mr. Wright - Would that require you to go back to the Planning
3982 Commission if you change the location of the building?
3983

3984 Mr. Merner - Yes, it would, because the exhibit was the previously
3985 approved plan.
3986

3987 Mr. Wright - How does that impact on us, Ben?
3988

3989 Mr. Blankinship - Let's let Mr. O'Kelly.
3990
3991 Mr. O'Kelly - Mr. Chairman, if I may speak to that, the Planning
3992 Commission did not approve this recreational facility. They approved the subdivision of
3993 the property. That's why this case is before you now, for approval of the conditional use
3994 permit to allow a noncommercial recreational facility.
3995
3996 Mr. Wright - He said that the Planning Commission approved the location
3997 of this building. How did that happen?
3998
3999 Mr. O'Kelly - The Planning Commission only approved the subdivision of
4000 the property. They did show the location of the recreational facility to comply with the
4001 proffered conditions, and to show the use of the property, but it wasn't approved by the
4002 Planning Commission.
4003
4004 Ms. Dwyer - The site design was not approved by the Planning
4005 Commission.
4006
4007 Mr. Merner - Just the location of where it was going to sit in the
4008 subdivision was shown on that particular plan. That's why we're here today, for the use
4009 permit to now allow it to be built on the property, which was a separate case we knew
4010 we had to come before you.
4011
4012 Ms. Dwyer - Allowing it is one thing. The fact that you've chosen to put
4013 this recreational facility on a part of this parcel that is so encumbered by Dominion
4014 Power easement, Pipeline easement, buffers, RPA's, and steep topography, it seems to
4015 me that you kind of created this problem. You basically are taking an unusable piece of
4016 land and trying to squeeze a recreational facility on it that has all these limitations and
4017 then asking for a variance to allow you to do that. That's the way it appears to me.
4018
4019 Mr. Merner - Actually, when we originally looked at this, it was always our
4020 intent to put that recreational facility in that particular location. We actually submitted a
4021 POD plan in for review for that location of that clubhouse, coming to find out, after our
4022 application got reviewed, some mistake that happened in the process, that we actually
4023 had to have a variance for the location of the parking to be on there. Not that we had to
4024 get the conditional use permit. We just thought we were going through a POD approval
4025 when we submitted the -- we thought it was the next step. You get the property
4026 rezoned; that's the location of the clubhouse; that's what was shown on the preliminary
4027 plan, even though we know it wasn't approved with the subdivision, but we thought the
4028 next step was, we were thereby right, and we can go ahead now and just submit the
4029 recreational facility site plan in through the POD. We were unaware at that time with the
4030 rezoning that we actually had to go for a conditional use permit procedure. Then when
4031 we did all that, we found out that the parking was also an issue, that it could now not be
4032 allowed there as well because of that requirement. It wasn't that it was just the
4033 identified property. This is where we thought everything would work out best for the
4034 community, and we wouldn't actually be here in the first place with this Board.

4035
4036 Mr. Kirkland - Mr. Blankinship, if this was zoned A-1, would he have any
4037 problem?
4038
4039 Mr. Blankinship - I don't think so. The parking standard says "in any R District,
4040 parking has to be in the rear yard.
4041
4042 Mr. Kirkland - So if you had this zoned A-1, you wouldn't be here.
4043
4044 Mr. Merner - We wouldn't be here, but the property was zoned in 1989
4045 and 1990 with that zoning condition that this recreational facility will be provided on this
4046 R-3A or R-2A zoned piece of property.
4047
4048 Ms. Dwyer - For example, we could approve the use permit for the
4049 recreational use, but not approve the location of the parking, in which case the solution
4050 to the parking might be in A-1 zoning, is that what you're suggesting?
4051
4052 Mr. Kirkland - Yes, I think he could go back.
4053
4054 Mr. Merner - I would assume that there are many other options. One, go
4055 back and rezone it to something else; two, move the thing around to reconfigure
4056 something so that you wouldn't have the variance in the first place, but again, we didn't
4057 even realize that the variance was even a requirement when we went through the
4058 rezoning.
4059
4060 Mr. Kirkland - I understand.
4061
4062 Ms. Harris - According to our staff report, it says the location of the
4063 recreation center was agreed to by the Planning Commission.
4064
4065 Mr. Blankinship - The center would be at that corner of the overall property.
4066
4067 Ms. Harris - It goes on to tell us how it's encumbered by the line
4068 easements, so that's 1 and 2 on the staff report.
4069
4070 Mr. Wright - Any further questions of the Board? Do you have anything
4071 else to report? Is anyone here in opposition to this request? Hearing none, that
4072 concludes the case.
4073
4074 Mr. Wright - A-76-2005, with UP-12-2005. Let's talk about the variance
4075 first.
4076
4077 Mr. Kirkland - Do you need a motion to talk about it?
4078
4079 Mr. Wright - I guess we would have to have a motion on whichever one
4080 you're going to discuss.

4081
4082 Mr. Blankinship - I would prefer we take the use permit first, Mr. Chairman.
4083 The variance is moot unless the use permit is approved first.
4084
4085 Mr. Wright - Let's take UP-12-2005 first.
4086
4087 Mr. Kirkland - I move that we approve UP-12.
4088
4089 Mr. Wright - Motion's made that we approve it.
4090
4091 Ms. Harris - Second motion.
4092
4093 Mr. Blankinship - That's a motion to approve by Mr. Kirkland, seconded by Ms.
4094 Harris.
4095
4096 Mr. Wright - Any discussion?
4097
4098 Mr. Kirkland - The applicant stated that the recreation area had to go on R-
4099 3AC property, is that correct? Can that be changed, or is that a fixed thing?
4100
4101 Mr. Blankinship - Let me see if the proffers are in the file. I would be very
4102 surprised if it had to be R-3AC zoning. I would characterize the applicant's statement
4103 as "the property is zoned R-3AC, and we were told we had to have a recreation center
4104 on the property," but let me just see what the proffer reads, because I certainly could be
4105 mistaken. The proffers should be in the file. I'm not seeing where the proffers require a
4106 green belt, public utilities, underground utilities, a green belt, effective covenants,
4107 foundations, minimum floor area, flood plain

4108
4109 Ms Dwyer - What was your question again? Whether they were required
4110 to zone

4111
4112 Mr. Kirkland - That they can't rezone the property, that the recreation area
4113 has to be built in an R-3AC.
4114
4115 Ms. Dwyer - That would be an atypical proffer I think.
4116
4117 Mr. Kirkland - He said that. Mr. Merner said that it had to be in R-3AC. If
4118 that can be changed to A-1,

4119
4120 Ms. Dwyer - Even if that were a proffer, the Planning Commission and
4121 Board could revisit that, but it seems to me that kind

4122
4123 Mr. Blankinship - They could have been in the proffer. I can't find the proffer
4124 that requires that they have a recreation center, and I thought sure he referred to that.
4125
4126 Mr. O'Kelly - Mr. Blankinship, may I ask a question? Even if the property

4127 were rezoned to A-1 Agricultural, I think perhaps in the A-1 District, you can park
4128 anywhere except in the required minimum front yard.
4129
4130 Mr. Blankinship - I think that's right, yes.
4131
4132 Ms. Dwyer - So what is the required minimum front yard?
4133
4134 Mr. O'Kelly - Fifty feet.
4135
4136 Ms. Dwyer - So that still might give them a lot of parking area.
4137
4138 Mr. Wright - They'd still have a problem.
4139
4140 Ms. Dwyer - I think they would still have a lot of parking area, Mr.
4141 Chairman, if they went back fifty feet.
4142
4143 Mr. O'Kelly - The problem I'm having is I don't have a site plan to look at.
4144 There was nothing in the package.
4145
4146 Mr. Blankinship - It was submitted and it was scanned, and why the reductions
4147 were not put in your packets, I don't know. I apologize for that.
4148
4149 Mr. Merner - I have another copy if you would like to look at it.
4150
4151 Mr. Blankinship - Could we – I think that would be helpful to the Board's
4152 deliberation. Actually it doesn't address A-1 districts at all. It's really small.
4153
4154 Mr. Merner - Mr. Blankinship, there were four rezoning cases, so you may
4155 only have one of the cases there that may be identified in one of the other rezoning
4156 cases on the property.
4157
4158 Ms. Dwyer - The basic question is, if this recreation area were rezoned
4159 for A-1, then parking could by right be placed anywhere other than the front fifty feet of
4160 that parcel?
4161
4162 Mr. Kirkland - What I was thinking, is if we approve the use permit, and if
4163 we turn around and deny the parking part, he would have to go back and get it rezoned
4164 A-1; therefore he could park anywhere he liked.
4165
4166 Ms. Dwyer - Other than that front fifty feet. So there is a remedy. We
4167 don't want to necessarily
4168
4169 Mr. Kirkland - I was looking for the remedy.
4170
4171 Mr. Wright - I thought there was a fifty-foot requirement from the
4172 interstate.

4173
4174 Ms. Dwyer - But that exists anyway.
4175
4176 Mr. Kirkland - That's the buffer. You can't park in the buffer. He hadn't
4177 planned on using that anyway. That's like a green belt, like a buffer buffer.
4178
4179 Ms. Dwyer - That's required anyway. We're just saying the A-1 zoning
4180 would prohibit parking within the front fifty feet, and elsewhere parking could be.
4181
4182 Mr. Kirkland - So that's roughly six spaces.
4183
4184 Ms. Dwyer - Depending on what the site plan looks like, but it would give
4185 them more leeway.
4186
4187 Mr. Blankinship - With a fifty-foot pipeline, it had to be fifty feet.
4188
4189 Ms. Dwyer - So they couldn't put – okay, that runs along the proffer line.
4190
4191 Mr. Blankinship - It would have to be outside of fifty feet.
4192
4193 Mr. Wright - I think I'm fine now. So he has a remedy.
4194
4195 Mr. Blankinship - So the motion on the table is to approve the use permit.
4196
4197 Mr. Kirkland - That's correct, and I'll stay with that.
4198
4199 Mr. Wright - Made and seconded. Any further discussion? All in favor,
4200 say aye; opposed, no. It's approved. Now A-76.
4201
4202 Mr. Kirkland - I make a motion we deny it.
4203
4204 Ms. Dwyer - Second.
4205
4206 Mr. Wright - Any discussion? The basis for that is what?
4207
4208 Mr. Kirkland - The basis for that is that he has a remedy to have the land
4209 rezoned, which would allow him, if he went to an A-1 Agricultural, to park in the front
4210 yard.
4211
4212 Mr. Wright - So he has a remedy.
4213
4214 Ms. Dwyer - And even beyond that, there is reasonable use of the
4215 property that is possible without the variance. He could redesign the whole site and not
4216 have parking in the front, but put parking somewhere else. The fact that there are
4217 limitations to the property were known at the time the property was purchased and
4218 designed.

4219
4220 Mr. Wright - Any further discussion? All in favor, say aye. Opposed, no.
4221 It's denied.

4222
4223 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
4224 Harris, the Board **granted** application **UP-12-2005** for a conditional use permit to
4225 operate a private nonprofit recreation facility at Kidwelly Lane (Castleton) (Parcel 825-
4226 692-8035 (part)). The Board granted the use permit subject to the following conditions:

4227
4228 1. The property shall be developed in substantial conformance with the plan filed
4229 with the application. Any changes or additions to the layout may require a new
4230 conditional use permit from the Board of Zoning Appeals.

4231
4232 2. The recreation center shall be operated on a nonprofit basis and be open only to
4233 members and their guests.

4234
4235 3. Hours of operation shall be limited to 6:00 AM to 10:00 PM for outdoor activities
4236 and 6:00 AM to 12:00 midnight for indoor activities. The pool season shall be limited to
4237 May 1 to September 30.

4238
4239 4. Up to four times per year, the pool hours may be extended to 12:00 Midnight for
4240 swimming meets. Public address systems, starter guns and similar equipment may be
4241 used at swimming meets, but at no other time except for emergency purposes.

4242
4243 5. The parking lot, driveways, and loading areas shall be subject to the
4244 requirements of Section 24-98 of Chapter 24 of the County Code.

4245
4246 6. The applicant shall present a complete grading, drainage, and erosion control
4247 plan prepared by a Professional Engineer certified in the state of Virginia to the
4248 Department of Public Works for approval. This plan must include the necessary
4249 floodplain information if applicable.

4250
4251 7. A detailed site lighting plan shall be included with the landscaping plans for
4252 Planning Department review and approval. All exterior lighting shall be shielded to
4253 direct light away from adjacent property and streets. For safety and security, lights
4254 beamed only on the swimming pool, and operated on a timer, shall be provided
4255 whenever water is in the pool.

4256
4257 8. All landscaping shall be maintained in a healthy condition at all times. Dead
4258 plant materials shall be removed within a reasonable time and replaced during the
4259 normal planting season.

4260
4261 9. The swimming pool shall be enclosed by a privacy fence at least six feet tall.
4262 The design shall be subject to Planning Department review and approval.

4263
4264 10. Connections shall be made to public water and sewer.

4265
 4266 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
 4267 Negative: 0
 4268 Absent: 0

4269
 4270 The Board granted the request because it found the proposed use will be in substantial
 4271 accordance with the general purpose and objectives of Chapter 24 of the County Code.
 4272

4273 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
 4274 Dwyer, the Board **denied** application **A-76-2005** for a variance to park in the front and
 4275 side yards at Kidwelly Lane (Castleton) (Parcel 825-692-8035 (part)).
 4276

4277 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
 4278 Negative: 0
 4279 Absent: 0

4280
 4281 The Board denied your request as it found from the evidence presented that there was
 4282 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
 4283 Virginia to justify a variance.
 4284

4285 Mr. Wright - I think we have the last case coming up.
 4286

4287 **A-77-2005** **KATHY S. LOCKE** requests a variance from Sections 24-95(i)(2)c.
 4288 and 24-95(q)(5) to build an addition at 10231 Acworth Drive
 4289 (Bretton Woods) (Parcel 768-765-9425), zoned R-2, One-family
 4290 Residence District (Brookland). The accessory structure setback
 4291 and minimum side yard setback are not met. The applicant
 4292 proposes 2 feet side yard setback and 5 feet accessory structure
 4293 setback, where the Code requires 10 feet side yard setback and 10
 4294 feet accessory structure setback. The applicant requests a
 4295 variance of 8 feet side yard setback and 5 feet accessory structure
 4296 setback.
 4297

4298 Mr. Wright - Does anyone else desire to speak with reference to this
 4299 case? Would you raise your right hand and be sworn please?
 4300

4301 Mr. Blankinship - Do you swear that the testimony you are about to give is the
 4302 truth, the whole truth, and nothing but the truth, so help you God?
 4303

4304 Ms. Locke - I do. Kathy Locke. Mine is pretty straight forward, and after
 4305 listening to all these variance stories today, I feel like going home, but nonetheless, we'll
 4306 go forward with this. I have been in my home for a little over 22 years in the Bretton
 4307 Woods Subdivision in the Glen Allen community, and a few years ago, I found out that I
 4308 have a very rare heart condition. I have made attempts to try to move, but every time I
 4309 try to do something, someone beats me to the house, they don't have a house to sell, or
 4310 there are other circumstances that are out of my control. In the process of trying to

4311 decide how to manage the next years of my life, as far as having less stairs to climb, I
4312 guess that's the point I'm trying to make here, stairs are becoming an issue, so I'm
4313 trying to figure out how to avoid that. I came up with the idea of doing this addition; it's
4314 somewhat large; I wanted to keep everything matching as far as the dimensions of the
4315 back of the house so that it wouldn't be an eyesore to anyone behind me or on either
4316 side. I guess that's pretty much it. I'd be happy to answer any questions.

4317

4318

4319

4320

4321

4322

4323 Mr. Wright - I think we're faced with the same thing we've said for the
4324 other cases. Any further questions of the Board?

4325

4326 Ms. Dwyer - I'm wondering – it says a 2-foot and 8-foot side yard setback,
4327 but

4328

4329 Ms. Locke - I wasn't sure if that was actually – I left earlier to go back to
4330 find out if they had written that correctly. Back in the mid-90's I got a variance to do an
4331 addition, and so there's already an addition there, and so I was going to try to match
4332 that. It's just an additional two feet if you're standing on Acworth, facing my home,
4333 instead of ten feet off the property line, it would be eight feet off the property line. So
4334 I'm only asking for two feet on the right side, and on the left side

4335

4336 Mr. Blankinship - You actually filed the application and then filed a revised ...

4337

4338 Ms. Locke - We filed it and then went back to do the measurements, and
4339 then I went back and explained it, and they helped me fill it in. If you face the home,
4340 you have to have ten feet off the property line, and I just needed an additional two feet
4341 on the right side. Am I articulating that well?

4342

4343 Mr. Blankinship - Since we weren't dealing with a survey, we decided to just
4344 advertise it and notify it in the worst case and put it out there.

4345

4346 Ms. Dwyer - So actually she's asking for a two-foot variance and an eight-
4347 foot setback,

4348

4349 Mr. Blankinship - Two-foot variance and an eight-foot setback – how far will
4350 the addition be from the property line?

4351

4352 Ms. Locke - Eight feet.

4353

4354 Mr. Blankinship - So it's a two-foot variance on an eight-foot setback; we've
4355 got it reversed in the way we advertised it, but we did that just to make sure that
4356 whichever way it turned out, it would be properly before you.

4357
4358 Ms. Dwyer - And the accessory structure setback – it's supposed to be
4359 ten feet away, and it's only going to be five.

4360
4361 Ms. Locke - With the addition, it would be five feet to walk through to get
4362 to the back yard. It doesn't present a hardship for anyone else, but it's creating a
4363 hardship for me in that over time, the stairs become an issue.

4364
4365 Ms. Dwyer - You could add a smaller addition.

4366
4367 Ms. Locke - Yes, but then it would create the issue of not matching the
4368 dimensions, and I don't know how that would be if something ever happened and the
4369 house had to be sold, or how it's going to look to my neighbors when they come
4370 outside.

4371
4372 Mr. Wright - Anything further? Any further questions of the Board or
4373 staff? Is anyone here in opposition to this request? Hearing none, that concludes the
4374 case.

4375
4376 Mr. Kirkland - Motion to deny, based on the Supreme Court ruling recently,
4377 the applicant has reasonable use of its property without the variance.

4378
4379 Ms. Dwyer - Second.

4380
4381 Mr. Wright - It's seconded. Any further discussion? All in favor, say aye.
4382 It's denied.

4383
4384 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
4385 Dwyer, the Board **denied** application **A-77-2005** for a variance to build an addition at
4386 10231 Acworth Drive (Bretton Woods) (Parcel 768-765-9425).

4387
4388 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
4389 Negative: 0
4390 Absent: 0

4391
4392 The Board denied your request as it found from the evidence presented that there was
4393 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
4394 Virginia to justify a variance.

4395
4396 Mr. Wright - The Board will take a brief recess before making decisions
4397 on the cases.

4398
4399 I would suggest that we go from the back forward since we've got some people here
4400 who were at the end of the docket. Everyone in accord with going from the back
4401 forward? It may be a good idea, as we do these things, to give your reasons.

4402

4403 Mr. Wright - All right. I don't think we have any minutes to approve. Is
4404 there anything else to come before the Board? I do remind the Board that we will have
4405 the Tidewater Quarries case before us for consideration at our next meeting, as to what
4406 we should do.

4407
4408 Ms. Dwyer - Sometime between now and then, we'll be getting the
4409 minutes.

4410
4411 Mr. Kirkland - Will I be getting the infamous VDOT Report in there with
4412 that?

4413
4414 Mr. Blankinship - We're working on it.

4415
4416 Mr. Kirkland - It was on television yesterday.

4417
4418 Mr. Wright - Do I hear a motion that we adjourn?

4419
4420 Mr. Kirkland - So moved.

4421
4422 Mr. Wright - Second?

4423
4424 Ms. Dwyer - Second.

4425
4426 Mr. Wright - All in favor, rise.

4427
4428 There being no further business, and on a motion by Mr. Kirkland, seconded by
4429 Ms. Dwyer, the Board adjourned until **July 28, 2005**, at 9:00 am.

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4431

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4433

4434 Russell A. Wright, Esq.

4435 Chairman

4436

4437

4438 Benjamin Blankinship, AICP

4439 Secretary