

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**  
2 **HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**  
3 **HENRICO COUNTY GOVERNMENT COMPLEX, ON THURSDAY, NOVEMBER 15,**  
4 **2001, AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND**  
5 **TIMES-DISPATCH ON OCTOBER 25 AND NOVEMBER 1, 2001.**  
6

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

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

7  
8  
9  
10 Mr. Balfour - I call the meeting of the Board of Zoning Appeals to order  
11 please, and ask you to stand for the Pledge of Allegiance.

12  
13 Pledge of Allegiance

14  
15 Mr. Balfour - Mr. Secretary, if you'll read the rules please.

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

November 15, 2001

31 the conditions suggested by the staff. Mr. Chairman, I am not aware of any  
32 deferrals or withdrawals on this morning's agenda.

33

34 Mr. Balfour - Does anybody wish to defer or withdraw their case who  
35 hasn't yet told our Secretary? If not, I see we have one case deferred from a  
36 previous meeting. Mr. Secretary, if you would call that case.

37

38 **A -119-2001** **JAMES AND JOYCE CLIFTON** appeal a notice of violation  
39 pursuant to Section 24-116(a) of Chapter 24 of the County  
40 Code with respect to tents erected at 2900 Mountain Road (Tax  
41 Parcel 31-A-46 and -47A), zoned R-2A One-Family Residence  
42 District (Brookland).

43

44 Mr. Balfour - Would all who plan to testify come forward or stand  
45 please. One person is the only one who's going to testify in this case? If others  
46 plan to testify, we'd like to swear you in all at once, so if you plan to testify, stand  
47 up.

48

49 Mr. Blankinship - All raise your right hand please. Do you swear that the  
50 testimony you are about to give is the truth, the whole truth, and nothing but the  
51 truth, so help you God?

52

53 Mr. Balfour - Would the people who plan to speak in favor come  
54 forward. That's in favor. Let me make a comment while he's coming up. Looks  
55 like about half a dozen more people stood up, and we're glad to hear from all of  
56 you, but due to our schedule, and in the interest of other people's cases, we ask  
57 that when you have something to say, please don't stand up and repeat what the  
58 person before you or someone else said. We'll hear you the first time, and we  
59 don't need some repetition. If you have something new to add, or some  
60 perspective we haven't thought about, that's fine, but we ask you not to just stand  
61 up here and repeat the previous person's remarks. Thank you. Yes sir, would you  
62 identify yourself?

63

64 Mr. Martineau - Good morning everyone. My name is Don Martineau. I  
65 am the Clifton's son-in-law. I am retired from Tredegar Industries, where I was the  
66 Director for Inter-Nations Services. I'd like to start off with a little bit of  
67 background. At the suggestion of the Board of Supervisors, from the Brookland  
68 District, the Cliftons applied for a provisional use permit to start a bed and  
69 breakfast, known as the Virginia Cliffe Inn. They applied on August 27, 1997.  
70 The County then created zoning and amendments permitting bed and breakfast  
71 operations as a provisional use in R districts. After a favorable staff report and  
72 upon recommendation of the Planning Commission, which incidentally was very  
73 helpful, and you can see from pages 2 through 10 of our handout, the Cliftons  
74 were granted a provisional use permit by the Henrico County Board of Supervisors

75 on November 18, 1997. The Clifton's plan of operation, submitted with the  
76 provisional use permit application, included, they could have up to 6 rooms for  
77 guests, a sign may be installed on Mountain Road, special events, such as  
78 weddings and social gatherings were allowed. This is stated in condition # 8 on  
79 page 11 of your handout, which is the provisional use permit. The Cliftons opened  
80 for business on January 1, 1998, and they did weddings in 1998, 1999, 2000,  
81 and 2001. They found that there are many couples who want a garden style  
82 wedding arrangement and choose not to have a marriage in the church. Over a  
83 hundred weddings were held at the Inn, with no complaints from the wedding  
84 parties or the neighbors. With weddings going so well, the Cliftons thought about  
85 expansion, so in April 2001, the Cliftons asked the County about erecting a 40-  
86 foot by 60-foot glass-enclosed building for weddings. It was at this time that the  
87 Henrico County officials revisited the Inn, and now made comment about the tent  
88 that was 1200 square feet in size at that time. The tent had been up for about a  
89 year. They said that we needed a tent permit, so the Cliftons applied for a tent  
90 permit, but were denied. Furthermore, they were told that the tent had to come  
91 down unless it was reduced to no more than 900 square feet in size. After  
92 numerous meetings between Henrico County officials and the Cliftons' attorneys,  
93 the Cliftons complied with this requirement by June 20, 2001. Our case is based  
94 on 2 key arguments.

95  
96 The first argument is on January 27, 2001, 7 days after the tent was reduced in  
97 size, Mr. John Short a Deputy Director of Planning, came out and measured the  
98 tent, and agreed the tent was no more than 900 square feet in size. He then  
99 issued a Notice to Mr. and Mrs. Clifton, stating that they were in violation of the  
100 County Zoning Ordinance by having a tent on the bed and breakfast property  
101 without a temporary use permit. This notice is page 15 of your handout. Our  
102 contention, and the basis for this appeal, is that County officials, including the  
103 Director of Planning and his deputy, misinterpreted the zoning ordinances. As I've  
104 already stated, the provisional use permit for this bed and breakfast expressly  
105 permits special events as spelled out in the operations plan submitted by the  
106 provisional use permit application, which is page 3 of your handout, and in  
107 provisional use permit itself, which is condition 8 on page 11 of your handout.  
108 Other written materials in the County's files show that special events, including  
109 weddings, were addressed. If you look at page 5 of your handout, you'll note this.  
110 Since weddings are permitted by the provisional use permit, we contend that tents,  
111 or in this case a 30-foot by 30-foot canopy, covering the ground level deck, are  
112 obviously an integral part of outdoor weddings. We feel, therefore, that the tent,  
113 by implication, is already permitted by the provisional use permit, and does not  
114 require an additional temporary use permit.

115  
116 The second argument in our case is this. In further support of the appeal, I must  
117 go back to the original notice of violation that states that a tent is illegal without a  
118 temporary use permit. The only place in the zoning ordinance that even refers to

119 temporary use permits, is in section 24-116. This section creates power for the  
120 Board of Zoning Appeals, to grant temporary use permits; however, this section  
121 does not indicate what kinds of uses require a temporary use permit. Furthermore,  
122 there is no other place in the Zoning Ordinance that spells out which uses must get  
123 a temporary use permit and which ones do not. We contend, therefore, that this  
124 sort of arrangement in the County Zoning Ordinance, essentially leaves it entirely  
125 up to the judgment of the County officials, to decide what uses require a temporary  
126 use permit. It is our belief that the Virginia Supreme Court Zoning Law explicitly  
127 prohibits allowing these kind of decisions up to County administrative officials.  
128 This concludes our case. I sincerely hope the Board agrees with the facts we've  
129 presented here. You know, we were just trying to do a good job here and provide  
130 a much needed service. We were not trying to break any rules, nor do we plan to  
131 do so in the future. I hope you see it in your minds and in your hearts to rule in  
132 favor of the Cliftons. I do have a couple of photographs of the tent on the  
133 property; they show the tent up during an actual wedding event, and it shows the  
134 tent down when there are no events. I also understand that there may be others  
135 present who are in support of our appeal. Thank you very much.

136

137 Mr. Balfour - I think he's going to put your picture up on the screen in  
138 a second. Are there any questions by members of the Board? You'll have a  
139 chance to respond later if there's anyone in opposition. Are there any others to  
140 speak in favor at this point? Yes ma'am.

141

142 Ms. Clifton - My name is Janice Clifton. I am Mr. and Mrs. Clifton's  
143 daughter and very interested and involved in the bed and breakfast. Just a couple  
144 points of clarification. I hope that you will understand that probably about 80% of  
145 our business is driven by weddings. That does not mean that we have a wedding  
146 every week, but most of our guests who come in to stay are coming for the  
147 wedding event. We found many, many couples who enjoy the atmosphere of  
148 being together for the weekend by staying at the bed and breakfast and having  
149 their wedding. The reason that this tent is a major concern, is our weddings are  
150 garden style, outdoor weddings, and we do have to provide some type of  
151 alternative or provision in the event of rain. As you'll see with the tent down, we  
152 do keep the tent down when it's not in use, so it's not a year-round structure or  
153 tent that is up all the time. We do want the availability to be able to put it up  
154 when needed for our weddings. Thank you.

155

156 Mr. Balfour - Any questions by members of the Board? Any others to  
157 speak in favor at this moment?

158

159 Mr. Clifton - Good morning. I am James Clifton of the bed and  
160 breakfast inn. I don't speak too clearly, is the reason he's presenting this. I do feel  
161 that this is an asset to Henrico County. We bring people in from all over the world,  
162 and I figure that Henrico County is known considerably because so many people

163 come in and stay there from all over the states and all over the world. I think it's a  
164 tremendous advantage to Henrico County to allow us to have this facility. Thank  
165 you very much.

166  
167 Mrs. Clifton - I'm Margaret Clifton, innkeeper, and I just wanted to  
168 explain a little bit about the pictures. This is on the very back of our property, and  
169 in the very back of that is the Cultural Arts Center. All the property is almost  
170 completely surrounded by trees. You cannot see that tent from any other direction  
171 except the very tip-top when it's up. If you'd like to see other pictures, I'll be glad  
172 to show them to you.

173  
174 Mr. Balfour - What position were these pictures taken from?

175  
176 Mrs. Clifton - This one was taken from the back of the house. All  
177 these other pictures that I have were taken from the other outskirt areas of the  
178 property.

179  
180 Mr. Balfour - Did I understand that someone in the County did tell you  
181 that a 900-square foot tent was okay?

182  
183 For building permit purposes.

184  
185 Mr. Balfour - My partner here answered the question. I asked if  
186 someone in the County had told you that a 900-square foot tent was all right.

187  
188 Mrs. Clifton - Yes they did. When we went to apply for the permit, and  
189 the people in the office said, "well you don't need a permit for a 30 by 30 tent, so  
190 we tried in every way possible that we could to comply with the County's  
191 regulations.

192  
193 Mr. Balfour - I think there may be a different permit, from what I  
194 understand. Let me ask you a second question. What's the largest room inside?

195  
196 Mrs. Clifton - Inside the house?

197  
198 For purposes of use as a dining room or a ballroom or  
199 something of that nature.

200  
201 Mr. Clifton - 18 by 22, whatever that is.

202  
203 Mrs. Clifton - 18 by 22.

204  
205 Mr. Balfour - Any other questions by Board members?]

206

207 Mrs. Clifton - Anybody else?

208

209 Mr. Balfour - You'll have a chance, if you like, to respond after we hear  
210 from people who may be in opposition. I don't know that at this point. Are there  
211 other people who wish to speak in favor.

212

213 I want to see these pictures that she's got.

214

215 Mr. Balfour - Mrs. Clifton, would you like to leave your pictures here?  
216 You don't mind if we hold on to them?

217

218 Mrs. Clifton - Not at all.

219

220 Mr. Gibson - Good morning. I'm Fred Gibson, the Associate Minister  
221 of Glen Allen Baptist Church. This is the first and only bed and breakfast in  
222 Henrico County, and as such has struck sort of a historic nerve that many of us are  
223 very much concerned about, because I recognize that public officials have not  
224 wished to make this seem like a case involving harassment, but to the public eye,  
225 especially those of the people that I represent. It appears to be that kind of tact,  
226 and therefore is fairly much resented by the public. I am very much concerned  
227 about the potential interference of public institutions in the vicinity with the free  
228 enterprise that this institution represents, because I understand that that kind of  
229 tact is also, borders on the illegal, it certainly borders on the immoral. We're very  
230 much concerned about this family, not only their free enterprise, but the character  
231 that they lend to the entire community. I have performed several weddings there.  
232 It has not been for my financial benefit because I don't charge for weddings or for  
233 funerals. I think that these are times when people already have encountered  
234 enough expense, so that they don't have to have themselves belabored financially  
235 during this time, so I have nothing to gain by my support of their continuing to  
236 have weddings there. One of the weddings that I enjoyed conducting there was  
237 hampered by a considerable rainfall. Had it not been for the provisional tent, we  
238 would have had to unceremoniously go in wet with our clothing, dirt on our feet,  
239 and gone into some inappropriate place inside the house. I personally would like,  
240 and I feel that I represent the opinion of many people here and absent, so I would  
241 like to see their petition granted. Thank you very much. Are there any questions?

242

243 Mr. Balfour - Any questions by Board members? Are you speaking for  
244 the church and congregation, or do you live in the neighborhood too?

245

246 Mr. Gibson - I'm speaking for myself; I'm employed there. I am a  
247 resident of Henrico County, and I'm employed at the church. I'm a retired  
248 missionary from southeast Asia, and I've chosen to spend part of my retirement  
249 years in employment at the church.

250

251 How do you mean, you think, I believe I heard you say,  
252 maybe correct me if I'm mistaken, something to the effect about public buildings in  
253 the area and perhaps they were acting in a manner you didn't think was  
254 appropriate. What are you talking about?

255  
256 Mr. Gibson - I didn't recognize how important the Cultural Arts Center  
257 was to our community until it was pointed out by the Cliftons themselves, because  
258 they were the first ones in the community to send a large amount of business to  
259 the resident dining room at the Cultural Arts Center, as well as to direct a large  
260 number of people, not only to the Cultural Arts Center, for their holdings, but also  
261 to Walkerton. It's come to my attention that Walkerton is planning to have, with  
262 the very small grounds and inadequate parking space, are planning to host  
263 weddings also. This is what I was referring to when I said I was very much  
264 concerned about the potential interference of public institutions with private  
265 enterprise, which I think may be highly questionable in Henrico County.

266  
267 Mr. Balfour - Any questions of Board members? Thank you sir. Any  
268 others to speak? To keep it in order, let me know, is there anyone else to speak in  
269 favor or in opposition, so we don't want to intermix people speaking one way or  
270 the other. Identify yourself. Do we have any others to speak in favor at this  
271 point?  
272 Three people, and we're not repeating ourselves.

273  
274 Mr. Collier - I'm Roger Collier. I'm pastor of Glen Allen Baptist  
275 Church. I live a quarter of a mile from the Cliftons; I did not expect to be here, so I  
276 am not overly prepared to speak, but what I want to say is to affirm what my  
277 associate just said. I have also done weddings, and I ride by oftentimes when  
278 other individuals are having weddings, and I have never seen any problem, never  
279 seen any concern. I have never had a concern expressed to me, and I know the  
280 community very well. Our church family has been very upset with what has been  
281 happening the last 6 months with this, and I would rise to say I would affirm their  
282 petition and request that you grant it favorably.

283  
284 Mr. Balfour - For use of the tent, we're not questioning having the  
285 weddings there.

286  
287 Mr. Collier - Yes, for use of the tent. I have been there with the tent,  
288 and I haven't had a wedding when it rained, but I always wondered what we would  
289 do and when I saw the tent, it was a great help.

290  
291 Mr. Balfour - I misspoke too, when I said we're questioning. We're not  
292 questioning anything; we're listening. Next? Yes sir.

293  
294 Mr. Mallory - Thank you. My name is James Mallory, and I've lived in

295 the area where the tent is going to be, and have been there all my life. I really  
296 appreciate the fact that the Cliftons do such a great job of what they're doing.  
297 Also, I spent 34 years as a police officer with Henrico County. I have never  
298 experienced any problem with the Cliftons from all my years as a police officer. I  
299 know that anything that they run, in Henrico County or anywhere else, will be in  
300 compliance with all things. They need your compliance to allow them to have the  
301 tent, because they would not do anything that wasn't proper, and I feel like, as a  
302 resident who has lived in the area all my life, I can speak only highly of the  
303 Cliftons. They are the greatest people that could possibly be in the neighborhood.  
304 Thank you.

305

306 Mr. Balfour - Where do you live in relation to the Cliftons?

307

308 Mr. Mallory - I live about 4 blocks, on Lambeth Road. I have gone to  
309 church with the Cliftons all my life; I've known them ever since they've been in the  
310 area. I just know that there's nothing that they wouldn't do for Henrico County  
311 and the community and all of the people who are there. I know that their interests  
312 are for the County, for myself, and for everybody who lives out there. Thank you.

313

314 Mr. Balfour - Any questions?

315

316 Mr. Duke - Good morning, Chairman, Board members, my name is  
317 Michael Duke. I reside on Courtney Road and have for more than 20 years. I  
318 consider myself neighbors of the Cliftons, have watched the activities that go on at  
319 the bed and breakfast, and have enjoyed what all they bring to our community. I  
320 personally feel that the services that they provide to the public, as well as the  
321 facilities that they have on site at the bed and breakfast, are in fact compatible  
322 with our neighborhood, as well as with surrounding non-residential citizens. I feel  
323 like their services and facilities compliment our neighborhood, not only our  
324 residential neighborhood, but also those facilities that the County has. They  
325 compliment and enhance those facilities as well in the immediate vicinity. There's  
326 a real ground swell of support for the activities and services that have been going  
327 on, on their property, and within our community, and I think you can see by the  
328 presence of the people who are here today in support and favor, and that there is  
329 no opposition. Amazingly enough, I've never heard of any opposition to the  
330 services that they provide or the facilities that they have erected on their property.  
331 I think people are kind of amazed and appalled that any challenge is made towards  
332 the bed and breakfast facility at all. Anyway, I concur with everyone here that  
333 they be allowed to continue the services in the future, as they have in the past.  
334 Thank you for this time.

335

336 Mr. Balfour - Thank you, Mr. Duke. Any questions? Anyone else to  
337 speak? Those 2 people in the corner wish to speak?

338



339 Mr. Kirkland - Mr. Chairman, could I ask the attorney just one question?  
340 Mr. Martineau, would you come forward. The spokesman. In the report that we  
341 got, page 8 and page 9 show 2 drawings of the plat of the location. When was  
342 page 8 drawn, and when was page 9 drawn?

343  
344 Mr. Martineau - That was drawn approximately 2 or 3 weeks before we  
345 applied for the application, before August 27, 1997.

346  
347 Mr. Kirkland - And then I see on page 9 that you added a porch to the  
348 house, a gazebo, and a deck to the outbuilding in the back. Is this the final  
349 drawing that was used with the PUP?

350  
351 Mr. Martineau - As far as I know, that was the final drawing.

352  
353 Mr. Kirkland - And you didn't have any plans at that time to put a tent  
354 on the drawing, or anything like that?

355  
356 Mr. Martineau - Not at that time, because people who were having  
357 weddings there were renting tents from tent rental companies in the Richmond  
358 vicinity.

359  
360 How often is this tent used, just out of curiosity? I  
361 assume it doesn't stay up. You put it up when there's a call for it?

362  
363 Mr. Martineau - How often is the tent used? We have approximately 50  
364 weddings a year, so it's used approximately 50 weekends and a couple of other  
365 side events that are wedding related, like if somebody has a large rehearsal dinner,  
366 they might hold it under the tent.

367  
368 So you average about once a week?

369  
370 Mr. Martineau - About once a week.

371  
372 And you use it regardless of the condition of the  
373 weather?

374  
375 Mr. Martineau - We put it up regardless of the condition of the weather.  
376 And when there's no event taking place, we put it down. With few exceptions, we  
377 have to clean the tent once in a while, and clean underneath it, so it might stay up  
378 an extra day for that reason.

379  
380 And the height, there's only one tent? You don't have  
381 several that are different heights?

382

383 Mr. Martineau - No, we just have one tent, and it's approximately 14 feet  
384 at the most at the peak.

385  
386 Mr. Balfour - Any other questions?

387  
388 Mr. McKinney - How does this tent go up and down.

389  
390 Mr. Martineau - Well, it's an ingenious invention of my father-in-law.  
391 What he did was to put up 4 4-by-4 posts at the corners and hook up a pulley  
392 system with a winch, and he raises the tent and puts the permanent posts under it  
393 when he raises it. Then when he takes it down, he just lifts the tent up a little bit,  
394 removes the permanent posts, and lowers the tent back down on the deck.

395  
396 And that takes how long, approximately?

397  
398 Mr. Martineau - Ten to fifteen minutes.

399  
400 Might want to get a patent.

401  
402 Mr. Martineau - He's thought about it.

403  
404 Mr. Balfour - Any other questions? Thank you. Any others at this  
405 point?

406  
407 Ms. Koontz - I'm Patricia Koontz, and we have an industry membership  
408 in the Wedding Guide, and we're actually in the same industry or business with the  
409 Cliftons, and I really feel as though we should dwell on the fact that this is a  
410 canopy. We all understand the reason of the tent regulation coming in to the law,  
411 and it speaks directly to egress, the size of egress for safety, but there are no sides  
412 on, like you're totally surrounded tent effect. My daughter and I are in this  
413 business. We have actually trained with the Cliftons; they were more than  
414 generous in helping us get started. We have a cultural arts center close to us also,  
415 and a person who's interested in being married indoors, is not interested in being  
416 married outdoors, and vice versa. There's actually no direct competition between  
417 the 2, in my feeling. The other side, as everyone has indicated, is the fact that I  
418 have not seen anything but extremely professional and attractive performances and  
419 services on this. As we all are aware, when we bring a wedding into an area,  
420 you're talking in terms of at least \$60,000 to \$80,000, by the time your guests are  
421 here, they're doing overnight lodging, their food and flowers. By the time you're  
422 through the whole thing, you're into a very serious, if any of you are fathers of the  
423 brides .....

424  
425 I have 2 daughters - what were those .....

426

427 Ms. Koontz - Well this is your surrounding guests that bring their  
428 money into the area too, like Mr. Clifton said, from around the world.

429  
430 I think I heard \$60- to 80,000.

431  
432 Ms. Koontz - You've got it. And good luck with 2 daughters. Thank  
433 you.

434  
435 Mr. Balfour - Anyone else? Mr. Tokarz?

436  
437 Mr. Tokarz - Members of the Board, my name is Tom Tokarz; I'm  
438 Assistant County Attorney .....

439  
440 Mr. Balfour - Were you sworn in with the rest of them?

441  
442 Mr. Tokarz - Yes. I'm here representing the Director of Planning,  
443 whose interpretation is the subject of this hearing this morning. I think it's  
444 important at the outset to clarify what this hearing is not about. The hearing this  
445 morning, in our view, is not about whether the tent is a good idea or not. The  
446 question is about, what are the procedures to be used for the tent to be used for  
447 the weddings. It is our view, based on the application that is before the BZA  
448 today, that the wisdom of the tent, or the use of the tent at weddings, is  
449 something to be resolved at a different level, either through a temporary use  
450 permit, granted by the Board of Zoning Appeals or by the Board of Supervisors in  
451 revisiting the Provisional Use Permit for amendment of the conditions to  
452 specifically allow the tent.

453  
454 What I'm going to present to you today, though, are the ordinance reasons and the  
455 facts that were presented to the Board of Supervisors to indicate to you that at the  
456 time this provisional use permit was approved, there was no indication that there  
457 would be commercial activities using a tent for weddings on the property. What I'd  
458 like to do is go quickly through the exhibits with you.

459  
460 Before you do that, did I hear you say you thought  
461 there'd be no problem with a special use permit?

462  
463 Mr. Tokarz - No, what I was saying is that is one of the 2 areas where  
464 I think the Cliftons could go to get approval for using the tents, go back to the  
465 Board of Supervisors, ask them to specifically approve a condition in the provisional  
466 use permit that specifically allows them to do the tent. I'm going to walk through  
467 what the Board of Supervisors had and what it approved, and it's our view that the  
468 Board of Supervisors never approved a tent, never even knew there was a tent for  
469 commercial use, which is at issue in this particular case.

470

471 Mr. Balfour - From what I understand, excuse me, is that you think  
472 they can go back now, since there is a tent, and ask for a different use, is that  
473 what you're saying?  
474

475 Mr. Tokarz - They could certainly go back and ask the Board of  
476 Supervisors for an amendment of the conditions of the conditions of the provisional  
477 use permit, to allow them to use the tent for weddings. The reason that's  
478 important is, and I'm going to go through the ordinance, the intent of the bed and  
479 breakfast ordinance, which I was intimately involved in, in 1998 when it was  
480 passed, was to permit limited commercial activity in a residential zone, allowing a  
481 bed and breakfast home to exist in a residential zone, and as you know, residential  
482 zones do not allow commercial activity except in a very limited sense.  
483

484 One of the pieces of information which we haven't gotten this morning, which I  
485 would hope the Board would wish to ask the applicant, is exactly what the revenue  
486 is from the weddings that are being held on the property. If you have 50 weddings  
487 a year, it's my understanding that some of the charges are up to \$3,000 per event.  
488 I don't know if that figure is correct; it's what I've been told. But that is a  
489 significant commercial activity in a residential zone. And that is the issue that  
490 really was addressed when the Board passed the bed and breakfast ordinance in  
491 1998.  
492

493 If I can turn to exhibit 1, exhibit 1 is the section of the Code that you're very  
494 familiar with, and this is the section of the Code that says, "except as otherwise  
495 permitted by the ordinance, no building or part thereof, or other structure, shall be  
496 erected, located, reconstructed, enlarged, converted, or altered except in  
497 conformity with the regulations herein specified." Now what that basically means  
498 is, unless the ordinance permits it, it is not permitted, and you would have to get a  
499 special exception or a variance. We do not have a special exception or a variance  
500 for a tent in this particular case.  
501

502 Exhibit 2, is the ordinance that was passed at the time the bed and breakfast was  
503 approved. I would say to you, I was very much involved in the drafting of this  
504 ordinance. This ordinance was written to allow the Virginia Cliffe Inn to operate as  
505 a bed and breakfast. This was directly brought forward by Mr. Glover, in order to  
506 permit the Virginia Cliffe Inn. There is no dispute about the operation of the  
507 Virginia Cliffe Inn as a bed and breakfast operation. But I do want to point out that  
508 there was a specific limitation in what was contemplated by the Board when it  
509 passed the ordinance. If you look at the definition of bed and breakfast home, it  
510 specifies that this will be a private, owner-occupied dwelling, with guest rooms,  
511 and it says in the last line, "the bed and breakfast function shall not detract from  
512 the primary residential use or appearance of the building." And the word  
513 "residential" is key here, because what we're talking about with the tent is a  
514 commercial activity, not a residential activity. It's a commercial activity. And this

515 is not consistent with what the Board intended when they passed the ordinance. If  
516 you turn to the next page, section 24-12.1, in section B-4, it specifically provides,  
517 "the exterior of the building shall not be altered from its single-family character."  
518 Once again the Board was trying to say, "if you're going to have a bed and  
519 breakfast operation, if you're going to have a limited commercial operation in a  
520 residential zone, we still want to maintain the residential character of the  
521 neighborhood." That was what was contemplated by the Board. You take a look  
522 at page 3 of 6, number 6, "parking area shall be located and designed to  
523 compliment the residential character of the lot." Once again, designed to make  
524 sure that the bed and breakfast operation was residential in nature, not  
525 commercial.

526  
527 And finally, on page 5 of 6, if you take a look at the off-street parking  
528 requirements, in B-17, for bed and breakfast home, it says, "one parking space per  
529 guest room, in addition to the parking required for the principal residents." They  
530 didn't anticipate there was going to be a lot of parking for commercial activity.  
531 They only required one parking space per guest room. That was in addition to the  
532 parking for the principal residents. There was no contemplation of commercial  
533 activity on a large scale when this ordinance was passed.

534  
535 If you'll turn to exhibit 3, exhibit 3 was the provisional use permit application that  
536 was submitted by the Cliftons. As you see at the top, # 1, they said that the  
537 request for the permit was to operate a bed and breakfast inn. They said that the  
538 present and proposed use of the property was a one-family dwelling. There is no  
539 mention in this application form as to any commercial activity, such as weddings.  
540 Page 3 of the application is the map, and this is one of the maps that may have  
541 been included in the first set, if you take a look at the map that was prepared by  
542 the Cliftons and submitted, there is no area on this map which shows a tent  
543 anywhere. There is no indication of a tent on the schematic whatsoever. If you  
544 take a look at the operations plan, which is on the page following, there is no  
545 reference to a tent. There is no reference to any commercial activities. They talk  
546 about the purpose is to obtain a provisional use permit, for a 5500 square foot,  
547 privately owned and occupied dwelling with 6 guest rooms and 4 bathrooms,  
548 where transient guests may stay for periods of up to 2 weeks. No reference to any  
549 weddings, no reference to any commercial activities.

550  
551 The Cliftons then submitted, and this is exhibit 4, a memo on August 27, 1997,  
552 and in this memo they tried to explain further what they were going to do at the  
553 Virginia Cliffe Inn. And down near the bottom of this page, they say that there are  
554 many areas in the yard for additional parking for gatherings. On the site plan we  
555 show patio, porches and decks, available to guests for their use. The gazebo in the  
556 back of the house and spacious gardens are also for guests to use at their leisure.  
557 No mention of tents. No mention of commercial activities. Then you turn to page  
558 2, and the last paragraph, and this is really I think, where the difficulty in this case

559 arises. I would say to you right now, I think this really was a situation where there  
560 was poor communication at the time of the provisional use permit application.

561  
562 The Cliftons submitted something, and they may have had one thing in mind, the  
563 people reading this may indeed have had another thing in mind. Here's why I say  
564 that. What they said is, the activities we would like to plan on, are weddings and  
565 social gatherings. Next sentence. As private citizens, we have hosted these  
566 affairs for families and friends for the last 20 years. There is no mention of  
567 charging for these activities. There is no mention of doing anything other than to  
568 have private functions where you invite your family. You invite your friends to  
569 come onto the property. There is no mention of any tents; there is no mention of  
570 anything that has grown into what has happened at the Virginia Cliffe Inn. What I  
571 submit to the Board is, that when the application was submitted, there was no  
572 indication to the Board of Supervisors in approving the provisional use permit  
573 application, that they intended to have 50 weddings a year and a widespread major  
574 commercial operation.

575  
576 I go to page 5. Look at the staff report. This was submitted to the Board of  
577 Supervisors, and the reason I submit this to you, is because this is what the Board  
578 of Supervisors acted on when they approved the provisional use permit application.  
579 And on page 2, I have highlighted the section that says, " the applicant  
580 proposes to host special events such as weddings and social gatherings. There is  
581 no reference to tents; there is no reference to commercial activities.

582  
583 On page 3, the staff proposes certain conditions, and one of those conditions is  
584 condition # 8, which Mr. Martineau referred to earlier. The condition says, "  
585 the bed and breakfast home may host special events, provided such events do not  
586 require on-street parking, do not entail amplified music outside the home, and do  
587 not occur beyond 11:00 pm or on Sundays." And it also says in the  
588 comprehensive plan analysis, " this area is designated suburban residential 1."  
589 My only point is, everything that the Board of Supervisors had before it at the time  
590 of the provisional use application, said that there was going to be a desire to  
591 continue to have weddings for family and friends, as they had been doing for 20  
592 years. There was no indication of commercial activity; there was no indication that  
593 a tent would be erected. And that is also verified when you look at the map that is  
594 attached to the staff report. Once again, there is no indication of any tent on the  
595 map, and this had been submitted by the Cliftons.

596  
597 Mr. Balfour - Mr. Tokarz, it looks like to me that this station may be  
598 the tent, because I wouldn't suspect you'd run a bed and breakfast home that  
599 says, "may host special events," for free. In other words, you'd expect them to  
600 have special events, which I assume could include a wedding, and if you allowed  
601 them to do that, and you know they're going to charge people to stay there,  
602 they're going to charge for the event as well.

603  
604 Mr. Tokarz - I don't think that necessarily follows. I think it is true  
605 that the expectation would be, that guests may come to the inn and may have  
606 weddings on the property. I don't think there is an expectation from the  
607 information submitted that there would be a separate charge for the holding of the  
608 wedding, and that you would have this become the commercial operation that it's  
609 become. I am saying to you that that may have been what the Cliftons intended. I  
610 am also saying to you that that was not conveyed to the Board of Supervisors, and my  
611 submission to you is that is not what the Board of Supervisors approved. It may  
612 have been poor communication. I'm not saying that anybody did anything wrong  
613 here. What I am saying though, is that the extent of the approval that was given  
614 by the Board of Supervisors has been overstated or misunderstood. The Board of  
615 Supervisors granted an approval for a bed and breakfast home, which is a limited  
616 commercial operation in a residential neighborhood. It did not, on the basis of what  
617 was submitted to it, approve a separate, stand-alone commercial activity for  
618 holding 50 weddings at a revenue, and I don't know what the revenue figure is, I  
619 think Mr. Clifton or Mrs. Clifton can certainly speak to that. But as I understood  
620 what the Cliftons' daughter said, that's 80% of their revenue. I would submit to  
621 you that that's far different than what the Board of Supervisors was told was going  
622 to be done with the bed and breakfast home when they approved this application in  
623 1997. Now once again, please understand, I'm not saying this is a bad thing. The  
624 Director of Planning's position is not that you shouldn't have weddings. The  
625 position is not that the bed and breakfast home is a bad thing. It's not even that  
626 the tent is a bad thing. The question, though, is this. The ordinance does not  
627 permit tents without having a temporary use permit. There is nowhere in the Code  
628 that permits tents without a temporary use permit, and in the last year alone, the  
629 Board of Zoning Appeals has granted temporary use permits for tents. In UP-18-  
630 2000, for the North Carolina Furniture Company, you were asked to approve tents  
631 for outdoor sales, for a commercial activity. In UP-35-2000, you were asked to,  
632 and did approve, tents for commercial uses for Plant Land. That was for the use of  
633 selling pumpkins. All we're saying at this point is, under the ordinance, the relief  
634 available to the Cliftons is not by this appeal. The relief available to the Cliftons is  
635 either by coming to this Board and getting a temporary use permit, or going back to  
636 the Board of Supervisors and requesting amendment of their provisional use permit  
637 application and asking for specific approval of the tent and for the commercial  
638 activities that are associated with the bed and breakfast activity. That is the  
639 proper way under the ordinance. That is why the Director of Planning issued the  
640 Notice of Violation. It does not go to whether the bed and breakfast home is a  
641 good thing, whether weddings are a good thing, or whether the tent is a good  
642 thing.

643  
644 Mr. Balfour - I understand you. I think you're saying, though, that a  
645 special use permit would be to use a tent and to be able to charge for special  
646 events.

647  
648 Mr. Tokarz - Yes sir. It would be to go beyond simply having guests  
649 in the home, which is what the application was for. I think a fair reading of the  
650 application would say, "when we have guests in the home, we're going to allow  
651 them to have a wedding in the garden." Perfectly fine, if they don't charge.  
652 Where we get into the difficulty is, the commercial activity, the revenue that comes  
653 with that, and associated with that is the tent in order to accommodate the  
654 commercial activity.

655  
656 Mr. Kirkland - Mr. Tokarz, if we were to grant a temporary use permit  
657 down the road, would that still clear up the commercial issue? Don't you think the  
658 best direction would have been the provisional use permit to add another condition  
659 in there?

660  
661 Mr. Tokarz - I believe the way to address everything that the Cliftons  
662 want to do, the preferred way would be to go back to the Board of Supervisors and  
663 either get a provisional use permit amendment, or to get rezoning of the property.  
664 Both of those have been offered to the Cliftons. I've been in a meeting where that  
665 was offered to representatives for them.

666  
667 Mr. Kirkland - I don't think we would still be in a quandary here about  
668 the commercial use, I think if we had given the temporary use permit.

669  
670 Mr. Tokarz - I think there is an underlying issue. I'm only addressing  
671 the temporary use permit because that is what is before the Board today.

672  
673 Mr. Tokarz, isn't a bed and breakfast a commercial use?

674  
675 Mr. Tokarz - Yes sir, but it is specifically permitted by the ordinance.  
676 The ordinance was amended specifically to permit the commercial use in the  
677 residential zone. Under the ordinance, the Board has the right to approve that  
678 commercial use in a residential zone if it specifically provides for it. It did not  
679 specifically provide though, for other commercial activities.

680  
681 Mr. McKinney - Does the County have a problem with the Cliftons'  
682 charge for weddings? And how much they make out of weddings?

683  
684 Mr. Tokarz - That's not been the subject of a complaint at this point. I  
685 would simply say to you, I do not believe it is consistent with what the intent of  
686 the ordinance was when it was passed in 1988. The purpose of the ordinance  
687 when it was passed, was to allow the use of the home for paying guests to stay  
688 there.

689  
690 Mr. McKinney - So if they held these weddings inside the house, if they



691 charged \$80,000 a wedding, the County would have no problem with that?

692  
693 Mr. Tokarz - I can't speak for the Director of Planning on that, sir. I  
694 believe, as I said earlier, that would be inconsistent with the bed and breakfast  
695 ordinance.

696  
697 Mr. McKinney - But they said in here they would have weddings.

698  
699 Mr. Tokarz - They said they would have weddings, yes sir.

700  
701 Mr. McKinney - When they made the application, they said they would  
702 have weddings? So if they decided to have weddings inside and charge, the  
703 County would have no problem with that, is that correct?

704  
705 Mr. Tokarz - = I don't agree with that, Mr. McKinney. I understand the  
706 question, but I believe a proper reading of the application is, when they said in the  
707 application, as they have done as private citizens, they've held them for family and  
708 friends - unless they've been charging their family and their friends for weddings, I  
709 assume that those have been at no charge. It's not been a commercial activity.

710  
711 Mr. Balfour - I don't think we can resolve that issue here. I do agree  
712 with Mr. McKinney that it's interesting to see that they can host special events,  
713 and I don't think anybody in the world thinks a bed and breakfast place is going to  
714 host special events free. That's not at issue before us right now.

715  
716 Mr. Tokarz - All I'm saying is, I think if you read the ordinance as it  
717 was written, it was intended to permit the use of the home for paying guests. And  
718 I think as a proper accessory use, if the guests want to do out on the grounds and  
719 have a wedding without charge, that would be certainly within the anticipation of  
720 that use. I think it's where you bring people in and charge a fee and make it of the  
721 scale that we're talking about, that you run afoul of what the intent was.

722  
723 Mr. Balfour - I'm not sure that's really before us at this point.

724  
725 Mr. McKinney - Let me ask one more question. When you say it's  
726 intended for the guests in the house if they want, but not if they want to go  
727 outside and have a wedding?

728  
729 Mr. Tokarz - No sir, what I meant to say is that if guests come to the  
730 house, paying guests, and the paying guests in the home is a specifically permitted  
731 use by the ordinance .....

732  
733 Mr. McKinney - Let me ask you this. Say I want to get married at this  
734 facility, and I get in touch with the Cliftons. They say OK, we want to stay there,

735 we're going to have guests who want to stay there to the maximum, and we'd like  
736 to be married there, inside. Or if we want to be married outside, on the grounds,  
737 how much is it going to cost? Is that a problem? Whether it's in a tent or not,  
738 forget the tent.

739

740 Mr. Tokarz - Not if the charge is for the normal room and board rate  
741 that they would charge any other paying guests for the bed and breakfast. Where I  
742 think we have the problem is , there is as I understand it, and I'm not speaking  
743 because I don't know for sure, there is a separate charge for setting up the  
744 weddings, and you do not have to be a paying guest at the inn to use the grounds  
745 for the weddings, but whether you are a guest or not, the problem is the charge for  
746 the weddings. If you're a guest at the facility, and you want to go out and have  
747 one of the ministers who's spoken today, and go into the garden and be married, I  
748 don't think there's any issue at all, if there's no charge for that service. It's where  
749 we bring in a wedding party and charge \$3,000, whatever the charge is, and make  
750 it into a separate commercial activity, then I think it runs afoul of what the  
751 ordinance was intended to address. And that I think is up to the Board of  
752 Supervisors to resolve.

753

754 Mr. Balfour - Any other questions? No, we can't have discussions  
755 among the people in the audience with each other, except in the hall. Any other  
756 questions, Mr. Tokarz? Thank you. We're glad to hear from the people who are  
757 proponents, but I imagine I'm speaking for the Board and the opposition, if that's  
758 the phrase, or the County's position, doesn't really relate to whether or not you're  
759 in favor of the use or intent of the property or not; their issue is more of a legal  
760 issue, the interpretation of what the County Code says and what the provisions  
761 were when it was originally allowed to be a bed and breakfast. So I would like to  
762 suggest that rather than repeat that you're in favor of a bed and breakfast, if you  
763 have a response, and I know you're not an attorney, to what the County said, we'll  
764 be glad to hear from you. We'll hear from you in any case; I just don't want you to  
765 get up and repeat what you said before.

766

767 Mr. Martineau - I won't address all the issues that were brought up; I  
768 would like to address a few of them.

769

770 Mr. Balfour - Could you limit it to what the County's specifically talking  
771 about, and that is the provision relating to a tent and whether or not that's included  
772 in the original permit. I don't really think we need to hear about whether or not  
773 you charge and what you make, because that's not before us at this point.

774

775 Mr. Martineau - And I don't intend to bring that up. The first issue he  
776 brought up was the (unintelligible) provide the existing use of land, etc. Virginia  
777 Uniform Statewide Building Code states that, "... written application for permits  
778 shall be made to the Code Official, etc., but there are exceptions. Tent and air

779 supported structures that cover an area of 900 square feet or less, including all  
780 connecting areas or spaces, with a common means of egress or entrance, and with  
781 an occupancy load of 50 or less people is an exception.” Two sides of this tent  
782 have no walls, so what is a common egress? We’re talking about 60 feet here. 60  
783 feet of egress space, I don’t consider that to be a common egress, and the issue  
784 about 50 people or less? I’ll be honest with you. We don’t know how many  
785 people are under that tent at any given time; we don’t count. If we did count, how  
786 long would somebody have to be under the tent before you’d consider them  
787 counted? So we think that the Virginia Uniform Standards Building Code gives us  
788 an exception for the tent.

789

790 Mr. Martineau, let me cut to the chase a little bit. I’m not  
791 sure I see why there’s such an aversion to going the route that the County has  
792 suggested. You’re asking us to, apparently, take a position that it doesn’t appear  
793 that the County may allow us to do. I’m just speaking personally from what I’ve  
794 heard. You’re asking us to kind of rush over what the Board of Supervisors said, to  
795 give you what you want, when there must be another way to get there.

796

797 Mr. Martineau - Let me assure you, we thought so too. We’ve spent in  
798 excess of \$16,000 on attorney’s fees to try to get there, and got nowhere. That’s  
799 why we’re here today. So it isn’t that we didn’t try. It isn’t that we didn’t contact  
800 the Board of Supervisors. If you look at the last page of your handout, you’ll see  
801 that we again pleaded with the Board of Supervisors to talk to us and get this  
802 resolved, and we got nowhere.

803

804 Mr. Balfour - That’s not what the County suggested, I don’t think.  
805 Have you already applied for a special use permit or a change in your provisional  
806 use permit?

807

808 Mr. Martineau - Well again, we had our lawyers try to resolve this issue  
809 without getting into a lot of legality, and every time we ran into a roadblock from  
810 Henrico County officials that we couldn’t do it this way. So we said all right, we’ll  
811 do it the right way, and we approached one of the Board of Supervisors to help us,  
812 because he offered to help us, and we got no response.

813

814 Mr. Balfour - How did you ask, well I guess that’s none of my business  
815 how you asked them to help you, but I’m not sure I understand that answer, but go  
816 ahead.

817

818 Mr. Martineau - The last page of that handout I gave you, page 23 I  
819 believe, is addressed to the Board of Supervisors. The only issue that I want to  
820 bring up about the provisional use permit, we said we would hold special events,  
821 such as weddings.

822

823 Mr. Balfour - Why is it that you don't want to apply for a special use  
824 permit, I mean you've spent \$16,000, and you've talked to a lot of people it  
825 sounds like.

826  
827 Mr. Martineau - Why didn't we? Because we couldn't get the  
828 cooperation of the County to help us get to that point where we could go to the  
829 County to get that special use permit, number 1. Number 2, you don't realize,  
830 people make their wedding plans months in advance. We had commitments on the  
831 books to do these weddings for these people, and we had to somehow get us  
832 through the wedding season so that we could "resolve this in a legal manner."

833  
834 Mr. Balfour - Is the wedding season over now? Now go file your  
835 permit.

836  
837 Mr. Martineau - We will, but we have to take this one step at a time. We  
838 have to get through this appeals process first. I'd like to point out in the  
839 provisional use permit, condition # 8, says where we can do special events, such  
840 as weddings. My understanding is, we don't need permission from the County to  
841 do non-commercial weddings. I can have a wedding in my home for hundreds of  
842 people, so long as I'm not "breaking any County laws," that's perfectly allowed.  
843 We assumed, and I agree with the gentleman from Henrico County, I agree there  
844 was a lot of misunderstanding about this whole provisional use permit. We  
845 assumed, whether it's legally or whether it's morally or what, we assumed that  
846 when we said we were going to have weddings, we assumed the County knew we  
847 were going to charge. Otherwise we wouldn't have even asked the County if we  
848 could do weddings.

849  
850 Mr. Balfour - The only question before us right now is the tent. I don't  
851 care about what you charge at this point, that wasn't before us.

852  
853 Mr. Martineau - I just wanted to clarify why there's such a  
854 misunderstanding about the permission .....

855  
856 Mr. Balfour - I agree; I would just assume you charged too; I don't  
857 question that.

858  
859 Mr. Martineau - So, in conclusion, we want to do the right thing. We  
860 want to get through this Board of Appeals situation, get that resolved. Hopefully  
861 you'll rule in favor of us being allowed to have a tent on the property. And we will  
862 go back to Henrico County and get this resolved the legal way. But we want to  
863 get the politics out of the way here. We need to get the politics out of the way of  
864 all this.

865  
866 Mr. Balfour - Do we have any more questions by members of the

867 Board? Thank you sir.

868

869 Mrs. Clifton - This is the first paper that we received from County, to  
870 form our plan of operation by, and it should be the first paper that you have. Item  
871 # 12, and they say that they didn't know we were going to do commercial  
872 weddings – this is the outline they gave us to go by when we submitted our plan  
873 of operation. This is the very first paper we ever got from the County. Number 12  
874 says, "Describe any other activities, such as weddings or social gatherings that  
875 may be held on the premises for paying guests. By that we thought we were  
876 talking about commercial weddings, because that's the very first on the outline. It  
877 comes before my plan of operation, which is entitled "MEMO" at the top, I believe.  
878 So what does that tell you?

879

880 Mr. Balfour - Mrs. Clifton, I guess I speak for the members of the  
881 Board. I appreciate your sincerity, and I appreciate everything you're saying, but  
882 we don't really have the issue of whether or not you charge to have weddings  
883 here. It only came up as an aside from comments made. The only concern is  
884 whether or not that tent is allowed or not under the Code, and I think this  
885 impression that perhaps the County has given you a solution that for some reason  
886 perhaps you didn't want to take during the wedding season, and I can appreciate  
887 that. But I think you're pushing against a wall that's not giving, I shouldn't give  
888 you a legal opinion, but I'm just trying to help you out a little bit. You've got a nice  
889 business going, and your neighbors obviously think it's nice, and they don't mind  
890 your tent, and they're glad for you to have weddings. It's just that you've got to  
891 go jump the hoops to get there, and I think that you jumped the wrong hoops.

892

893 Mrs. Clifton - Well, from the responses we've gotten, we didn't think  
894 that was hardly possible that we could do it any other way. Thank you.

895

896 Mr. Kirkland - Mr. Chairman, let me ask you a question, and then maybe  
897 you can ask Mr. Blankinship. Mr. Blankinship, if we were to approve this today,  
898 that the tent could stay, would there be a need for them to go for a PUP, a  
899 condition, or a temporary use permit?

900

901 Mr. Blankinship - I'm not prepared to answer that, Mr. Kirkland

902

903 Mr. Kirkland ..... because he made the statement that he was trying  
904 to get through one hoop at a time, if we do this today, does he have to go any  
905 further or is this it?

906

907 Mr. Blankinship - The notice that is under appeal is for having a tent on the  
908 property, and if you were to overturn the Director's decision on that notice, that  
909 notice would be rendered void. I would think the tent would then be allowed I  
910 could see in the future receiving a complaint about the use itself, that is, having the

911 weddings, that could result in a separate notice. You're kind of asking a  
912 hypothetical question here that I'm not answering yes or no; I'm saying I'm a little  
913 bit uncomfortable.

914  
915 Mr. Kirkland - Mr. Martineau made the statement that he was trying to  
916 get through one step at a time, and this was one step, and I didn't understand it, if  
917 this was turned down, were they going back, or if this was approved, would they  
918 stop. That's why I was trying to get the steps straight.

919  
920 Mr. Blankinship - I'm not prepared to answer that.

921  
922 Mr. Kirkland - That's all I need to know. Thank you.

923  
924 Mr. Balfour - Any other questions by the Board members of Mr.  
925 Blankinship or Mr. Tokarz? Thank you, folks, for coming; we appreciate you time.  
926 Sorry it took so long; we wanted to hear from everybody. Thank you. \\  
927

928 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by  
929 Mr. Wright, the Board **denied** the appeal **A-119-2001** of a notice of violation  
930 pursuant to Section 24-116(a) of Chapter 24 of the County Code with respect to  
931 tents erected at 2900 Mountain Road (Tax Parcel 31-A-46 and -47A. The Board  
932 sustained the notice of violation because it found there was no error in the  
933 application of the County Code.

934  
935 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
936 Negative: 0  
937 Absent: 0

938  
939 Mr. Balfour - I ask the pleasure of the Board – do you want to take a  
940 recess now or keep on going for a while?

941  
942 Mr. McKinney - Keep on going for a while.

943  
944 Mr. Balfour - All right; call the first case.

945  
946 **A -147-2001** **WILLIAM DEBENDER** requests a variance from Sections 24-  
947 95(i)(2)(b) and 24-95(i) of Chapter 24 of the County Code to  
948 build a detached garage at 11416 Wood Brook Court (Rock  
949 Springs Estates) (Tax Parcel 13-2-G-14), zoned A-1, Agricultural  
950 District (Brookland). The accessory structure height  
951 requirement and accessory structure location requirement are  
952 not met. The applicant wishes to build a detached garage in the  
953 front yard with a height of 16.5 feet, where the Code allows  
954 accessory structures in the rear yard with a height of 15.0 feet.

955  
956 Mr. Balfour - Is someone here to speak on A-147-2001? If not, we  
957 shall pass it by, for the moment. Mr. Secretary?

958  
959 **A -149-2001** **FRANCES BRISTOW YUAN** requests a variance from Section  
960 24-95(c)(4) of Chapter 24 of the County Code to add a covered  
961 front porch at 1702 Devers Road (Westhaven) (Tax Parcel 102-  
962 11-K-92), zoned R-3, One-family Residence District (Brookland).  
963 The front yard setback is not met. The applicant has 31.5 feet  
964 front yard setback, where the Code requires 35.0 feet front  
965 yard setback. The applicant requests a variance of 3.5 feet  
966 front yard setback.

967  
968 Mr. Balfour - Would all who plan to testify raise their hand please.

969  
970 Mr. Blankinship - Do you swear that the testimony you are about to give is  
971 the truth, the whole truth, and nothing but the truth, so help you God?

972  
973 Mr. Balfour - Would you state your name.

974  
975 Mr. Wilson - I'm Philip Wilson; I'm representing Ms. Yuan here. Then  
976 Ms. Yuan will speak as well. As a little bit of background, I do hold a Master's  
977 Degree from London University in Urban and Rural Planning, was a member of the  
978 Royal Town Planning Institute of Britain, a liaison officer for the Greater London  
979 Council on Development Control, as well as being elected Chairman of the  
980 Remodeling Council and Director of the Richmond Homebuilders' Association. The  
981 proposal here is to add a covered porch on the front of the house, with a depth of  
982 8 feet, front to back, which would extend 3.5 feet into the setback requirements.  
983 The neighboring house at 1704 has a covered porch, 7 feet deep. The property at  
984 6427 Millhiser Avenue, at the junction with Devers Road, has a covered porch 32  
985 feet from the front boundary. The house at 6309 Millhiser has a covered porch 29  
986 feet from its front boundary, so no precedent would be set. The houses in the  
987 area, built in '49, are not on a parallel line with the road frontage. Some are set  
988 slightly forward, and some are slightly back, so it's not like an even line here.

989  
990 Let me ask you a question. While we're on that point,  
991 how wide are these other porches to which you refer?

992  
993 Mr. Wilson - They vary in width.

994  
995 Are they more than 6 feet in width?

996  
997 Mr. Wilson - Oh yes. Some are much more than 6 feet (unintelligible)  
998 they were built with the house.

999

1000 Well I think that's pertinent, because that's the problem  
1001 here; if this were only 6 feet, you wouldn't be here. You say the others in the area  
1002 are more than 6 feet? Thank you.

1003

1004 Mr. Wilson - Yes that's correct; some of them go across the front of  
1005 the house; some half, some 2/3; they do vary. And these properties I've  
1006 mentioned all have the same zoning requirements. One of the reasons for  
1007 requesting an 8-foot deep porch, as you can see, Ms. Yuan is incapacitated and  
1008 she has a problem with maneuvering the wheelchair. Obviously, once you got the  
1009 rails up, it actually reduces the width of the usable porch to 7 1/2 feet, and you've  
1010 got to allow for the out swing of the door. There used to be an uncovered stoop  
1011 on the front of the house, which was demolished to allow for the location of the  
1012 front door to be moved, because it really wasn't allowing for very good access,  
1013 with the wheelchair. On the moving of the front porch, a lot of water damage was  
1014 revealed, to the wood siding, the plate, and the band board. This is often the  
1015 problem with uncovered porches, because you get splash back from rain from the  
1016 hard surface of the porch onto the wood just below the door. As President of  
1017 Virginia Home Improvement, we get called on many occasions to take care of this  
1018 situation. Even having gutters doesn't help too much.

1019

1020 Aesthetically, the porch would certainly dress up the house, and there's no problem  
1021 with that. As you can see from the photos, it's fairly plain. The fact that a lot of  
1022 people have front porches so they can use them to sit out and look outside and get  
1023 shade from the sun and protection from the rain; there's nothing unusual in the  
1024 request to have a front porch. It certainly dresses up the curb appeal as well. The  
1025 front boundary of the property does not directly abut the road; there is a further 10  
1026 feet from the hard surface of the road to the boundaries of the property, used for  
1027 parking of vehicles, so it actually gives a clearance from the road, instead of about  
1028 35 feet, say about 45 feet. It adds another 10 feet to the actual road surface.  
1029 That's fairly common in that neighborhood. Accompanying the request, there are  
1030 about 50 letters from the neighbors, supporting the proposal, and from what I  
1031 gather, no adverse letters have come in at all. Mr. Blankinship would confirm that.

1032

1033 Mr. Blankinship - That's right, and that sheaf of letters in favor is in the file.

1034

1035 Mr. Wilson - It is considered that to reduce the proposed depth of the  
1036 porch would impose a physical hardship on Ms. Yuan, if not a financial one. She  
1037 does need the extra space for maneuverability, and to ask for an 8-foot porch is  
1038 really not excessive whatsoever. As I say, there are others in the area with the  
1039 same depth and similar. Basically, we would like to request the Board to consider  
1040 this request favorably. I wouldn't detract from the area; there's no site line issues  
1041 here; there's quite a few trees in the front yard. It could only add to the property  
1042 value, and let Ms. Yuan be allowed to use it the way she should be allowed to use



1043 it.  
1044  
1045 Mr. Balfour - Any questions?  
1046  
1047 Mr. Kirkland - On the porch – are you going to have any sides closed in,  
1048 is it going to be screened?  
1049  
1050 Mr. Wilson - No, completely open. Just an open porch.  
1051  
1052 Mr. Kirkland - I assume it's going to be handicapped accessible, so it's  
1053 going to come out on the low end, is that what you're saying?  
1054  
1055 Mr. Wilson - You might be able to tell from that photo that the right  
1056 front corner has a lower foundation than the left, so at the moment we're  
1057 proposing 2 steps on the low corner, but depending on Ms. Yuan's condition, we  
1058 may have to put a ramp on there as well, instead of coming from the back. One of  
1059 the other properties in the neighborhood, on Millhiser Road, I noticed has a large  
1060 ramp for access.  
1061  
1062 Mr. Kirkland - I've been out to the site several times, and it's a real  
1063 improvement to what was there. The porches in the area. I rode the whole  
1064 neighborhood.  
1065  
1066 Mr. Wilson - So it will be an improvement. The neighbors are all in  
1067 favor of it, and it has no adverse effect on the neighborhood whatsoever.  
1068  
1069 Mr. Balfour - Any other questions? Ms. Yuan, would you like to speak?  
1070  
1071 Ms. Yuan - Yes. Can you hear me all right? Pardon my voice. I had  
1072 worn my porch down on the high side of the yard. As you look at it, I'm on an  
1073 incline, and it makes it much easier for me to go down fewer steps. Where it's  
1074 located, the steps are in the center, it's 5 steps, and where the door is, it's 9  
1075 steps. If I carried it all the way to the right, I would have fewer steps to access.  
1076 I'm not totally wheelchair bound; I just got out of the hospital yesterday, but I will  
1077 be in my wheelchair for a while. My contention was if I was ever wheelchair  
1078 bound, I would need access to be able to get out on my porch and be able to  
1079 maneuver, and I'd like for that to be considered. I'd appreciate it.  
1080  
1081 Mr. Balfour - Any questions for Ms. Yuan? Thank you ma'am.  
1082  
1083 Ms. Yuan - And I think it will be an improvement too as far as the  
1084 visual improvement. Thank you.  
1085  
1086 Mr. Balfour - Thank you. Any other questions? If not, I assume there's

1087 no opposition. Thank you for your time.

1088

1089 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by  
1090 Mr. Wright, the Board **granted** application **A-149-2001** for a variance add a covered  
1091 front porch at 1702 Devers Road (Westhaven) (Tax Parcel 102-11-K-92). The  
1092 Board granted the variance subject to the following condition:

1093

1094 1. Only the improvements shown on the plan filed with the application may be  
1095 constructed pursuant to this approval. No substantial changes or additions to the  
1096 layout may be made without the approval of the Board of Zoning Appeals. Any  
1097 additional improvements shall comply with the applicable regulations of the County  
1098 Code.

1099

1100 Affirmative:	Balfour, Kirkland, McKinney, Nunnally, Wright	5
1101 Negative:		0
1102 Absent:		0

1103

1104 The Board granted this request, as it found from the evidence presented that, due  
1105 to the unique circumstances of the subject property, strict application of the  
1106 County Code would produce undue hardship not generally shared by other  
1107 properties in the area, and authorizing this variance will neither cause a substantial  
1108 detriment to adjacent property nor materially impair the purpose of the zoning  
1109 regulations.

1110

1111 Mr. Balfour - Next case.

1112

1113 **A -150-2001** **DARRYL C. GEORGE** requests a variance from Section 24-  
1114 95(i)(2)d. of Chapter 24 of the County Code to allow the  
1115 existing garage to remain at 915 Clauson Road (Wildwood)  
1116 (Tax Parcel 63-11-G-1), zoned R-2A, One-family Residence  
1117 District (Fairfield). The minimum side yard setback is not met.  
1118 The applicant has 6 feet side yard setback, where the Code  
1119 requires 10 feet side yard setback. The applicant requests a  
1120 variance of 4 feet side yard setback.

1121

1122 Mr. Balfour - Would you identify yourself please.

1123

1124 Mr. George - I'm Darryl George, the property owner.

1125

1126 Mr. Blankinship - Do you swear that the testimony you are about to give is  
1127 the truth, the whole truth, and nothing but the truth, so help you God?

1128

1129 Mr. George - I do. Basically, what happened here, is I purchased this  
1130 home in 1992. In 1993 I hired a contractor to build a 720 square foot carport.

1131 Application was made to the County of Henrico, building permit issued, and carport  
1132 was built in 1993. This past July the funds were available for me to enclose the  
1133 carport, so basically, I poured concrete, framed up walls, and put up doors. At the  
1134 very end of the process, I would say late August, an individual from the Henrico  
1135 County building permit department knocked on my door and asked me for a  
1136 building permit for the work that I had most recently been conducting. I told him a  
1137 permit was issued in 1993. He obtained the permit, came back on a subsequent  
1138 visit, had the permit in hand, and said that the permit that was issued was for a  
1139 carport, and I clearly had a garage.

1140

1141 I kind of explained that I didn't really think I had needed a permit to do the  
1142 improvements, but showed him the work I had done. The footprint of the garage  
1143 and carport did not change, the footers did not change, the headers did not  
1144 change, it was the same exact setback. He said, "Well that's no problem Mr.  
1145 George, we'll issue a building permit. All you have to do is submit plans to the  
1146 department, and we'll issue one." But the problem here arises that the structure  
1147 does not meet proper setback, and this was a total surprise to me. After all, the  
1148 structure itself had been there since 1993. He had the 1993 building permit  
1149 application in hand and identified and showed me, in fact, on the plan where it  
1150 called and said the structure was 12 feet from the property line. He identified that  
1151 the minimum setback was 10 feet from the property line, but the structure ended  
1152 up being only about 7 feet, 6 feet from the property line. Obviously, we made a  
1153 mistake, or the contractor made a mistake, while setting the footings and building  
1154 the original structure in 1993. What I'm asking the Board to do is to grant a  
1155 variance for the side yard setback for the actual garage.

1156

1157 Mr. Balfour - Any questions?

1158

1159 Mr. McKinney - What kind of business are you in, Mr. George?

1160

1161 Mr. George - I teach driver improvement actually.

1162

1163 Mr. McKinney - Driver improvement?

1164

1165 Mr. George - Yes sir, I own a company called A-Aarons Traffic School,  
1166 Inc., and the Virginia Driver Improvement Clinic.

1167

1168 Mr. McKinney - Do you have any limousines?

1169

1170 Mr. George - In the past, going way back, I did operate a limousine  
1171 service in the early 1990's, and most recently operated a sedan service that was  
1172 licensed by the Virginia Department of Motor Vehicles. You may be asking about  
1173 the parking of cars on the premises. That was what your question would be in  
1174 reference to?

1175  
1176 Mr. McKinney - I'm just asking the question.  
1177  
1178 Mr. Balfour - How many cars do you park on the premises?  
1179  
1180 Mr. George - Currently I only have one car in that garage, actually it's  
1181 not a car at all, it's a truck. Currently I have one truck in the garage.  
1182  
1183 Mr. Kirkland - Have you contacted the contractor when you told him he  
1184 missed by half?  
1185  
1186 Mr. George - Well, coincidentally, the contractor is also my next-door  
1187 neighbor, and actually we had a strained relationship over the summer regarding  
1188 some other issues. So no sir, I did not.  
1189  
1190 Mr. McKinney - Well he's your neighbor; he won't have any problem  
1191 moving it, will he Mr. George?  
1192  
1193 Mr. George - Believe me, if it was able to be moved the way it was  
1194 built, I would certainly hook a chain up to it and drag it back.  
1195  
1196 Mr. McKinney - Oh it can be moved.  
1197  
1198 Mr. George - I agree that anything can be done with the proper  
1199 motivation and funds available.  
1200  
1201 Mr. McKinney - What is the purpose of this garage? What are you using it  
1202 for?  
1203  
1204 Mr. George - Just to park my vehicles in.  
1205  
1206 Mr. McKinney - Your vehicles?  
1207  
1208 Mr. George - Correct. Recently I had 2 vehicles; now I'm down to 1.  
1209  
1210 Mr. McKinney - So it's only for the purpose of parking your vehicles in the  
1211 garage? Are you going to put a workshop in it? Maybe you should.  
1212  
1213 Mr. George - Well, the space is available, but no, I have no intentions of  
1214 putting a workshop in there.  
1215  
1216 Mr. McKinney - But it will not be used for any type of commercial use?  
1217 And you don't have a problem with a condition on that?  
1218

1219 Mr. George - I'm sorry, what was your question?  
1220  
1221 Mr. McKinney - You don't have a problem with putting a condition on the  
1222 case that it will not be used for any type of commercial use?  
1223  
1224 Mr. George - No, I don't have any problem with that.  
1225  
1226 Mr. McKinney - What were you getting ready to say when I brought that  
1227 up?  
1228  
1229 Mr. George - I was going to address the suggested condition as outlined  
1230 in the application by someone on staff at Henrico County that said, "Only the  
1231 improvements shown on the plan filed with application may be (considered)... for  
1232 approval." My only concern was that that was in fact, going to be the structure  
1233 that's now there. I didn't quite understand the wording.  
1234  
1235 Mr. Blankinship - It's a standard condition.  
1236  
1237 Mr. McKinney - Mr. Secretary, he still has to go get a building permit for  
1238 it? He has to have the normal inspections and so forth?  
1239  
1240 Mr. Blankinship - Yes sir. Right.  
1241  
1242 Mr. Balfour - Any other questions? Thank you sir. Anyone else on this  
1243 case?  
1244  
1245 After an advertised public hearing and on a motion by Mr. McKinney, seconded by  
1246 Mr. Wright, the Board **granted** application **A-150-2001** for a variance to allow the  
1247 existing garage to remain at 915 Clauson Road (Wildwood) (Tax Parcel 63-11-G-  
1248 1). The Board granted the variance subject to the following conditions:  
1249  
1250 1. Only the improvements shown on the plan filed with the application may be  
1251 constructed pursuant to this approval. No substantial changes or additions to the  
1252 layout may be made without the approval of the Board of Zoning Appeals. Any  
1253 additional improvements shall comply with the applicable regulations of the County  
1254 Code.  
1255  
1256 2. The structure shall not be used for any commercial purpose.  
1257  
1258 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1259 Negative: 0  
1260 Absent: 0  
1261

1262 The Board granted this request, as it found from the evidence presented that, due  
1263 to the unique circumstances of the subject property, strict application of the  
1264 County Code would produce undue hardship not generally shared by other  
1265 properties in the area, and authorizing this variance will neither cause a substantial  
1266 detriment to adjacent property nor materially impair the purpose of the zoning  
1267 regulations.

1268  
1269 Mr. Balfour - Call the next case, Mr. Secretary.

1270  
1271 **A -151-2001** **GLEN M. BROWNIE** requests a variance from Section 24-9 of  
1272 Chapter 24 of the County Code to build a single family house at  
1273 8250 Yahley Mill Road (Tax Parcel 251-A-1 (part)), zoned A-1,  
1274 Agricultural District (Varina). The public street frontage  
1275 requirement is not met. The applicant has 0 feet public street  
1276 frontage, where the Code requires 50 feet public street  
1277 frontage. The applicant requests a variance of 50 feet public  
1278 street frontage.

1279  
1280 Mr. Balfour - Raise your hand and be sworn in please.

1281  
1282 Mr. Blankinship - Do you swear that the testimony you are about to give is  
1283 the truth, the whole truth, and nothing but the truth, so help you God?

1284  
1285 Mr. Brownie - Yes I do. My name is Glen Brownie. I am requesting a  
1286 variance. I'd like to put a single-family dwelling on a piece of property which has  
1287 no road frontage. There is an existing driveway that my father put in the property  
1288 approximately 20 years ago, that I could use to allow me access to the property.

1289  
1290 Mr. Balfour - Excuse me, could you pull the microphone a little closer or  
1291 bend over a little bit; we're having trouble hearing you.

1292  
1293 Mr. Brownie - There is an existing driveway there, that I could use. I do  
1294 not have to affect anybody else's property at the time to get to where I need to be.

1295  
1296 Have you read the suggested conditions on the back of  
1297 your case, and you're agreeable with them?

1298  
1299 Mr. Brownie - Yes sir. Yes sir.

1300  
1301 Mr. Balfour - Any other questions of Mr. Brownie?

1302  
1303 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
1304 Mr. Wright, the Board **granted** application **A-151-2001** for a variance to build a

1305 single family house at 8250 Yahley Mill Road (Tax Parcel 251-A-1 (part)). The  
1306 Board granted the variance subject to the following conditions:

1307  
1308 1. This variance applies only to the public street frontage requirement. All  
1309 other applicable regulations of the County Code shall remain in force.

1310  
1311 2. Only the improvements shown on the plan filed with the application may be  
1312 constructed pursuant to this approval. No substantial changes or additions to the  
1313 layout may be made without the approval of the Board of Zoning Appeals. Any  
1314 additional improvements shall comply with the applicable regulations of the County  
1315 Code.

1316  
1317 3. At the time of building permit application, the applicant shall submit the  
1318 necessary information to the Department of Public Works to ensure compliance  
1319 with the requirements of the Chesapeake Bay Preservation Act and the code  
1320 requirements for water quality standards.

1321  
1322 4. At the time of building permit application the owner shall demonstrate that  
1323 the parcel created by this division has been conveyed to members of the  
1324 immediate family, and the subdivision ordinance has not been circumvented.

1325  
1326 5. Approval of this request does not imply that a building permit will be issued.  
1327 Building permit approval is contingent on Health Department requirements,  
1328 including, but not limited to, soil evaluation for a septic drainfield and reserve area,  
1329 and approval of a well location.

1330  
1331 6. The applicant shall present proof with the building permit application that a  
1332 legal access to the property has been obtained.

1333  
1334 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1335 Negative: 0  
1336 Absent: 0

1337  
1338 The Board granted this request, as it found from the evidence presented that, due  
1339 to the unique circumstances of the subject property, strict application of the  
1340 County Code would produce undue hardship not generally shared by other  
1341 properties in the area, and authorizing this variance will neither cause a substantial  
1342 detriment to adjacent property nor materially impair the purpose of the zoning  
1343 regulations.

1344  
1345 **A -152-2001** **JOHN R. ROCK** requests a variance from Section 24-9 of  
1346 Chapter 24 of the County Code to build a single family house at  
1347 2542 Kingsland Road (Tax Parcel 260-A-1 (part)), zoned A-1,  
1348 Agricultural District (Varina). The public street frontage

1349 requirement is not met. The applicant has 0 feet public street  
1350 frontage, where the Code requires 50 feet public street  
1351 frontage. The applicant requests a variance of 50 feet public  
1352 street frontage.  
1353

1354 Mr. Balfour - All who plan to testify, raise their hands.  
1355

1356 Mr. Blankinship - Do you swear that the testimony you are about to give is  
1357 the truth, the whole truth, and nothing but the truth, so help you God?  
1358

1359 Mr. Erdmann - Good morning. I'm Craig Erdmann, the attorney for Mr.  
1360 Rock and Mrs. Sanderson. I don't know if you have copies of the maps, if I may  
1361 present to you. Mr. Rock owns 36 acres around the exterior of this 3-acre parcel  
1362 that's been parceled off by survey. The problem here is once again the road  
1363 access. There is an existing roadway; Mr. Rock's residence where he is now, is  
1364 sitting back off his easement, and his housekeeper is wanting to build a 3-bedroom  
1365 single-family residence for her and her husband to live in, and we are looking for a  
1366 variance from the access requirement.  
1367

1368 Mr. Balfour - Any questions of Mr. Erdmann?  
1369

1370 You say she's his housekeeper?  
1371

1372 Mr. Erdmann - Correct. She's taking care of Mr. Rock and his aged  
1373 mother, and she and her husband plan to move into the 3-bedroom home that's  
1374 going to be built on the corner of Mr. Rock's premises, and the property's going to  
1375 be deeded over to Mrs. Sanderson.  
1376

1377 How long has she been taking care of Mr. Rock?  
1378

1379 Mr. Erdmann - She's known him for several years. She's been working  
1380 for him for 7. Mr. Rock is unmarried.  
1381

1382 Mr. Kirkland - Mr. Blankinship, do we have a problem with the  
1383 subdivision because she's not a family member?  
1384

1385 Mr. Blankinship - It would be the first division of the property since 1987,  
1386 so you're allowed one split.  
1387

1388 Mr. Kirkland - Okay, just wanted to make sure that went in the record.  
1389

1390 Mr. Erdmann, have you read the conditions?  
1391

1392 Mr. Erdmann - We have, and we have no objection.



1393  
1394  
1395  
1396  
1397  
1398  
1399  
1400  
1401  
1402  
1403  
1404  
1405  
1406  
1407  
1408  
1409  
1410  
1411  
1412  
1413  
1414  
1415  
1416  
1417  
1418  
1419  
1420  
1421  
1422  
1423  
1424  
1425  
1426  
1427  
1428  
1429  
1430  
1431  
1432  
1433  
1434  
1435  
1436

Mr. Balfour - Mr. Rock, did you want to say anything?

Mr. Rock - My name is John Rock. I've been a resident of Henrico County for about 40 years. I own some office and warehouse buildings over on Brook Road here, and I own Central Supply Company, and a franchise motorcycle dealership called Boss Hoss of Virginia. I am 70 years old, and my mom is approaching 90. Mrs. Sanderson has been a real big help to us, and at this time she and her husband live in south Richmond, so if I could get them over on my place, where she would be close by, it would really be a big help to me, and I appreciate any kindness you could show me.

Mr. Balfour - Any questions? Thank you Mr. Rock. Would she like to say anything. Anyone else wish to speak on this case? Thank you Mr. Erdmann.

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Kirkland, the Board **granted** application **A-152-2001** for a variance to build a single family house at 2542 Kingsland Road (Tax Parcel 260-A-1 (part)). The Board granted the variance subject to the following condition:

1. This variance applies only to the public street frontage requirement. All other applicable regulations of the County Code shall remain in force.
2. At the time of building permit application, the applicant shall submit the necessary information to the Department of Public Works to ensure compliance with the requirements of the Chesapeake Bay Preservation Act and the code requirements for water quality standards.
3. Approval of this request does not imply that a building permit will be issued. Building permit approval is contingent on Health Department requirements, including, but not limited to, soil evaluation for a septic drainfield and reserve area, and approval of a well location.
4. The applicant shall present proof with the building permit application that a legal access to the property has been obtained.
5. The owners of the property, and their heirs or assigns, shall accept responsibility for maintaining access to the property until such a time as the access is improved to County standards and accepted into the County road system for maintenance.

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

1437  
1438 The Board granted this request, as it found from the evidence presented that, due  
1439 to the unique circumstances of the subject property, strict application of the  
1440 County Code would produce undue hardship not generally shared by other  
1441 properties in the area, and authorizing this variance will neither cause a substantial  
1442 detriment to adjacent property nor materially impair the purpose of the zoning  
1443 regulations.

1444  
1445 Mr. Balfour - Next case.

1446  
1447 **UP- 27-2001 VULCAN CONSTRUCTION MATERIALS, INC.** requests a  
1448 conditional use permit pursuant to Sections 24-103 and 24-  
1449 52(d) of Chapter 24 of the County Code to extract materials  
1450 from the earth at New Market Road (Tax Parcel 270-A-1 (part)),  
1451 zoned A-1, Agricultural District (Varina).

1452  
1453 Mr. Balfour - You want to raise your right hand?

1454  
1455 Mr. Blankinship - Do you swear that the testimony you are about to give is  
1456 the truth, the whole truth, and nothing but the truth, so help you God?

1457  
1458 Mr. Lewis - I do. My name is Monte Lewis, with Lewis and  
1459 Associates, representing Vulcan on this project. This is a site that has already  
1460 been mined. We're in the process of reclaiming it. All of the grading for the  
1461 reclamation has been done. It's just a timing issue that we weren't able to get  
1462 grass established before the permit ran out, due to the dry conditions. We expect  
1463 this to be done, hopefully this fall or at least by the spring. The area around the  
1464 pond has been seeded and established, but we just ran out of time and weren't  
1465 able to establish the whole thing before the permit ran out. Therefore, we're  
1466 asking for an extension of the use permit. All of the permits have been obtained.  
1467 The E&S bonds and the reclamation bonds are already in place; I don't know if it's  
1468 needed to change your wording on the condition that the applicant shall maybe  
1469 "maintain" the financial guarantees instead of "provide," because it's already  
1470 provided.

1471  
1472 Mr. Blankinship - It just says "before beginning work," they have to provide  
1473 it; if you've already done it .....

1474  
1475 Mr. Lewis - I'll leave it up to your discretion, just for the record.

1476  
1477 Mr. Balfour - Any questions?

1478  
1479 According to the staff report, they've got a good  
1480 operation going on, Mr. Blankinship?

1481  
1482 Mr. Blankinship - Yes sir, we're not aware of any problems on the entire  
1483 Curles Neck property.

1484  
1485 Mr. Balfour - Did you want to speak sir?

1486  
1487 Mr. Brazell - No sir. I'm just here. My name is Tom Brazell, I'm a  
1488 geologist for Vulcan Materials, and if there were any questions that anyone had  
1489 about the reclamation that was ongoing at this site, I'd be more than happy to  
1490 answer them.

1491  
1492 M. Balfour - Any questions of the Board members? Thank you.

1493  
1494 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
1495 Mr. Kirkland, the Board **granted** application **UP-27-2001** for a conditional use  
1496 permit to extract materials from the earth at New Market Road (Tax Parcel 270-A-1  
1497 (part)). The Board granted the use permit subject to the following conditions:

1498  
1499 1. This use permit is subject to all requirements of Section 24-103 of Chapter  
1500 24 of the County Code.

1501  
1502 2. Before beginning any work, the applicant shall provide a financial guaranty in  
1503 an amount of \$2,000.00 per acre for each acre of land to be disturbed, for a total  
1504 of \$141,720.00, guaranteeing that the land will be restored to a reasonably level  
1505 and drainable condition. This permit does not become valid until the financial  
1506 guaranty has been approved by the County Attorney. The financial guaranty may  
1507 provide for termination after 90 days notice in writing to the County. In the event  
1508 of termination, this permit shall be void, and work incident thereto shall cease.  
1509 Within the next 90 days the applicant shall restore the land as provided for under  
1510 the conditions of this use permit. Termination of such financial guaranty shall not  
1511 relieve the applicant from its obligation to indemnify the County of Henrico for any  
1512 breach of the conditions of this use permit. If this condition is not satisfied within  
1513 90 days of approval, the use permit shall be void.

1514  
1515 3. Before beginning any work, the applicant shall submit erosion control plans  
1516 to the Department of Public Works for review and approval. Throughout the life of  
1517 the operation, the applicant shall continuously satisfy the Department of Public  
1518 Works that erosion control procedures are properly maintained, and shall furnish  
1519 plans and bonds that the department deems necessary. The applicant shall provide  
1520 certification from a licensed professional engineer that dams, embankments and  
1521 sediment control structures meet the approved design criteria as set forth by the  
1522 State. If this condition is not satisfied within 90 days of approval, the use permit  
1523 shall be void.

1524

- 1525 4. Before beginning any work, the applicant shall obtain a mine license from the  
1526 Virginia Department of Mines, Minerals and Energy. If this condition is not satisfied  
1527 within 90 days of approval, the use permit shall be void.  
1528
- 1529 5. Before beginning any work, the areas approved for mining under this permit  
1530 shall be delineated on the ground by five-foot-high metal posts at least five inches  
1531 in diameter and painted in alternate one foot stripes of red and white. These posts  
1532 shall be so located as to clearly define the area in which the mining is permitted.  
1533 They shall be located, and their location certified, by a certified land surveyor. If  
1534 this condition is not satisfied within 90 days of approval, the use permit shall be  
1535 void.  
1536
- 1537 6. In the event that the Board's approval of this use permit is appealed, all  
1538 conditions requiring action within 90 days will be deemed satisfied if the required  
1539 actions are taken within 90 days of final action on the appeal.  
1540
- 1541 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
1542 state and local regulations administered under such act applicable to the property,  
1543 and shall furnish to the Planning Office copies of all reports required by such act or  
1544 regulations.  
1545
- 1546 8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight  
1547 Savings Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.  
1548
- 1549 9. No operations of any kind are to be conducted at the site on Sundays, or  
1550 national holidays.  
1551
- 1552 10. The applicant shall post and maintain a sign at the entrance to the mining  
1553 site stating the name of the operator, the use permit number, the mine license  
1554 number, and the telephone number of the operator. The sign shall be 12 square  
1555 feet in area and the letters shall be three inches high.  
1556
- 1557 11. Routes of ingress and egress shall be over the applicants private roads to the  
1558 loading area at the Jams River as outlined on the map filed with the application.  
1559
- 1560 12. The applicant shall post and maintain "No Trespassing" signs every 250 feet  
1561 along the perimeter of the property. The letters shall be three inches high. The  
1562 applicant shall furnish the Chief of Police a letter authorizing the Division of Police  
1563 to enforce the "No Trespassing" regulations, and agreeing to send a representative  
1564 to testify in court as required or requested by the Division of Police.  
1565
- 1566 13. All roads used in connection with this use permit shall be effectively treated  
1567 with calcium chloride or other wetting agents to eliminate any dust nuisance.  
1568

1569 14. The applicant shall maintain the property, fences, and roads in a safe and  
1570 secure condition indefinitely, or convert the property to some other safe use.

1571  
1572 15. If, in the course of its preliminary investigation or operations, the applicant  
1573 discovers evidence of cultural or historical resources, or an endangered species, or  
1574 a significant habitat, it shall notify appropriate authorities and provide them with an  
1575 opportunity to investigate the site. The applicant shall report the results of any  
1576 such investigation to the Planning Office.

1577  
1578 16. If water wells located on surrounding properties are adversely affected, and  
1579 the extraction operations on this site are suspected as the cause, the effected  
1580 property owners may present to the Board evidence that the extraction operation is  
1581 a contributing factor. After a hearing by the Board, this use permit may be revoked  
1582 or suspended, and the operator may be required to correct the problem.

1583  
1584 17. Open and vertical excavations having a depth of 10 feet or more, for a  
1585 period of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to  
1586 protect the public safety.

1587  
1588 18. Topsoil shall not be removed from any part of the property outside of the  
1589 area in which mining is authorized. Sufficient topsoil shall be stockpiled on the  
1590 property for respreading in a layer with five inches of minimum depth. All topsoil  
1591 shall be stockpiled within the authorized mining area and provided with adequate  
1592 erosion control protection. If the site does not yield sufficient topsoil, additional  
1593 topsoil shall be brought to the site to provide the required five-inch layer of cover.  
1594 All topsoil shall be treated with a mixture of seed, fertilizer, and lime as  
1595 recommended by the County after soil tests have been provided to the County.

1596  
1597 19. No offsite-generated materials shall be deposited on the mining site without  
1598 prior written approval of the Director of Planning. To obtain such approval, the  
1599 operator shall submit a request stating the origin, nature and quantity of material to  
1600 be deposited, and certifying that no contaminated or hazardous material will be  
1601 included. The material to be deposited on the site shall be limited to imperishable  
1602 materials such as stone, bricks, tile, sand, gravel, soil, asphalt, concrete and like  
1603 materials, and shall not include any hazardous materials as defined by the Virginia  
1604 Hazardous Waste Management Regulations.

1605  
1606 20. A superintendent, who shall be personally familiar with all the terms and  
1607 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the  
1608 terms and conditions of this use permit, shall be present at the beginning and  
1609 conclusion of operations each work day to see that all the conditions of the Code  
1610 and this use permit are observed.

1611

1612 21. A progress report shall be submitted to the Board on November 30, 2002.  
1613 This progress report must contain information concerning how much property has  
1614 been mined to date of the report, the amount of land left to be mined, how much  
1615 rehabilitation has been performed, when and how the remaining amount of land will  
1616 be rehabilitated, and any other pertinent information about the operation that would  
1617 be helpful to the Board.

1618  
1619 22. Excavation shall be discontinued by November 30, 2003, and restoration  
1620 accomplished by not later than November 30, 2004, unless a new permit is  
1621 granted by the Board of Zoning Appeals.

1622  
1623 23. The rehabilitation of the property shall take place simultaneously with the  
1624 mining process. Rehabilitation shall not be considered completed until the mined  
1625 area is covered completely with permanent vegetation.

1626  
1627 24. All drainage and erosion and sediment control measures shall conform to the  
1628 standards and specifications of the Mineral Mining Manual Drainage Handbook.  
1629 Any drainage structures in place prior to October 14, 1992 and which do not  
1630 conform to the Mineral Mining Manual Drainage Handbook may remain in place  
1631 until such time as any reconstruction is required at which time said structures shall  
1632 be brought into conformance with the Mineral Mining Manual Drainage Handbook.

1633  
1634 25. Failure to comply with any of the foregoing conditions shall automatically  
1635 void this permit.

1636  
1637 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1638 Negative: 0  
1639 Absent: 0

1640  
1641 The Board granted the request because it found the proposed use will be in  
1642 substantial accordance with the general purpose and objectives of Chapter 24 of  
1643 the County Code.

1644  
1645 Mr. Blankinship - You guys can stay here. The next case, for some reason,  
1646 was inadvertently left off the agenda, Mr. Chairman, but I'm going to call it  
1647 anyway, with your permission.

1648  
1649 **UP- 28-2001 VULCAN CONSTRUCTION MATERIALS, INC.** requests a  
1650 conditional use permit pursuant to Sections 24-103 and 24-52(d) of Chapter 24 of  
1651 the County Code to extract materials from the earth at Osborne Turnpike (Tax  
1652 Parcel 213-A-2 (part)), zoned A-1, Agricultural District and M-1, Light Industrial  
1653 District (Varina).

1654

1655 Mr. Balfour - They're still under oath.  
1656  
1657 Mr. Blankinship - Do you swear that the testimony you are about to give is  
1658 the truth, the whole truth, and nothing but the truth, so help you God?  
1659  
1660 Mr. Hinson - I do. My name is Paul Hinson; I'm with Koontz-Bryant.  
1661 We're the engineer assisting Vulcan Materials on the Chatsworth project, Use  
1662 Permit 28-2001. This is a re-approval of an existing mining permit on the site. We  
1663 have submitted and received approval for an erosion and sedimentation control plan  
1664 on the project. We have implemented all of the erosion and sedimentation control  
1665 items on the site. We have almost completed all of our restoration for the  
1666 previously mined areas. We also have some seeding to do, and some minor erosion  
1667 damage that we need to repair, and we also have a change of ownership on this  
1668 project, so we will be submitting new bonds in accordance with the new owner as  
1669 well. It was previously owned by Tarmac Materials, and they were purchased by  
1670 Vulcan Construction Materials. We did have one of the suggested conditions that  
1671 we'd like to discuss with the Board as well. Condition # 24 discusses the topsoil  
1672 must be stockpiled outside of the mining limits and that it cannot be used as part  
1673 of the restoration. This permit was actually enacted prior to this condition being  
1674 part of the conditions for the permit, and there was topsoil that was previously  
1675 stockpiled in the setbacks for the project. On the previous renewal, the Board had  
1676 granted an exception an exception to that, to allow us to use the topsoil that is in  
1677 the existing setbacks as part of our restoration efforts, and we would also like for  
1678 the Board to allow us to use that topsoil as part of our restoration efforts, that's in  
1679 those setbacks on the site.  
1680  
1681 Mr. Balfour - So you're asking to amend it to say that the topsoil  
1682 already there, as a result of the setbacks, be used.  
1683  
1684 Mr. Hinson - Yes sir, topsoil currently stockpiled in the setback areas be  
1685 allowed to be used for restoration on the site.  
1686  
1687 Do you see any problem with that, Mr. Blankinship?  
1688  
1689 Mr. Blankinship - No sir.  
1690  
1691 Mr. Hinson - We will not stockpile any additional materials in there, but  
1692 we would request that we be able to use what's already there.  
1693  
1694 You agree with the other 30 conditions?  
1695  
1696 Mr. Hinson - Yes sir, we have no objection to any of the other  
1697 conditions.  
1698

1699 Mr. Balfour - Thirty-one kind of covers it anyway. Do you have any  
1700 other questions? Thank you sir.

1701  
1702 Mr. Brazell - My name is Ton Brazell. Once again, I just wanted to  
1703 make note of the fact that those bonds have been transferred to Vulcan Materials,  
1704 and we have gone through the change of ownership process.

1705  
1706 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
1707 Mr. Wright, the Board **granted** application **UP-28-2001** for a conditional use permit  
1708 to extract materials from the earth at Osborne Turnpike (Tax Parcel 213-A-2 (part)).  
1709 The Board granted the use permit subject to the following conditions:

1710  
1711 1. This use permit is subject to all requirements of Section 24-103 of Chapter  
1712 24 of the County Code.

1713  
1714 2. Before beginning any work, the applicant shall provide a financial guaranty in  
1715 an amount of \$2,000.00 per acre for each acre of land to be disturbed, for a total  
1716 of \$154,000.00, guaranteeing that the land will be restored to a reasonably level  
1717 and drainable condition. This permit does not become valid until the financial  
1718 guaranty has been approved by the County Attorney. The financial guaranty may  
1719 provide for termination after 90 days notice in writing to the County. In the event  
1720 of termination, this permit shall be void, and work incident thereto shall cease.  
1721 Within the next 90 days the applicant shall restore the land as provided for under  
1722 the conditions of this use permit. Termination of such financial guaranty shall not  
1723 relieve the applicant from its obligation to indemnify the County of Henrico for any  
1724 breach of the conditions of this use permit. If this condition is not satisfied within  
1725 90 days of approval, the use permit shall be void.

1726  
1727 3. Before beginning any work, the applicant shall submit erosion control plans  
1728 to the Department of Public Works for review and approval. Throughout the life of  
1729 the operation, the applicant shall continuously satisfy the Department of Public  
1730 Works that erosion control procedures are properly maintained, and shall furnish  
1731 plans and bonds that the department deems necessary. The applicant shall provide  
1732 certification from a licensed professional engineer that dams, embankments and  
1733 sediment control structures meet the approved design criteria as set forth by the  
1734 State. If this condition is not satisfied within 90 days of approval, the use permit  
1735 shall be void.

1736  
1737 4. Before beginning any work, the applicant shall obtain a mine license from the  
1738 Virginia Department of Mines, Minerals and Energy. If this condition is not satisfied  
1739 within 90 days of approval, the use permit shall be void.

1740  
1741 5. Before beginning any work, the areas approved for mining under this permit  
1742 shall be delineated on the ground by five-foot-high metal posts at least five inches



1743 in diameter and painted in alternate one foot stripes of red and white. These posts  
1744 shall be so located as to clearly define the area in which the mining is permitted.  
1745 They shall be located, and their location certified, by a certified land surveyor. If  
1746 this condition is not satisfied within 90 days of approval, the use permit shall be  
1747 void.

1748  
1749 6. In the event that the Board's approval of this use permit is appealed, all  
1750 conditions requiring action within 90 days will be deemed satisfied if the required  
1751 actions are taken within 90 days of final action on the appeal.

1752  
1753 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
1754 state and local regulations administered under such act applicable to the property,  
1755 and shall furnish to the Planning Office copies of all reports required by such act or  
1756 regulations.

1757  
1758 8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight  
1759 Savings Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.

1760  
1761 9. No operations of any kind are to be conducted at the site on Saturdays,  
1762 Sundays, or national holidays.

1763  
1764 10. All means of access to the property shall be from the established entrance  
1765 onto Osborne Turnpike.

1766  
1767  
1768 11. The applicant shall erect and maintain gates at all entrances to the property.  
1769 These gates shall be locked at all times, except when authorized representatives of  
1770 the applicant are on the property.

1771  
1772 12. The applicant shall post and maintain a sign at the entrance to the mining  
1773 site stating the name of the operator, the use permit number, the mine license  
1774 number, and the telephone number of the operator. The sign shall be 12 square  
1775 feet in area and the letters shall be three inches high.

1776  
1777 13. The applicant shall post and maintain "No Trespassing" signs every 250 feet  
1778 along the perimeter of the property. The letters shall be three inches high. The  
1779 applicant shall furnish the Chief of Police a letter authorizing the Division of Police  
1780 to enforce the "No Trespassing" regulations, and agreeing to send a representative  
1781 to testify in court as required or requested by the Division of Police.

1782  
1783 14. Standard "Truck Entering Highway" signs shall be erected on Osborne  
1784 Turnpike on each side of the entrances to the property. These signs will be placed  
1785 by the County, at the applicant's expense.

1786

1787 15. The applicant shall post and maintain a standard stop sign at the entrance to  
1788 Osborne Turnpike.

1789  
1790 16. The applicant shall provide a flagman to control traffic from the site onto the  
1791 public road, with the flagman yielding the right of way to the public road traffic at  
1792 all times. This flagman will be required whenever the Division of Police deems  
1793 necessary.

1794  
1795 17. All roads used in connection with this use permit shall be effectively treated  
1796 with calcium chloride or other wetting agents to eliminate any dust nuisance.

1797  
1798 18. The operation shall be so scheduled that trucks will travel at regular intervals  
1799 and not in groups of three or more.

1800  
1801 19. Trucks shall be loaded in a way to prevent overloading or spilling of materials  
1802 of any kind on any public road.

1803  
1804 20. The applicant shall maintain the property, fences, and roads in a safe and  
1805 secure condition indefinitely, or convert the property to some other safe use.

1806  
1807 21. If, in the course of its preliminary investigation or operations, the applicant  
1808 discovers evidence of cultural or historical resources, or an endangered species, or  
1809 a significant habitat, it shall notify appropriate authorities and provide them with an  
1810 opportunity to investigate the site. The applicant shall report the results of any  
1811 such investigation to the Planning Office.

1812  
1813 22. If water wells located on surrounding properties are adversely affected, and  
1814 the extraction operations on this site are suspected as the cause, the effected  
1815 property owners may present to the Board evidence that the extraction operation is  
1816 a contributing factor. After a hearing by the Board, this use permit may be revoked  
1817 or suspended, and the operator may be required to correct the problem.

1818  
1819 23. Open and vertical excavations having a depth of 10 feet or more, for a  
1820 period of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to  
1821 protect the public safety.

1822  
1823 24. Topsoil shall not be removed from any part of the property outside of the  
1824 area in which mining is authorized. Sufficient topsoil shall be stockpiled on the  
1825 property for respreading in a layer with five inches of minimum depth. All topsoil  
1826 shall be stockpiled within the authorized mining area and provided with adequate  
1827 erosion control protection. If the site does not yield sufficient topsoil, additional  
1828 topsoil shall be brought to the site to provide the required five-inch layer of cover.  
1829 All topsoil shall be treated with a mixture of seed, fertilizer, and lime as  
1830 recommended by the County after soil tests have been provided to the County.

1831 Topsoil stored outside the mining areas under previous approvals may be used for  
1832 reclamation.

1833

1834 25. No offsite-generated materials shall be deposited on the mining site without  
1835 prior written approval of the Director of Planning. To obtain such approval, the  
1836 operator shall submit a request stating the origin, nature and quantity of material to  
1837 be deposited, and certifying that no contaminated or hazardous material will be  
1838 included. The material to be deposited on the site shall be limited to imperishable  
1839 materials such as stone, bricks, tile, sand, gravel, soil, asphalt, concrete and like  
1840 materials, and shall not include any hazardous materials as defined by the Virginia  
1841 Hazardous Waste Management Regulations.

1842

1843 26. A superintendent, who shall be personally familiar with all the terms and  
1844 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the  
1845 terms and conditions of this use permit, shall be present at the beginning and  
1846 conclusion of operations each work day to see that all the conditions of the Code  
1847 and this use permit are observed.

1848

1849 27. A progress report shall be submitted to the Board on November 30, 2002.  
1850 This progress report must contain information concerning how much property has  
1851 been mined to date of the report, the amount of land left to be mined, how much  
1852 rehabilitation has been performed, when and how the remaining amount of land will  
1853 be rehabilitated, and any other pertinent information about the operation that would  
1854 be helpful to the Board.

1855

1856 28. Excavation shall be discontinued by November 30, 2003, and restoration  
1857 accomplished by not later than November 30, 2004, unless a new permit is  
1858 granted by the Board of Zoning Appeals.

1859

1860 29. The rehabilitation of the property shall take place simultaneously with the  
1861 mining process. Rehabilitation shall not be considered completed until the mined  
1862 area is covered completely with permanent vegetation.

1863

1864 30. All drainage and erosion and sediment control measures shall conform to the  
1865 standards and specifications of the Mineral Mining Manual Drainage Handbook.  
1866 Any drainage structures in place prior to October 14, 1992 and which do not  
1867 conform to the Mineral Mining Manual Drainage Handbook may remain in place  
1868 until such time as any reconstruction is required at which time said structures shall  
1869 be brought into conformance with the Mineral Mining Manual Drainage Handbook.

1870

1871 31. Failure to comply with any of the foregoing conditions shall automatically  
1872 void this permit.

1873

1874 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1875 Negative: 0  
1876 Absent: 0

1877  
1878 The Board granted the request because it found the proposed use will be in  
1879 substantial accordance with the general purpose and objectives of Chapter 24 of  
1880 the County Code.

1881  
1882 Mr. Balfour - Next case.

1883  
1884 **A -153-2001 ANNE H. DECAMPS** requests a variance from Section 24-  
1885 95(c)(1) of Chapter 24 of the County Code to build an addition  
1886 at 9116 University Boulevard (University Heights) (Tax Parcel  
1887 101-10-C-B), zoned R-2, One-family Residence District  
1888 (Tuckahoe). The minimum side yard setback and total side yard  
1889 setback are not met. The applicant has 4.8 foot minimum side  
1890 yard setback and 19.2 feet total side yard setback, where the  
1891 Code requires 7.8 feet minimum side yard setback and 23.4  
1892 feet total side yard setback. The applicant requests a variance  
1893 of 3.0 feet minimum side yard setback and 4.2 feet total side  
1894 yard setback.

1895  
1896 Mr. Balfour - Anyone here on that case? We'll pass it by for the  
1897 moment. Next case?

1898  
1899 **A -154-2001 DAVID HEPLER** requests a variance from Section 24-95(i)(2) of  
1900 Chapter 24 of the County Code to build a single-family house at  
1901 12315 Kain Road (Tax Parcel 26-A-52 (part)), zoned A-1,  
1902 Agricultural District (Three Chopt). The accessory structure  
1903 location requirement is not met. The applicant wishes to build a  
1904 single-family house with accessory structures in the front and  
1905 side yards, where the Code allows accessory structures in the  
1906 rear yard.

1907  
1908 Mr. Balfour - Raise your right hand please.

1909  
1910 Mr. Blankinship - Do you swear that the testimony you are about to give is  
1911 the truth, the whole truth, and nothing but the truth, so help you God?

1912  
1913 Mr. Hepler - Good morning; my name is David Hepler, and I've been a  
1914 resident of Henrico County for about 25 years. This property has been in my  
1915 family for about 35 years. Basically, my newly wed wife and I would like to build  
1916 our home on this property, and have the restriction regarding the accessory  
1917 structures to be in the front and side yards. I believe the zoning ordinance to allow

1918 accessory structures in the rear yard of the dwelling would seem to be intended to  
1919 prevent inappropriate or unsightly structures from being built in the front or side  
1920 yards where they would adversely affect the surrounding area. In this case, I  
1921 believe it's kind of a different situation, because the accessory structures already  
1922 exist, and we wish to build the dwelling. Building the proposed dwelling will not  
1923 make the accessory structures any more or less visible. In fact, neither the existing  
1924 accessory structures, nor the proposed dwelling, are visible from the road or the  
1925 surrounding homes, due to the distance from them, and also the many trees and  
1926 bushes in the area. I don't believe that the variance, if it's granted, and the  
1927 building of the proposed dwelling, would have any negative effect on any other  
1928 property in the area. Basically, as I've already stated, because of the non-visibility  
1929 of these structures. One of the options that we were presented with, was  
1930 demolishing all of these accessory structures, which we actually have done, well  
1931 we've demolished one of the structures, which is listed on the picture there. It  
1932 says "to be razed. We've actually already demolished that, at a cost of over  
1933 \$6,000, to tear it down and haul it off, so we also have a longer range plan to  
1934 have some of these other sheds demolished as money and time permits. So we  
1935 would just ask for your consideration in granting of this variance.

1936

Are these buildings usable at this particular time?

1937

1938

1939 Mr. Hepler - Yes, they are usable; we're using them for storage. They  
1940 could be used for a horse stall or something to that effect.

1941

1942

Neither one of these is a garage?

1943

1944 Mr. Hepler - Well, the picture that you see before you is actually more  
1945 of a barn that could be used for storage or livestock, and has been used in the past  
1946 for that purpose many years ago. There is one other structure shown that could be  
1947 used for a carport or to house a tractor or some type of garden equipment or  
1948 something like that.

1949

1950

Is this some family property?

1951

1952 Mr. Hepler - Yes, this property's been in my family for about 35 years.

1953

1954 Mr. Balfour - Are there any other questions of Board members? I  
1955 gather you're a hundred yards back from the road, I've noticed too.

1956

1957 Mr. Hepler - Yes, I think it's about 300 feet, that's correct. And along  
1958 Kain Road there's a large stand of trees, bushes, actually not only along the road,  
1959 but between the proposed site and the road.

1960

1961 Mr. Balfour - Any other questions of Board members? Thank you sir.

1962  
1963 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
1964 McKinney, the Board **granted** application **A-154-2001** for a variance to build a  
1965 single-family house at 12315 Kain Road (Tax Parcel 26-A-52 (part)). The Board  
1966 granted the variance subject to the following conditions:

1967  
1968 1. Only the improvements shown on the plan filed with the application may be  
1969 constructed pursuant to this approval. Any additional improvements shall comply  
1970 with the applicable regulations of the County Code.

1971  
1972 2. Approval of this request does not imply that a building permit will be issued.  
1973 Building permit approval is contingent on Health Department requirements,  
1974 including, but not limited to, soil evaluation for a septic drainfield and reserve area,  
1975 and approval of a well location.

1976  
1977 3. The accessory buildings located in the front yard may remain until such time  
1978 as demolition occurs. No additional accessory buildings may be located in the front  
1979 yard. The existing accessory structures may not be replaced, restored, or  
1980 expanded without additional approval from the Board of Zoning Appeals.

1981  
1982 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1983 Negative: 0  
1984 Absent: 0

1985  
1986 The Board granted this request, as it found from the evidence presented that, due  
1987 to the unique circumstances of the subject property, strict application of the  
1988 County Code would produce undue hardship not generally shared by other  
1989 properties in the area, and authorizing this variance will neither cause a substantial  
1990 detriment to adjacent property nor materially impair the purpose of the zoning  
1991 regulations.

1992  
1993 Mr. Balfour - Next Case.

1994  
1995 **A -155-2001 HUNTER PETTUS, JR.** requests a variance from Section 24-  
1996 95(i)(2) of Chapter 24 of the County Code to allow an  
1997 accessory structure to remain at 8107 Kingston Road (River  
1998 Road Hills) (Tax Parcel 113-5-F-4), zoned R-1, One-family  
1999 Residence District (Tuckahoe). The accessory structure location  
2000 requirement is not met. The applicant has an accessory  
2001 structure in the side yard, where the Code allows accessory  
2002 structures in the rear yard.

2003

2004 Mr. Balfour - Are there any others to speak besides the people at the  
2005 rostrum? All of you stand and be sworn in.

2006  
2007 Mr. Blankinship - Do you swear that the testimony you are about to give is  
2008 the truth, the whole truth, and nothing but the truth, so help you God?

2009  
2010 Mr. Blankinship - Mr. Chairman, let me point out that there's a letter at each  
2011 place that pertains to this case.

2012  
2013 Mr. Pettus - I do. There's one more, if I could read it or give it to you.

2014  
2015 Mr. Blankinship - Yes, pass it on up.

2016  
2017 Mr. Pettus - Because he is out of town, I thought he was going to be  
2018 here. May I start? I'm Hunter Pettus. My wife and I live at 8107 Kingston Road,  
2019 and we've been there for over 40 years. She was recently in an automobile  
2020 accident, last November, and is physically handicapped. When we went to put up  
2021 a tool and garden house, we had the help of a landscape architect, Karen Kelley,  
2022 who will talk about it, and we didn't realize, after living there 40 years, we still  
2023 didn't realize that you could not put a tool house on the side of your house. Now  
2024 we have a funny-shaped lot, to start with, it's a pie-shaped lot. The front of the  
2025 house is on Kingston Road, and it goes back to a point, and the lot goes uphill  
2026 towards the back. That would not be too good of place for a person like Patsy to  
2027 have to walk up to. Anyway, we went ahead and put the building up, not knowing  
2028 that we were in default; we wouldn't do anything to purposely break the rules. It  
2029 was a mistake; it was unintentional, and I don't know what we could have done to  
2030 have not done it, to tell you the truth, because we did not know the rule on that.  
2031 The builder of the house said a person here at Henrico County said that we did not  
2032 need a building permit, and I think you have a copy of that letter from Tom, the  
2033 builder. So we went ahead and put the house up where it was designed by Karen,  
2034 and we also now have a signed letter from all of our nearby neighbors, or most all  
2035 of them, said that they have no objection to the way the tool house is built, the  
2036 construction of it, the looks of it. You can see it's on the side of the house; it's  
2037 not on the front. Most people have said that it improves the looks of our lot, it's  
2038 so attractive, and it's nicely landscaped. That's about all I can say, but we do  
2039 have signed letters from neighbors on each side of us, in the rear of us, in the front  
2040 of us, and also selected other ones; all saying that they have no problem with the  
2041 location of the house.

2042  
2043 Mr. Balfour - Any questions of Mr. Pettus?

2044  
2045 Mr. Pettus - The main thing I wanted to get across is, we've been  
2046 there over 40 years, and also we've got signatures from all of our nearby  
2047 neighbors.





2092  
2093 The Board granted this request, as it found from the evidence presented that, due  
2094 to the unique circumstances of the subject property, strict application of the  
2095 County Code would produce undue hardship not generally shared by other  
2096 properties in the area, and authorizing this variance will neither cause a substantial  
2097 detriment to adjacent property nor materially impair the purpose of the zoning  
2098 regulations.

2099  
2100 Mr. Balfour - We've got 2 that we passed. You want to call those  
2101 cases?

2102  
2103 **A -147-2001** **WILLIAM DEBENDER** requests a variance from Sections 24-  
2104 95(i)(2)(b) and 24-95(i) of Chapter 24 of the County Code to  
2105 build a detached garage at 11416 Wood Brook Court (Rock  
2106 Springs Estates) (Tax Parcel 13-2-G-14), zoned A-1, Agricultural  
2107 District (Brookland). The accessory structure height  
2108 requirement and accessory structure location requirement are  
2109 not met. The applicant wishes to build a detached garage in the  
2110 front yard with a height of 16.5 feet, where the Code allows  
2111 accessory structures in the rear yard with a height of 15.0 feet.

2112  
2113 Mr. Balfour - Mr. Blankinship, did you have any word?

2114  
2115 Mr. Blankinship - I've spoken to him several times about the case, and no,  
2116 he didn't say anything about missing the meeting.

2117  
2118 Upon a motion by Mr. Kirkland, seconded by Mr. Wright, the Board of Zoning  
2119 Appeals **deferred A-147-2001** application for a variance to to build a detached  
2120 garage at 11416 Wood Brook Court (Rock Springs Estates) (Tax Parcel 13-2-G-  
2121 14). The case was deferred for 30 days, at your request, from the November 15,  
2122 2001, until the December 13, 2001, meeting,

2123  
2124 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
2125 Negative: 0  
2126 Absent: 0

2127  
2128 Mr. Balfour - Next case.

2129  
2130 **A -153-2001** **ANNE H. DECAMPS** requests a variance from Section 24-  
2131 95(c)(1) of Chapter 24 of the County Code to build an addition  
2132 at 9116 University Boulevard (University Heights) (Tax Parcel  
2133 101-10-C-B), zoned R-2, One-family Residence District  
2134 (Tuckahoe). The minimum side yard setback and total side yard  
2135 setback are not met. The applicant has 4.8 foot minimum side

2136 yard setback and 19.2 feet total side yard setback, where the  
2137 Code requires 7.8 feet minimum side yard setback and 23.4  
2138 feet total side yard setback. The applicant requests a variance  
2139 of 3.0 feet minimum side yard setback and 4.2 feet total side  
2140 yard setback.

2141  
2142 Mr. Blankinship - Similarly, Mr. Chairman, we have had some conversations  
2143 back and forth with these applicants, and I'm not aware of any comment that they  
2144 would not be in attendance.

2145  
2146 Upon a motion by Mr. McKinney, seconded by Mr. Kirkland, the Board of Zoning  
2147 Appeals **deferred A-153-2001** application for a variance to build an addition at  
2148 9116 University Boulevard (University Heights) (Tax Parcel 101-10-C-B). The case  
2149 was deferred for 30 days, to allow you to have a representative present the case,  
2150 from the November 15, 2001, until the December 13, 2001, meeting,

2151  
2152 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
2153 Negative: 0  
2154 Absent: 0

2155  
2156 On a motion by Mr. Nunnally, seconded by Mr. Wright, the Board **approved**  
2157 the Minutes of the April 26, 2001, Henrico County Board of Zoning Appeals  
2158 meeting.

2159  
2160 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright  
2161 5  
2162 Negative: 0  
2163 Absent: 0

2164  
2165 There being no further business, and on a motion by Mr. Wright, seconded  
2166 by Mr. Kirkland, the Board adjourned at 10:47 am, until December 13, 2001,  
2167 at 9:00 am.

2168  
2169

2170 Daniel Balfour,  
2171 Chairman

2172  
2173 Benjamin Blankinship, AICP

2174 Secretary

