

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**  
2 **HENRICO COUNTY, HELD IN THE BOARD ROOM OF THE COUNTY**  
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**  
4 **COMPLEX, ON THURSDAY, OCTOBER 20, 2005, AT 9:00 A.M., NOTICE HAVING**  
5 **BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH ON SEPTEMBER 29**  
6 **AND OCTOBER 6, 2005.**  
7

**Members Present:** James W. Nunnally, Chairman  
Richard Kirkland, CBZA, Vice-Chairman  
Helen E. Harris

**Members Absent:** Elizabeth G. Dwyer,  
R. A. Wright

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

8  
9 Mr. Nunnally - Good morning, Ladies and Gentlemen. We welcome you to  
10 the October meeting of the County of Henrico Board of Zoning Appeals. We ask you to  
11 please stand and join us for the **Pledge of Allegiance to the Flag of Our Country.**  
12 Before we call our first case this morning, I’d like to explain to you that the Board of  
13 Zoning Appeals has five members on the Board. Unfortunately, two of them could not  
14 be here this morning. We have a quorum, which is three of us, and we can make the  
15 votes, against or for, but if any of you feel uneasy about it, you may request a  
16 deferment, and we will defer it until next month, if you want the whole five to vote on it.  
17 Is that correct, Mr. Blankinship?

18  
19 Mr. Blankinship - Yes sir. To clarify, in order to grant a variance, there have to  
20 be three affirmative votes, no matter how many members are here, so essentially the  
21 vote would have to be unanimous to grant a variance this morning. I don’t believe that  
22 applies to use permits. I think that’s just variances and appeals.

23  
24 **(Voice from audience)** - It doesn’t apply to what again?

25  
26 Mr. Blankinship - To use permits. There are several applications for  
27 conditional use permits this morning, and a two (2) to one (1) vote in favor would  
28 approve a use permit. But a two to one in favor on a variance would amount to a denial,  
29 because you have to have three affirmative votes.

30  
31 **(Audience voice)** - And we can’t take our chances and come back later if they  
32 vote us down?

33  
34 Mr. Blankinship - No, you have to make your choice before the hearing is  
35 over.  
36  
37 Mr. Nunnally - Should we ask for that decision now?  
38  
39 Mr. Blankinship - I think we can take evidence on each case, and the applicant  
40 may decide after hearing evidence; there may be somebody here to speak that they  
41 weren't aware was going to speak.  
42  
43 Mr. Nunnally - Do we have any deferrals or withdrawals?  
44  
45 Mr. Blankinship - No, sir, none at all.  
46  
47 Mr. Nunnally - All right sir, call the first case.  
48  
49 Mr. Blankinship - Before I do that, let me read the rules. As the Secretary, I  
50 will call each case. Then at that time the applicant should come to the podium. I will  
51 ask everyone who intends to speak on that case, in favor or in opposition, to stand and  
52 be sworn in. The applicants will then present their testimony. After the applicant has  
53 spoken, the Board will ask them questions, and then anyone else who wishes to speak  
54 will be given the opportunity. After everyone has had a chance to speak, the applicant,  
55 and only the applicant, will be given the opportunity for rebuttal. After hearing the case,  
56 and asking questions, the Board will take the matter under advisement. They will  
57 render all of their decisions at the end of the meeting. If you wish to know their decision  
58 on a specific case, you can either stay until the end of the meeting, or you can call the  
59 Planning Office later this afternoon, or you can check the website this afternoon. We  
60 usually get it updated within an hour or so of when the meeting ends. This meeting is  
61 being tape recorded, so we will ask everyone who speaks, to speak directly into the  
62 microphone on the podium, to state your name, and to spell your last name please.  
63 And finally, out in the foyer, there are two binders, containing the staff report for each  
64 case, including the conditions that have been recommended by the staff.  
65

66 **Beginning at 9:00**

67  
68 **A-94-2005** **ROBERT C. IRBY III** requests a variance from Sections 24-95(d)(1)  
69 and 24-9 to build a one-family dwelling at 1290 Chaffins Bluff Lane  
70 (Parcel 803-679-3723), zoned R-2A, One-family Residence District  
71 (Varina). The lot width requirement and public street frontage  
72 requirement are not met. The applicant has 70 feet lot width and 0  
73 feet public street frontage, where the Code requires 150 feet lot  
74 width and 50 feet public street frontage. The applicant requests a  
75 variance of 80 feet lot width and 50 feet public street frontage.  
76

77 Mr. Nunnally - Is any other person interested in this case? If so, please  
78 stand and raise your right hand and be sworn in?

79  
80 Mr. Blankinship - Mr. Irby, would you raise your right hand? Do you swear  
81 that the testimony you are about to give is the truth, the whole truth, and nothing but the  
82 truth, so help you God?  
83  
84 Mr. Irby - I do.  
85  
86 Mr. Blankinship - Mr. Chairman, I call your attention to two of the three  
87 handouts that were left at your place this morning, pertain to this case. {Mr. Irby,} let me  
88 give you a copy.  
89  
90 Mr. Nunnally - Mr. Irby, state your name for the record and tell us what  
91 you're requesting.  
92  
93 Mr. Irby - Robert C. Irby III. We're requesting a variance for road  
94 frontage and lot width, pertaining to the existing lot that's been there for quite some  
95 time. I also have a little note from my real estate agent who couldn't be here today, if I  
96 may bring that up to you.  
97  
98 Mr. Nunnally - Yes, you may give it to Mr. Blankinship; we'll have to keep it  
99 for 30 days however.  
100  
101 Mr. Kirkland - Mr. Irby, could you give us a little background on when you  
102 purchased this land and what's happened since then?  
103  
104 Mr. Irby - We purchased it, or entered into the contract, I believe, in  
105 1996. We didn't end up closing on it until '97, but we purchased it with the full intent  
106 that the second lot would be buildable. I will be happy to show you where we revised  
107 the original contract to make sure that it specified both lots instead of just one, as the  
108 realtor and owner had originally put in the contract.  
109  
110 Mr. Kirkland - When you originally contracted this, are you saying now that  
111 you planned on two lots in the beginning?  
112  
113 Mr. Irby - Most definitely. I even talked to the Planning Board at the  
114 time about it, to make sure that there was a very good chance, as long as we met the  
115 rest of the requirements as far as getting perk permits.  
116  
117 Mr. Kirkland - And you knew at that time that it would require a variance  
118 because you didn't have the width or road frontage?  
119  
120 Mr. Irby - Yes sir, I did, but I was informed at the time that it shouldn't  
121 be that big of a problem to get that because the lot was a pre-existing lot.  
122  
123 Mr. Nunnally - You purchased this lot, you said, in 1996, and closed in  
124 1997. Where were you living at that time when you purchased this property?

125  
126 Mr. Irby - In Richmond, in Ginter Park, same place we still live,  
127 unfortunately.  
128  
129 Ms. Harris - Have you seen the inspection report?  
130  
131 Mr. Irby - I'm not sure I've seen this latest one. I didn't have a chance  
132 to read it. It doesn't look like I have seen this one.  
133  
134 Ms. Harris - How would you access the property? We understand that a  
135 bridge has washed away.  
136  
137 Mr. Irby - Yes ma'am. Well, it hasn't washed away. I ran into the  
138 fireman who was out there the other day as he was coming in there, so I assume he got  
139 some good pictures of that. It just narrowed it, and it definitely does need to be  
140 repaired, there's no question about that, but that will obviously be taken care of. That  
141 road, if you get a chance to look at the pictures that I've submitted up there, you'll see  
142 that the front half of it is still in use, but there's only two lots that use the back half of it  
143 back on the river, and one of them, the lady's 90-some years old and no longer drives,  
144 other than a golf cart that she rides around the premises. Being that we don't live there  
145 and just go out there for recreational use, the back half has not been used, and that's  
146 why you see the condition that it's in now; it's just gotten overgrown and everything, but  
147 at one time, that road was well kept all the way back down to the river, and has been in  
148 use, from what I can tell, at least since early last century.  
149  
150 Ms. Harris - Look at the report that's from the Chief Fire Marshal, under  
151 "**Bridge,**" where it says, "There appears to be a bridge located at the bottom of the  
152 ravine." They feel that it was undermined by the storm waters. So you're saying that  
153 this bridge didn't wash away, that it's been at the bottom of the ravine all this time?  
154  
155 Mr. Irby - It's been there all this time. It has been damaged; it was  
156 damaged by Gaston last year when we had that 12 inches of water in one day, when  
157 Shockoe Bottom and everywhere else, including my basement in Ginter Park, got  
158 flooded.  
159  
160 Ms. Harris - So when you access the property, you have to use a path,  
161 more or less, you have to go around?  
162  
163 Mr. Irby - Right now we've got, and I think there's a picture of it, it's on  
164 one of the pictures that I've submitted, we've put up "no trespassing," pretty much not a  
165 gate, but sawhorses there, because of the danger of it. We're talking with the neighbors  
166 now, and we will obviously get it resolved.  
167  
168 Mr. Kirkland - This house you're building – is it for yourself?  
169  
170 Mr. Irby - No sir.

171  
172 Mr. Kirkland - It's for sale?  
173  
174 Mr. Irby - It will be; it's not right now.  
175  
176 Mr. Kirkland - So you'll have to make all these necessary road  
177 improvements to sell it?  
178  
179 Mr. Irby - No question about it.  
180  
181 Mr. Kirkland - And then Fire and Rescue will be able to access back there  
182 with no problem?  
183  
184 Mr. Irby - I actually have another fireman, just happened to be with  
185 me, when we ran into the other fireman who was just getting there, and he had already  
186 been out there recently, because the little old lady had gotten stuck on her three-  
187 wheeler on the side of a bank on the river, and they had to go rescue her. They ended  
188 up having to go through Morrissey's property to get there, which is right next door to it.  
189 That road's been used since early last century, and there's obviously, there was even a  
190 contracting crew that had an area down at the bottom of that hill, off to the side, that he  
191 cleared to store all of his contracting equipment. So he had big tractor-trailers that  
192 carried heavy loading equipment, bulldozers, and everything else down there. If you  
193 look at those pictures, I think you'll see that it's not that steep of a grade.  
194  
195 Ms. Harris - When you use the path to access this property, that's  
196 someone else's land, right? Do you have permission to do that?  
197  
198 Mr. Irby - We have a right-of-way through there, and I'll be happy to  
199 show you if you'd like.  
200  
201 Ms. Harris - The right-of-way for the driveway, or the right-of-way to  
202 access someone else's land to get to your land?  
203  
204 Mr. Irby - It's actually the drive. Chaffins Bluff Lane is the name of the  
205 road that goes up to it. That is actually split between two different property owners, but  
206 we've got a right-of-way in our deed to access our property through that road.  
207  
208 Mr. Blankinship - Through Chaffins Bluff Lane?  
209  
210 Mr. Irby - Yes sir.  
211  
212 Mr. Blankinship - But do you have a legal access to reach the property from  
213 some other way, given that Chaffins Bluff Lane is not passable to emergency vehicles?  
214  
215 Mr. Irby - Not right now, sir, but like I said, there's nobody out there  
216 living there other than Myrtle Cogbill, and she has access through Gil Morrissey's

217 property right now. Obviously, once everything gets straight with the neighbors out  
218 there, we've already been talking about it, it's just a matter of getting the right bids to get  
219 that bridge fixed, and then once we get ready to put it on the market, we'll go ahead and  
220 improve the road back to just as you see the front half of the road is, which is in very  
221 good condition.

222  
223 Mr. Nunnally - In this letter you have from your realtor, it says that "Most  
224 recently I sold two comparable side-by-side riverfront parcels approximately 1,000 yards  
225 down river to two separate individuals. Those parcels would have been devalued by  
226 \$150,000 to \$200,000 had they been combined and sold to only one purchaser." What  
227 size lots were these? They're not your lots, are they?

228  
229 Mr. Irby - No sir. But they were roughly 3 acres apiece, but one of  
230 them has at least half of it in a ravine, and the other half on the other side, at least an  
231 acre of it is a Civil War fort, that's not buildable. It's on Battery Hill Drive, right down the  
232 road. There are only two building lots, pretty much exactly the same situation.

233  
234 Mr. Kirkland - Have you read the staff conditions for this case, Page 3 of 3  
235 of the staff report, and there's six items listed there? Can you elaborate on # 6 – are  
236 there Civil War gun emplacements on this site?

237  
238 Mr. Irby - What little is left of them. Unfortunately, the rest of them  
239 have been bulldozed by their owners out there, but we have preserved what we've got  
240 there.

241  
242 Mr. Kirkland - None of them are in the place where the site of the house  
243 would be, are they?

244  
245 Mr. Irby - It's actually right on the edge of what I call the cliff, and  
246 unfortunately it's being eroded away, but there are still gun emplacements, well, I think  
247 the gun emplacement was actually on the neighbor's property. The house, because of  
248 the Chesapeake Bay Act, would be back behind. We were originally planning on  
249 building there, and what we envisioned doing, was building an English basement house,  
250 actually three stories, so that the English basement would come up to the height of the  
251 earthworks that are there, and then incorporate the earthworks into the landscape. I've  
252 actually done a pretty good amount of research on that, and I've got family that goes  
253 way back, all the way back to the point where Pocahontas was my 13<sup>th</sup> great-  
254 grandmother, one of my ancestors, who we are related through her, bought seven of the  
255 first lots from William Byrd in Shockoe Bottom, that are still there today. You can  
256 actually go look and see where they are. The family still has them. It's where Tobacco  
257 Row is today.

258  
259 Mr. Nunnally - Any other questions from the members of the Board or staff?

260  
261 Ms. Harris - You acquired this property through a family division?

262

263 Mr. Irby - No, it was actually, it went through the Code back when it  
264 was subdivided. I believe it was 1975, Mr. Blankinship? Is that what we determined? I  
265 know one of them was in '57, and I think the other one might have been in '75, when the  
266 Codes were different. It was my understanding, when talking to the Planning Director at  
267 that time, that he didn't think I would have much problem getting a variance because of  
268 it actually being a legal parcel at the time.

269  
270 Mr. Nunnally - Any other questions? All right, Mr. Irby, you have a seat,  
271 and we'll ask the opposition to come down and speak. You'll have a time to rebut after  
272 this, Mr. Irby. Anyone else going to speak other than you, sir?

273  
274 Mr. Ellis - Yes, my daughter arrived after the swearing in. She's a  
275 property owner along Chaffins Bluff.

276  
277 Mr. Nunnally - Why don't you come on down and be sworn in now.

278  
279 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
280 truth, the whole truth, and nothing but the truth, so help you God?

281  
282 Mr. Ellis - I do. My name is Howard Ellis; my wife, who's in  
283 attendance here, and I own, we are one of two adjoining property owners other than the  
284 applicant. We own property to the east of the applicant's property, in the name of H.  
285 Ellis Family Partnership.

286  
287 Mr. Blankinship - Is there a house on that property?

288  
289 Mr. Ellis - No, there is not. My concerns are primarily the precedent  
290 that such a decision would give for future development in the area, and also, the  
291 question of density. I have some other comments that I would like to make, and I'll try  
292 to keep that as brief as possible. There was a map on the board that indicated the  
293 previous drawing. I've not had a chance to investigate this. The map shows that Aqua  
294 Vista Lane actually runs up against the applicant's property, and a question that I have  
295 is why is that not being considered as access to this property, instead of Chaffins Bluff?  
296 It's just a question. I have no answer, and there may be a very good answer. As far as  
297 precedent is concerned, to grant a complete relinquishment of road frontage  
298 requirement, the 50 feet, and to divide in half, or to acquiesce on more than half of the  
299 lot width requirement, I think sets a dangerous precedent for the area and the density of  
300 the area in terms of future requests. Another precedent, I think, is that the property was  
301 bought in 1997. The taxpayer has been paying taxes on a significantly reduced value of  
302 this lot for eight years. If it had been purchased, feeling as though it was a developable  
303 lot, then I question why it was originally assessed about 1/7<sup>th</sup> of the lot value of the lot  
304 that has the house on it. As your report indicates, both assessments have gone up over  
305 the years, but the lot in question continues to be assessed at about 1/7<sup>th</sup> of the value of  
306 the land that underlies the existing house. Surely, anyone who purchases property and  
307 pays taxes, would know that that's a strong indication that the County considers that  
308 property to be an unbuildable lot. Otherwise, it would have been assessed at a much

309 higher value. I think that it is part of the report; it's on page 2 of 3, second paragraph  
310 from the top. As I indicated, my second primary concern is the precedent for density of  
311 the area. To take this 2.3 acres and divide it into two buildable lots would at the same  
312 time, create the two smallest buildable lots on the literature that's been provided to you.  
313 I haven't been able to go back and determine what size other building lots are that face  
314 the river, but I am certain that there are lots of people up and down the river who would  
315 like the opportunity to take their property, divide it up into smaller lots, sell it at a  
316 significant profit, and benefit from it.

317  
318 Mr. Nunnally - Mr. Ellis, this partnership you say, how many acres of land  
319 do you have there?

320  
321 Mr. Ellis - In one parcel we have 3.4 acres. Frankly, I misspoke, in that  
322 I said it was a partnership. My wife and I own two parcels. We own one parcel that is  
323 actually abutting the applicant that totals 9 acres. It runs from Osborne Turnpike all the  
324 way back to the applicant's property. It has about 100 feet of frontage on Osborne  
325 Turnpike. It runs a significant distance down Chaffins Bluff Lane. We own that as  
326 individuals. We bought that about four years ago.

327  
328 My wife and I then bought another parcel that Chaffins Bluff actually comes across to  
329 get to the applicant's property, and we bought that 3.4 acres in June of last year. We  
330 like the area; my daughter lives there; we are very concerned about the density of the  
331 area and preserving the environment that she lives in.

332  
333 Finally, I would like to make a comment about the barriers on the road that were shown  
334 going back to where the bridge has washed out for automobile traffic. Those barriers  
335 were put there by my daughter and her husband, and you can see that they are spaced  
336 to allow Myrtle, Ms. Cogbill, to take her golf cart to the mailbox. She comes across the  
337 remainder of the bridge, so the barriers were put there to keep vehicular traffic from  
338 whizzing down that road and falling into the creek. They are sawhorses that my  
339 daughter built, and she and her husband put out there to stop traffic from going back to  
340 where the bridge had washed out. Do you have any questions of me?

341  
342 Ms. Harris - Do you wish to purchase Mr. Irby's land? Have you  
343 considered that?

344  
345 Mr. Ellis - No, I had not considered that. I think, I believe, that he  
346 priced the land to my daughter and son-in-law. My daughter can address the price that  
347 he asked for the land, but it was not priced to me, nor did I consider buying it.

348  
349 Mr. Nunnally - Any other questions of Mr. Ellis? Thank you. Please state  
350 your name for the record.

351  
352 Ms. N. A. Ellis - I'm Nicole Anderson Ellis. I apologize for being late. I have  
353 a statement that I would like to share with the Board, and then I have a statement from  
354 another neighbor who could not be here today, Jennifer Todd McDonough, that I will



355 read if it is all right. Can we go back to the image – that’s the one. My husband and my  
356 daughter and I live in a home that is just visible in the upper right-hand corner of this  
357 image. We have lived there for six years now. My property does not border Mr. Irby’s  
358 directly; however his only access to his land is via the right-of-way on Chaffins Bluff that  
359 crosses my property. We were not given any formal notice of this hearing or of his  
360 request for a variance. We heard about it through our neighbors, so I’m glad to have  
361 heard about it, and I’m here to express my opposition. Mr. Irby has informed me of his  
362 intentions to sell his home and move out of state, and I certainly understand his desire  
363 to maximize his profit by selling these parcels and selling them both as potential  
364 residences. I support Mr. Irby’s right to sell those lots separately, or combined,  
365 whichever garners him the most money. He is advertising the existing home as a  
366 candidate for renovation, and my family and I will welcome anyone who buys the land  
367 and comes into our community.  
368

369 However, we strongly oppose his attempt to bypass the existing County regulations and  
370 squeeze two houses into a space where the County’s own experts say there should  
371 only be one. I won’t waste your time by restating how he fails to meet the current Code.  
372 My family and I would suffer immediate impacts from Mr. Irby’s being given permission  
373 to build on his undersize second lot. As I mentioned, his property is only accessible by  
374 a gravel road that crosses our property and runs within about twenty feet of our house.  
375 We would therefore be subject to disruption, danger of additional traffic, both during  
376 construction and for perpetuity. In addition, sharing the upkeep of Chaffins Bluff Lane  
377 has proven problematic already, due to some ambiguity over who was legally  
378 responsible for its upkeep. As I mentioned, his property is only accessible by the gravel  
379 drive, and as you saw from the pictures, the bridge is out. Currently it is not accessible  
380 at all. I am concerned that were we allowed two more households to access their  
381 homes via that road, that it would cause additional wear and tear without solving the  
382 problem of who is responsible for its upkeep. These reasons for opposing the request  
383 are very interpersonal, and my primary opposition is not.  
384

385 As a member of ROOT, the Residents of Old Osborne Turnpike Homeowners  
386 Association, and as a citizen of Henrico County, I see no justification for the County to  
387 ignore established zoning codes and allow the crowding of residences onto lots that,  
388 according to the County’s own published reports, do not adequately support them. An  
389 exception in this case does not provide any benefit to the people of Henrico County. It  
390 would benefit Mr. Irby, but at the expense of all Henrico citizens, since granting such a  
391 variance would set a precedent to which other landowners will point whenever  
392 established County zoning regulations stand in their way. Again, I support Mr. Irby’s  
393 right to sell his property and to benefit from his investment, and considering the current  
394 market for land in Varina, I am confident he will do quite well. What we cannot support  
395 is providing an exemption from existing laws to benefit one at the expense of many. I  
396 have copies of these for you.  
397

398 The second comment is from Jennifer Todd McDonough. She and her husband Mark  
399 live in a home that’s just off Osborne Turnpike, on the road in between Aqua Vista,  
400 thank you, they live on Crystal Spring Lane. “To Whom it May Concern: As a property

401 owner in close proximity of Mr. Irby's land, I am concerned about his request. Mr. Irby is  
402 asking for exception, or variance, for two of the key County requirements, road frontage  
403 and lot width. The County has requirements on property for a reason. I am asking you,  
404 the County Planning and Board of Zoning Appeals, to adhere to your requirements and  
405 deny Mr. Irby's variance request. His lot is obviously not wide enough to hold a home,  
406 nor does it have any road frontage. I fear that if we make an exception in his case, that  
407 we will set a precedent for future landowners who also do not meet the County's  
408 guidelines. Please take our concerns into consideration as you make your decision  
409 today. Thank you. Jennifer and Mark McDonough"

410  
411 Do you have any questions of me?  
412

413 Mr. Kirkland - It's been stated, and you stated it twice in your comments,  
414 that Chaffins Bluff Lane – is that on your property? You said that twice, and it's  
415 confusing, and I don't understand this.

416  
417 Ms. N. A. Ellis - Chaffins Bluff Lane runs through my property, along the  
418 edge of it. Technically, we own the land that it runs on, but there is an easement to  
419 allow access to everyone living on the river.

420  
421 Mr. Kirkland - Do you use it?  
422

423 Ms. N. A. Ellis - Oh certainly, that is our drive.

424  
425 Mr. Kirkland - That's your driveway? That's what I was trying to get  
426 squared away.

427  
428 Ms. Harris - What is your address?  
429

430 Ms. N. A. Ellis - 1431 Chaffins Bluff Lane. It's at the very bottom of my  
431 notes.

432  
433 Ms. Harris - Would you have objections if he built on one, if he  
434 considered the whole parcel as one lot?

435  
436 Ms. N. A. Ellis - Not at all.

437  
438 Ms. Harris - You would have no objections.  
439

440 Ms. N. A. Ellis - No, there is one home there, and I think it is within his rights  
441 to allow someone to purchase the entire property and build on it.

442  
443 Mr. Nunnally - Any other questions?  
444

445 Ms. Cohen - My name is Gayle Cohen. We are property owners adjacent  
446 to Mr. Irby. We live at 1400 Aqua Vista Lane. I guess it was our impression all these

447 years that the lots have been vacant, that it was one lot rather than two, so this was  
448 news to see these two narrow lots, and that it was a zoning request to put a house on  
449 the one narrow lot. The one narrow lot is directly adjacent to our property, and certainly  
450 Mr. Irby has the right to benefit from his investment, and we're all in favor of that of  
451 course. We are concerned about a possible reduction in property values, the type of  
452 construction that might be built on such a narrow lot, what the construction restraints  
453 might be. I'm certainly not knowledgeable about that, but it is such a narrow lot, and I  
454 was told that the setback requirements are such that there has to be a total of fifty feet  
455 on either side of the house. That's what the County told me, so if I'm incorrect, I stand  
456 corrected. That would mean that at a minimum there has to be 20 feet on one side, is  
457 that a true statement?

458  
459 Mr. Blankinship - Yes.

460  
461 Ms. Cohen - Given that fact, if the lot is 70 feet wide, there would have to  
462 be 50 feet of setback, so the house could only be 20 feet wide, is kind of what I'm  
463 working with in my thought process. I certainly am not a zoning person, but that was my  
464 understanding to date, so given that, we are certainly concerned about the placement of  
465 the house on the lot, the size of the house, and what that would do. If there should be a  
466 construction that happens to be approved and takes place, we would like for the  
467 maximum setback to be on our property side, with a vegetative and fence barrier,  
468 because currently we enjoy a very rural, peaceful, neighborhood. We're kind of at the  
469 end of Aqua Vista, and we would like to maintain that character. With regard to Aqua  
470 Vista, the folks on Aqua Vista Lane, a private road, and we maintain it, and we can  
471 speak to the accessibility that the fire and ambulance have no problem getting there.  
472 My husband had a heart attack last March, and they were there probably within ten  
473 minutes. So we're very much in favor of having easy access by the fire department.

474  
475 Mr. Kirkland - Mr. Blankinship, could you point out her house – is it the  
476 large home that I see at the bottom of the map here?

477  
478 Mr. Blankinship - I believe so, the one just to the south.

479  
480 Mr. Kirkland - Is that your house, ma'am?

481  
482 Ms. Cohen - Yes.

483  
484 Mr. Kirkland - The other house that's on the other lot of Mr. Irby's – where  
485 does that appear to be? The split-off lot, is that the one .....

486  
487 Mr. Blankinship - .....just to the right there.

488  
489 Ms. Cohen - It's the one closest.

490  
491 Mr. Kirkland - When this lot's split, will that house conform to R-2A?

492

493 Mr. Blankinship - The location of the house itself is not shown on any of the  
494 plats that have been submitted.  
495  
496 Mr. Kirkland - I just wondered if it meets all of the setback requirements  
497 after it's split.  
498  
499 Mr. Blankinship - That's a fairly old house, and I don't know the we have any  
500 plats that show its location relative to the property lines.  
501  
502 Mr. Kirkland - Okay, I can ask Mr. Irby that.  
503  
504 Ms. Cohen - That house hasn't been occupied since you bought it, has it?  
505 So the lot has been vacant for the whole time that Mr. Irby has owned it, both lots.  
506  
507 Ms. Harris - Ms. Cohen, is it possible for access from across your  
508 property on Aqua Vista Lane to Mr. Irby's land or parcel? I think the question was  
509 raised by Mr. Ellis – is it possible that Mr. Irby's property could be accessed from the  
510 road that you use.  
511  
512 Ms. Cohen - There's no right-of-way given from his property, and I don't  
513 think that the folks on our lane would agree to that. I can't speak for everybody, but it is  
514 a lane that's been kind of the way it is. His property has always been accessed by  
515 Chaffins Bluff. The properties on our lane have been accessed by Aqua Vista, and  
516 everybody on our lane contributes to having the road paved and maintained, etc.  
517  
518 Mr. Nunnally - Any other questions of Ms. Cohen. Thank you, Ms. Cohen.  
519 Any other person in opposition? Were you sworn in?  
520  
521 Ms. E. A. Ellis - I was sworn, yes. I'm Eugenia Anderson Ellis, wife of  
522 Howard Ellis, and I'm speaking just because I'd like to pick up a few points that weren't  
523 made so far. One of the things that perhaps would help with your decision is to get a  
524 strong feeling of the neighborhood and what's going on there. You saw the pictures  
525 with the barriers, and everyone keeps talking about this road. It's a little lane; it has  
526 grass down the middle; cars cannot pass each other. It's a one-lane little driveway that  
527 gets to my daughter's house and then goes on. When the bridge washed out, after  
528 Gaston, we made some connections with the various neighbors to find out what we  
529 were going to do. We were concerned about Myrtle coming and she made it more  
530 convenient since she stopped driving and could get by with her golf cart. But a letter  
531 was sent by my daughter to all of the neighboring people who'd be affected by it, and  
532 nobody responded, so Mr. Irby in saying, "the neighbors are working on it, and that  
533 won't be a problem," he has never responded to my daughter's letter, nor have any of  
534 them responded. I don't think Myrtle is in any position to put any money into it, and then  
535 we are the only remaining property owners, myself, my husband and my daughter. That  
536 issue as it was presented isn't quite as clear.  
537 The other thing is to consider what this part of the County is. It's not suburbia. This is a  
538 lovely, rural setting, where deer cross that little lane, daily. Wild turkey are out there. It

539 is clearly not something that restrictions for a subdivision would apply to.

540  
541 The final point I'd like to make is that as you see the two narrow lots, for a single luxury  
542 buyer, the house that is there – I checked with the Planning Department before I came  
543 down here to see what the restrictions are in Henrico – whether you have the demolition  
544 by neglect restriction. We live on Church Hill, and we have that in the old historic district  
545 in the City of Richmond, that you're not allowed to let a house completely fall apart, you  
546 can't have plain demolition by just neglecting it, and that's the way that we preserve the  
547 historic nature. This house, apparently in Henrico County, that's not true. The building  
548 inspectors can say that you either must fix it or you must tear it down. Had building  
549 inspectors been taken to this house in the last eight years, that probably would have  
550 happened. It is unlivable. The land has washed away under the front porch, and it's  
551 really in a very dangerous situation, so whoever buys it is going to have to do major  
552 repairs, or I suspect, put a luxury home in the middle of these two lots. I think in fact if  
553 that's done, the County will certainly profit in terms of higher taxes. Thank you very  
554 much.

555  
556 Mr. Nunnally - Anyone else in opposition? Mr. Irby, you have a short time  
557 to rebut.

558  
559 Mr. Irby - First of all, it's pretty obvious that somebody's been  
560 trespassing on my property if they know all this information about it, with the trespassing  
561 signs up there.

562  
563 Second of all, I want to make something very clear. As recently as yesterday, I spoke  
564 with Nicole Ellis about this whole issue, sought her out to discuss the issue. Never once  
565 did any problem with this arise. When I first brought the realtor out there, the first day, I  
566 met with Joe, I can't remember if Nicole was there or not; they were very interested in  
567 buying that property, so that is totally wrong, what they claim. They also went so far as  
568 to ask me if I would be willing to sell one of the lots, individually. So where all this is  
569 coming from, has got me a little bit suspicious about the reasoning behind this, that they  
570 could possibly be trying to devalue my property so they may be able to afford it. Telling  
571 you that they had no interest in buying that property is an absolute untruth. I talked to  
572 both of them about it, not just her husband. In fact, she has told me as recently as  
573 yesterday, please talk to me instead of my husband. I talked to Joe originally because  
574 he met me and the realtor out there the first day we ever went out there. He said he  
575 was very interested in purchasing it. I then talked to Nicole separately about it. She  
576 said they were very interested, and they were going to talk to her parents about it. At  
577 that time they led me to believe that they owned that whole property out there.

578  
579 She said they were never notified. Here's the notification right here, Ellis, Howard and  
580 Eugenia Ellis. That's the first time I found out that they did not own the property. They  
581 told me originally they owned all that property.

582  
583 My property was not originally owned, but at one time the house, at my understanding,  
584 was built by Mayor Bright of the City of Richmond, and some of you may know the

585 history behind him, but he was apparently a fairly famous mayor of Richmond.

586

587 Another misnomer that's been put out here is that I'm trying to split this property. This  
588 property has been split for a long time, and I have the plats here, if anyone would like to  
589 see them. The original house that's there was built on that lot separately. They later  
590 purchased the lot in question today, after it was subdivided according to the County  
591 Code at the time, and I discussed this with Mr. Blankinship about the setbacks at that  
592 time. They were different than they are now. That's obviously why they agreed to allow  
593 the subdivision when they did, and that was my understanding, because, believe me, I  
594 looked into this tooth and nail, before I purchased the property.

595

596 I own property down river from this, off of Rustling Cedar Lane. I've got roughly 26  
597 acres down there. I tried to purchase a piece of property next door to that; at the time  
598 they told me there was no chance in hell that they would ever give me a variance to let  
599 me split off this particular piece of property. So I let that piece of property go. Within  
600 the next year, a used car salesman came in there and bought it and fortunately for him,  
601 had a real estate agent who knew the loopholes, came in there, purchased it, got the  
602 variances, no road frontage again, mind you, and for those of you who know this area, I  
603 can't think of but maybe a handful of people down there who actually have State spec  
604 road frontage, who live on the river. I lost several hundred thousand dollars because of  
605 that. They did give him the variance, and not only that, they let him split the lot in half.  
606 My lot was already there; it's a pre-existing lot. They gave him the variance that he  
607 requested, let him subdivide it because of a little loophole evidently that his real estate  
608 agent knew about, that I didn't know about, and he ended up with five acres on the  
609 James River, with a house on it, for free, after he sold that lot beside. Believe me, I  
610 looked into this extensively before I went. My family has put just about every dime we  
611 own into these properties along the James River. Everybody thought we were crazy at  
612 the time; the first one that I purchased was in 1992, and we've held onto all of them  
613 since then.

614

615 Mr. Nunnally - Now you're going to sell this property to someone else, to  
616 build on?

617

618 Mr. Irby - To be perfectly honest with you, we owe taxes on all of these  
619 properties. They have gone up so much since we purchased the property, we can't  
620 afford to pay the property taxes on them any more. I didn't want to get into this, but I've  
621 got a daughter who's been in a vegetative state since she was two years old. She's  
622 now 23 years old. We have taken care of her since day one. She has been with us  
623 ever since they told us she wouldn't live through the first year. She still lives with us.  
624 We lost our insurance as far as having nursing coverage to help take care of her. I had  
625 to quit my job and start up a new business that I could run out of the house. I take care  
626 of her, every day, all day long. My wife takes care of her at nighttime. I had to hire a  
627 nurse to come over there today; in fact, I told Mr. Blankinship that's why I had to defer  
628 the first meeting, because the nurse had to cancel and couldn't come.

629

630 Mr. Kirkland - Mr. Irby, the comment was made that the existing home

631 that's on the other lot is in bad shape. Can that be renovated, or do you know?  
632

633 Mr. Irby - Where it is now, believe it or not, I had Jerry Cable call me,  
634 and he wanted to purchase that property. I mean the Jerry Cable who owns the  
635 Tobacco Company. I asked what he was going to do with it, and he said he was going  
636 to fix it up, shore it up, and I'm going to live in it. He actually owns the Cohen's  
637 property. That's who they bought their property from. The Cohens had to get a  
638 variance on their property, the one right beside me, .....

639  
640 Mr. Kirkland - .....probably for road frontage.

641  
642 Mr. Irby - Yes sir. I'll be glad to show you a topo map that shows you  
643 .....

644  
645 Mr. Kirkland - I just want to know if you're going to tear it down or not.

646  
647 Mr. Irby - My vision, we were planning on moving there when we  
648 bought the property. The intention was to be able to sell off one lot so that we could  
649 afford to build our dream house on the other lot. We were going to, I had a company,  
650 actually several of them, and I do have that letter with me. The original part of that  
651 house is a very neat little cottage. It was built as a weekend cottage by Mayor Bright,  
652 back in the 1930's. It's got the original Lewis Ginter mantelpiece over the nice stone  
653 fireplace, made out of river rock. It has a cannonball from the Civil War set into it. To  
654 make a long story short, we were going to pick the house up that's there, move it back  
655 towards the creek in the back, which is a long distance away from the river, and also a  
656 long distance from any of the other properties. The Ellis's house, and it's actually in one  
657 of the pictures that I showed you up there, if you can see, it's on the drive coming in  
658 there, is not even in that picture, so that tells you how far back away from the property it  
659 is. We were going to take the historical part at the very least, of this cottage, and turn it  
660 into a guesthouse and/or an office for me, and than rebuild back from the river.

661  
662 Mr. Kirkland - What my biggest thing was, is that if you tear this down, and  
663 you build another home on the property, are you going to be in the variance situation  
664 again? Mr. Blankinship, if he builds another home on this lot, adjacent to this lot, will he  
665 have to get another variance for this? Will that be too narrow also? I don't know any  
666 dimensions or anything.

667  
668 Mr. Blankinship - We don't have a plat of that other property, so I can't really  
669 answer the question.

670  
671 Mr. Kirkland - So would we be back here again and arguing the same thing  
672 again? I've heard enough. That's enough for me.

673  
674 Mr. Nunnally - Any other questions? Thank you, Mr. Irby; we'll decide this  
675 case later on today.

676

677 Mr. O’Kelly - Mr. Chairman, may I ask Mr. Blankinship a question, to  
678 clarify some concerns that Ms. Cohen had? The property’s zoned R-2A. It requires an  
679 acre of land and 150 feet of lot width because it’s going to be on well and septic tank.  
680 Aren’t the setbacks governed by the zoning of the property, R-2A?  
681  
682 Mr. Blankinship - I’m sure you’re correct.  
683  
684 Mr. Irby - While they’re looking that up, I did .....

685  
686 Mr. Blankinship - You’re right. The setbacks would not be affected by that  
687 same, so the sides would be 12 and 30, minimum of 12 and sum of 30. I was mistaken  
688 before, and I apologize.  
689

690 Mr. O’Kelly - So that would allow for a 40-foot wide house.  
691

692 Mr. Blankinship - Thank you.  
693

694 Mr. Irby - And I would just add to that, I spoke to Mr. Blankinship about  
695 this; I asked him what he thought would be reasonable and what the Code was at the  
696 time that lot was split off.  
697

698 Mr. Nunnally - Mr. Irby, I appreciate that, but I think we’ve got all the  
699 information we need. We’ve been going on here for an hour on just this one case, and  
700 we’ve got a few more behind you. We’ll let you know something by the end of the day,  
701 or you can call the County later this afternoon. A-94-2005, Robert C. Irby III.  
702

703 Mr. Kirkland - I move we deny it.  
704

705 Ms. Harris - Second.  
706

707 Mr. Nunnally - Motion by Mr. Kirkland we deny it; second by Ms. Harris. All  
708 in favor, say aye. (3 “ayes”)  
709

710 Mr. Blankinship - Mr. Kirkland, could you enter something into the record.  
711

712 Mr. Kirkland - Yes, I move we deny it because he has reasonable use of  
713 the property at this time. He could combine both pieces of property and have  
714 reasonable use of it. We’re not affecting him economically in either way. Plus, we have  
715 a strong precedence in the past of yes, giving 0 road frontage, but never giving, hardly  
716 ever, any deviation in the setbacks. I think that this is strictly a money thing; this is not a  
717 family division or anything to that effect. If he had the width, I think we could go along  
718 with it, but he just doesn’t have it.  
719

720 Mr. Blankinship - Do you want to say anything about access for the record?  
721

722 Mr. Kirkland - Well, I can’t figure out who has access to this situation. Of



723 course, Aqua Vista Lane, they said that they won't give him access that way. Chaffins  
724 Bluff, they're going to cut across her property; I guess he'll have to gain access  
725 somehow from that. There's no road, really, leading to the property. He would have to  
726 spend a lot of money, bridgework; it's also probably laying in the Bay Act area. I think  
727 what's there is there. For one dwelling, it will be okay, but not two.

728  
729 Ms. Harris - The question that comes to my mind is does he not have  
730 access now to the whole parcel. If this had been a family division at some previous  
731 point, would there already be something in writing saying that he had access by the  
732 road in which the bridge has been washed away.

733  
734 Mr. Blankinship - I think he does have a legal right to cross that road. The  
735 problem is, when I spoke to the Deputy Fire Marshal yesterday, he said if we tried to  
736 send a fire truck down there in the winter, we wouldn't get it back until spring.

737  
738 Ms. Harris - He would not need a variance to sell this property, as a  
739 whole.

740  
741 Mr. Kirkland - As a whole, even though it is two lots .....

742  
743 Mr. Blankinship - .....because there is an existing dwelling there, and  
744 he could tear it down and rebuild within two years.

745  
746 Mr. Kirkland - He could build a bigger home in the middle.

747  
748 Mr. Irby - I'm back. I didn't know you were finished.

749  
750 Mr. Kirkland - I made a motion we deny it.

751  
752 Ms. Harris - And I seconded it.

753  
754 Mr. Blankinship - You've already voted; we were just making sure the record  
755 was clear on the reasons.

756  
757 Mr. Nunnally - It's been denied sir.

758  
759 Mr. Irby - I came back to tell you to have it deferred. You told me you  
760 could hear the evidence and then decide whether to defer it because the full panel was  
761 not here. That's what I would like to do. I've been blindsided.

762  
763 Mr. Kirkland - Mr. Blankinship, could you give us a ruling on this, because  
764 we have made a motion, we're ready to vote, and I thought you told him that after he  
765 made his comments, that he could make that decision then whether to wait.

766  
767 Mr. Blankinship - The appropriate time to do that is during the public hearing  
768 portion. Once we end the public hearing on that case, then the neighbors are on notice

769 that there will be no further requests like that, but we don't always stand on the very fine  
770 points. We do have the provision for rehearing of a case immediately after a decision is  
771 made. As Mr. Gidley just mentioned, there are three "no" votes, so having two  
772 additional members wouldn't change that unless someone had a change of heart over  
773 the next month. Perhaps we should seek some council from the County Attorney's  
774 office.

775  
776 Ms. Harris - I think we were in discussion. Have we voted before the  
777 discussion?

778  
779 Mr. Kirkland - We hadn't voted; we made the motion.

780  
781 Mr. Blankinship - The vote had been taken. I recorded the vote.

782  
783 Mr. Kirkland - Then we're done.

784  
785 Mr. Irby - I recall some of your questions you were asking one another  
786 as I came out .

787  
788 Mr. Kirkland - Sir, you had time to speak, and when we make our vote, we  
789 normally don't take any more information from the applicant or the people who are  
790 against the case. Mr. Blankinship, I'm sure you can talk to him, and he can give you the  
791 next level if you want to challenge the vote that we just took.

792  
793 Mr. Blankinship - That'll be stated in the letter that you'll receive next week.

794  
795 Mr. Irby - I just didn't realize that you were going to be finished this  
796 early, and come back in here, and tell you, as you said that I could do, if I decided after  
797 hearing the evidence I could defer it, and that's what I was coming back in here to do. I  
798 had no idea you would get done this quickly.

799  
800 Mr. Kirkland - Well, we're done.

801  
802 Mr. Blankinship - There is the provision at next month's meeting, if one of the  
803 three of you, since you all three voted in favor of the motion to deny, if one of you  
804 wanted to reconsider this, you could make a case. If you wanted to change your vote,  
805 you could make a motion at next month's meeting, to have the case reheard.

806  
807 Mr. Kirkland - But he would have to state some new some new information  
808 that we haven't heard?

809  
810 Mr. Irby - Well I actually had a number of other things I wanted to bring  
811 up that I was not allowed to bring up.

812  
813 Mr. Kirkland - What you should do is get with Mr. Blankinship after this  
814 meeting and he'll inform you of what you can do.

815  
816 Mr. Blankinship - You'll have the discretion to do that if one of the Board  
817 members changes your vote. And if none of you changes your vote, it would be moot  
818 anyway.

819  
820 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.  
821 Harris, the Board **denied** application **A-94-2005** for a variance to build a one-family  
822 dwelling at 1290 Chaffins Bluff Lane (Parcel 803-679-3723).

823  
824 Affirmative: Harris, Kirkland, Nunnally 3  
825 Negative: 0  
826 Absent: Dwyer, Wright 2

827  
828 The Board denied your request as it did not find from the evidence presented that there  
829 was any "hardship approaching confiscation" as required by § 15.2-2309 of the Code of  
830 Virginia to justify a variance, because one dwelling on the 2.3 acres, taken as a whole,  
831 constitutes reasonable use of the property. The Board also found that the granting of  
832 the variance would cause substantial detriment to surrounding property.

833  
834 **UP-25-2005** **RYAN HOMES** requests a temporary conditional use permit  
835 pursuant to Section 24-116(c)(1) to locate a temporary sales trailer  
836 at 4628 Wistar Road (Village at Willow Run) (Parcel 767-752-  
837 3012), zoned RTHC, Residential Townhouse District (Conditional)  
838 (Brookland).

839  
840 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
841 please stand and raise your right hand?

842  
843 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
844 truth, the whole truth, and nothing but the truth, so help you God?

845  
846 Mr. Fanelli - I do. My name is Ryan Fanelli. I'm here on behalf of Ryan  
847 Homes. I'm here to tell you a little bit about the case. It's a temporary sales center  
848 similar to some others we've been fortunate enough to place in the County. It will have  
849 some landscaping around the site. The foundation will be skirted, and we expect to be  
850 out of there, hopefully by halfway through 2006, though the application does permit us  
851 the use through December; it'll just be until we finish construction on a model home in  
852 that town home community, so it will be temporary.

853  
854 Mr. Kirkland - The only concern I had, Mr. Blankinship, in the staff  
855 conditions, I don't see anything about hooking up the restroom.

856  
857 Mr. Fanelli - It will be serviced by a Porta-John on the rear of the trailer,  
858 on the exterior.

859  
860 Mr. Kirkland - We need to make some sort of, because it says private well

861 and septic on the front sheet, and then it has nothing in the staff conditions. How many  
862 people are going to work in this trailer?  
863

864 Mr. Fanelli - One salesperson, and possibly a coordinator, but at least  
865 one.  
866

867 Mr. Kirkland - Are you going to enclose the Porta-John, with some  
868 landscaping and fencing area type thing?  
869

870 Mr. Fanelli - I'm not sure whether you have this sheet in your package,  
871 but it was part of our submittal. It is going to have screening and landscaping. That  
872 shows the fencing for the generator to power the trailer, as well as the Porta-John, and  
873 there is a fence blocking that from the street.  
874

875 Mr. Blankinship - The note specifies portable toilet with six-foot privacy fence.  
876

877 Ms. Harris - Did you get a copy of the letter from Ms. Judy Rogers on  
878 Nansmond Street, regarding how she can be assured that there is no trash caused by  
879 the increase of activity in that area, and she asked about the definitive marking of  
880 parking spaces, so that no parking would be on her property. Do you have this letter?  
881

882 Mr. Blankinship - I just handed it to him, Ms. Harris.  
883

884 Ms. Harris - I need you to address these please.  
885

886 Mr. Fanelli - Can you tell me where this .....  
887

888 Mr. Blankinship - I believe we've already informed her of the distance.  
889

890 **(Mr. Gidley, not sworn in)** - The lady who wrote the letter, her property would be  
891 315 feet, approximately, from where the trailer would go. She inquired about the fence.  
892 On the approved plans, there is a six-foot tall fence that would be on the border there.  
893

894 Mr. Blankinship - The plans for the town house development show a six-foot  
895 fence.  
896

897 **Mr. Gidley** - There would be brick columns with metal fencing, so she'd  
898 have a nice fence along the border. As far as trash, that's something traditionally  
899 Building Inspections enforces. Again, she would be 315 feet away from the trailer.  
900

901 Ms. Harris - What about the definitive marking of parking spaces?  
902

903 Mr. Fanelli - No ma'am, the parking spaces shown on this plan, we will  
904 asphalt that parking and then take it away, just for ease of everyone's use, but it's going  
905 to be directly off of our proposed entrance, approximately 315 feet away from her  
906 property. We generally have, at peak times, maybe five cars in the parking lot there. I

907 can't tell you the exact dimension, but it will suffice for five cars parking there. I'm just  
908 not sure where she lives, as to how we can best .....

909  
910 Mr. Blankinship - But you will have a clearly designated parking lot; it won't be  
911 parking on the street?

912  
913 Mr. Fanelli - Correct. We will create a parking lot.

914  
915 Mr. Nunnally - Anyone else want to speak on this case? UP-25-2005, Ryan  
916 Homes.

917  
918 Mr. Kirkland - Move we approve it.

919  
920 Ms. Harris - Second the motion.

921  
922 Mr. Nunnally - Motion by Mr. Kirkland that we approve it, second by Ms.  
923 Harris. All in favor say aye. Opposed? It's been approved.

924  
925 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.  
926 Harris, the Board **granted** application **UP-25-2005** for a temporary conditional use  
927 permit to locate a temporary sales trailer at 4628 Wistar Road (Village at Willow Run)  
928 (Parcel 767-752-3012). The Board granted the use permit subject to the following  
929 conditions:

930  
931 1. Only the improvements shown on the plan filed with the application may be  
932 constructed pursuant to this approval. No substantial changes or additions to the layout  
933 may be made without the approval of the Board of Zoning Appeals. Any additional  
934 improvements shall comply with the applicable regulations of the County Code..

935  
936 2. The trailer shall be skirted on all sides with a durable material as required by the  
937 building code for a permanent installation.

938  
939 3. A detailed landscaping and lighting plan shall be submitted to the Planning  
940 Department with the building permit for review and approval. Approved landscaping  
941 shall be installed during the fall planting season. All landscaping shall be maintained in  
942 a healthy condition at all times. Dead plant materials shall be removed within a  
943 reasonable time and replaced during the normal planting season.

944  
945 4. The trailer shall be removed from the property on or before December 4, 2006, at  
946 which time this permit shall expire.

947  
948 5. [ADDED] The bathroom in the trailer shall be connected to sanitary facilities  
949 approved by the Virginia Department of Health.

950  
951 Affirmative: Harris, Kirkland, Nunnally 3

952 Negative: 0

953 Absent: Dwyer, Wright 2

954  
955 The Board granted the request because it found the proposed use will be in substantial  
956 accordance with the general purpose and objectives of Chapter 24 of the County Code.

957  
958 **UP-26-2005** **VIOLET M. RICHARDSON** requests a conditional use permit  
959 pursuant to Section 24-12(g) to provide 24-hour family day care at  
960 2805 Sandy Lane (Sandy Lane) (Parcel 807-730-3414), zoned A-1,  
961 Agricultural District (Fairfield).

962  
963 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
964 please stand and raise your right hand?

965  
966 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
967 truth, the whole truth, and nothing but the truth, so help you God?

968  
969 Ms. Richardson - I do. My name is Violet Marie Richardson. I am requesting  
970 a 24-hour conditional use permit. I feel that I should be granted this conditional use  
971 permit, because in my heart, I love kids. I have been doing it ever since 1999; I am  
972 against child abuse, child neglect, predators, sexual abuse, and I try to open up my  
973 home for kids to come in a safe place, for the parents and children to come in my home.

974  
975 Mr. Blankinship - Do you actually intend to operate 24 hours a day, or do you  
976 just want to have the flexibility to open early or to stay open late?

977  
978 Ms. Richardson - I want the intent, because I like to keep kids in the daytime  
979 and at night also. I would like to have that like that.

980  
981 Mr. Nunnally - Do you have any children there now?

982  
983 Ms. Richardson - Yes I do.

984  
985 Mr. Nunnally - How many?

986  
987 Ms. Richardson - I have four. One is in pre-school, and I have three. I'm only  
988 allowed for five right now as a voluntary register, but right now I don't have anything,  
989 because my voluntary register ran out September 17. I have submitted an application  
990 October 18 for State licensing, and I'm just waiting now. It's supposed to be 60 days  
991 prior to this application, once you send it in, for someone to come out, someone  
992 assigned to me from the State, that I would meet the standards. I'm planning on  
993 meeting the standards.

994  
995 Mr. Kirkland - How many children will you have in the house at one time,  
996 including your own, let's say in the evening?

997  
998 Ms. Richardson - I don't have any. My child is grown; he's 33, and he doesn't

999 live there.  
1000  
1001 Mr. Kirkland - You say you had four children. Are they all grown and left?  
1002  
1003 Ms. Richardson - No, I have four children of other parents, that I care for.  
1004  
1005 Mr. Kirkland - Do you have any kids of your own that live there now?  
1006  
1007 Ms. Richardson - No, my son is 33. He doesn't live there.  
1008  
1009 Mr. Kirkland - So how many children would you have at one time?  
1010  
1011 Ms. Richardson - Right now I'm only allowed five anyway, with or without  
1012 voluntary register.  
1013  
1014 Mr. Kirkland - Okay, five is your max.  
1015  
1016 Ms. Richardson - Five is my max, but I want twelve. So I have to get a  
1017 conditional use permit for twelve.  
1018  
1019 Mr. Kirkland - So you're going to have twelve children at one time?  
1020  
1021 Ms. Richardson - I'd like to have twelve, but I also want to hire an assistant to  
1022 help me, because we're going by ratios, and I'm not going to be able to do it by myself.  
1023  
1024 Mr. Kirkland - How big is your house?  
1025  
1026 Ms. Richardson - I have a pretty large home?  
1027  
1028 Mr. Kirkland - How many square feet? Do you have any idea?  
1029  
1030 Mr. Blankinship - It's 1276 in the report.  
1031  
1032 Mr. Kirkland - You'll have twelve children in there?  
1033  
1034 Ms. Richardson - Yes, and I have a basement, which was a recreation room,  
1035 and it's pretty large. It has a bathroom downstairs; it has a sink. I have a refrigerator  
1036 and a microwave down there, so the kids have no reason to go upstairs. Large back  
1037 yard for play or equipment, so I have plenty of room in my family room for them.  
1038  
1039 Mr. Kirkland - Have you read the staff report of all the information that was  
1040 in there about the point system and everything? I'm sure you're aware of that, because  
1041 twelve children would go with the point system real quick.  
1042  
1043 Ms. Richardson - Yes, I'm aware. With two-year-olds, I could only have eight  
1044 myself, but with an assistant I could make up the twelve with an assistant.

1045  
1046 Mr. Nunnally - With one assistant?  
1047  
1048 Ms. Richardson - One assistant. Two-year-olds, I could have eight, but I could  
1049 use one assistant to make up twelve kids, because it's sixteen points per provider.  
1050  
1051 Ms. Harris - Are any of the children who you have in your home now, are  
1052 any of them teenagers?  
1053  
1054 Ms. Richardson - No.  
1055  
1056 Ms. Harris - So what ages do you have now?  
1057  
1058 Ms. Richardson - Two through five. I have two two-year-olds, one three-year-  
1059 old, and one five-year-old. He just started pre-school this year.  
1060  
1061 Ms. Harris - So the next step up from keeping five children in the home,  
1062 is twelve?  
1063  
1064 Ms. Richardson - Yes.  
1065  
1066 Ms. Harris - I was by there yesterday. I drove by because I was  
1067 concerned about the traffic on that road. The driveway is extremely narrow. What do  
1068 you propose to alleviate a safety problem? For example, I needed to turn around, so I  
1069 had to go down a bit and find a driveway with the double width in order to turn around.  
1070 Then there is a ravine on both sides of your driveway, and the real serious curve just  
1071 before we get to your house, coming from Harvie Road. I was very concerned about  
1072 safety as far as traffic was concerned.  
1073  
1074 Ms. Richardson - I let them turn around by coming down into my yard. They  
1075 turn around in my yard. I don't let them back out of the driveway.  
1076  
1077 Ms. Harris - How long have you been in business?  
1078  
1079 Ms. Richardson - I have been keeping kids part-time, ever since 1999,  
1080 voluntary register. I worked at Southern States for 25 years, till they laid me off in 2001.  
1081  
1082 Ms. Harris - In that home?  
1083  
1084 Ms. Richardson - Not in that home; I had been doing it in apartments. I've only  
1085 been on Sandy Lane a little over a year. After I got laid off in 2001, then I started doing  
1086 it fulltime, so I've been doing it a little over a year where I'm living now.  
1087  
1088 Ms. Harris - Mr. Blankinship, do we notify neighbors on a case like this?  
1089  
1090 Mr. Blankinship - Yes ma'am, immediately adjoining and across the street.



1091  
1092 Ms. Harris - How do your neighbors feel about you expanding your  
1093 operation?  
1094  
1095 Ms. Richardson - I went around to each one, the names that were on the list,  
1096 and all of them were for me. They said they were glad to welcome a 24-hour daycare in  
1097 that neighborhood. I'm quiet; even when I was living in an apartment, they never even  
1098 knew I was keeping kids. When they did, there wasn't any problem, because they were  
1099 always quiet, never a problem.  
1100  
1101 Ms. Harris - You've never considered another building for this daycare?  
1102  
1103 Ms. Richardson - No, I don't want a "center"; I'd rather do it in my home. A lot  
1104 of parents, they prefer family day homes than centers. They feel that they can get more  
1105 attention because there are fewer kids.  
1106  
1107 Mr. Nunnally - What's the latest time at night that you think somebody  
1108 would be coming to pick up a child, or drop off one.  
1109  
1110 Ms. Richardson - Maybe 7:00 to 3:30 or 7:00 to 4:30, something like that, 4:30  
1111 in the morning. The rest would be 11:00 to 7:00 am, and it'd probably be 7:30 when  
1112 they pick them up in the morning then. It would be kept quiet. It's not a lot of noise;  
1113 they would be tired.  
1114  
1115 Mr. Nunnally - But if somebody comes down there at 3:30 in the morning,  
1116 the lights are going to flash on.  
1117  
1118 Ms. Richardson - My daycare is in the basement, and they drive around the  
1119 back .....

1120  
1121 Mr. Nunnally - But they've got to get to that basement.  
1122  
1123 Ms. Richardson - That's true, but I feel that it wouldn't be any problem.  
1124  
1125 Mr. Blankinship - These are people who work nights? Do you have kids in  
1126 that situation already, or do you have particular people in mind?  
1127  
1128 Ms. Richardson - Yes. I have over the years, but I don't now. As I get my  
1129 State licensing, I will send out fliers, and it wouldn't be any problem. I'd have twelve  
1130 children like that; I've turned down children because I couldn't keep them without proper  
1131 licensing.  
1132  
1133 Ms. Harris - So you don't see any need to widen your driveway at all?  
1134  
1135 Ms. Richardson - No, because once they come in, I give them permission to  
1136 turn around in my yard. I'll abide by State regulations like I've been doing for years. It

1137 won't be too hard to do State licensing, because voluntary register is basically the  
1138 same, maybe a little bit stricter.  
1139  
1140 Ms. Harris - Your reason for wanting 24 hours, rather than the normal  
1141 hours, is to accommodate the parents who do work at night? Or is there another  
1142 reason?  
1143  
1144 Ms. Richardson - There's two reasons. It's to help the parents and the  
1145 children, and it's to help better my income. I need an extra income too.  
1146  
1147 Mr. Kirkland - How many bathrooms do you have in your home?  
1148  
1149 Ms. Richardson - I have two bathrooms.  
1150  
1151 Mr. Kirkland - Both of them on the first floor, or is one of them in the  
1152 basement?  
1153  
1154 Ms. Richardson - One is on the first floor; one is where the kids are.  
1155  
1156 Ms. Harris - When they have the 24-hour service, you have one large  
1157 family room, so they actually sleep during the night hours in that same room?  
1158  
1159 Ms. Richardson - The day kids will have gone home, and I have proper cots,  
1160 mats, and covers for them.  
1161  
1162 Mr. Nunnally - Any other questions for Ms. Richardson? From members of  
1163 staff? Is anyone here in opposition to this request? Hearing none, that concludes the  
1164 case. UP-26-2005, Violet M. Richardson.  
1165  
1166 Ms. Harris - I move that we approve, but I need to make a statement  
1167 here. When I received my data on this case, I did have many reservations about traffic  
1168 being one, and I just could not envision why we would need a 24-hour facility, but when  
1169 we consider the work patterns of our young adults now who have children, and their  
1170 desperate need to have someone reliable to keep their children, I have had a change of  
1171 heart, so I do move that we approve this particular case.  
1172  
1173 Mr. Nunnally - There is a motion on the floor by Ms. Harris that it be  
1174 approved.  
1175  
1176 Mr. Kirkland - Mr. Blankinship, if she doesn't get State licensing, is there  
1177 any way that we'll know that? Even though we approve this use permit, will we have a  
1178 way to know that she got turned down? I find it hard to believe that the State's going to  
1179 allow her to have twelve kids in that house.  
1180  
1181 Mr. Blankinship - We don't have anything routine in place, but we can certainly  
1182 follow that up for you.

1183  
1184 Mr. Nunnally - Can we put that in as a condition?  
1185  
1186 Mr. Blankinship - I think there is already a condition suggested that she  
1187 comply with the State licensing requirements, so we can make sure that we follow up  
1188 and report back to you on that.  
1189  
1190 Mr. O’Kelly - Will she not need a business license?  
1191  
1192 Mr. Blankinship - Yes, she will need a business license.  
1193  
1194 Ms. Harris - Yes, we’ll need to add that as a condition.  
1195  
1196 Mr. Kirkland - She’s going to have to do some modifications to her home,  
1197 and there’s going to have to be a lot of things done, because I’m sure once it gets  
1198 going, I’m sure she’s going to fill twelve kids every night.  
1199  
1200 Ms. Harris - Do we ever put time limits on these special use permits?  
1201  
1202 Mr. Blankinship - In my six years here, this is the first request we’ve had for  
1203 24-hour daycare. We’ve had one other request to bring in an employee from outside  
1204 the home, which requires a conditional use permit.  
1205  
1206 Mr. Kirkland - We’ll have to grant her one of those if she gets the permit by  
1207 the State – she might have to be required to have an additional person, so therefore,  
1208 she will come back to us again.  
1209  
1210 Mr. Blankinship - That’s included within this request. We thought it better, it  
1211 was actually Mr. Gidley’s idea, to put the 24-hour thing in the advertisement, just to  
1212 make sure everybody was aware of that. Yes, having an employee is also covered by  
1213 this use permit. Without the use permit, she would be allowed to go, up to twelve  
1214 children, 6:00 am to 6:00 pm, no employees. But if you want either extended hours or  
1215 an employee from outside the home, and between 6 and 12 children .....

1216  
1217 Mr. Kirkland - She’s going to have to have an employee working around  
1218 the clock. There’s just no way around it.  
1219  
1220 Ms. Harris - Is it possible that we could grant this for a specified period  
1221 .....  
1222  
1223 Mr. Kirkland - She’s talking about year-wise.  
1224  
1225 Mr. Blankinship - I think you could. We usually shy away from that, in what  
1226 are normally permanent conditions, because we want the applicant to know whether or  
1227 not he can make an investment with the expectation that he can continue that use, but

1228 here the investment really is in the home. There'd be some investment involved adding  
1229 the dwelling, but I think you could do that in a case like this.

1230  
1231 Ms. Harris - Yes, I do want to add a condition of time, because if we're  
1232 going to get complaints from neighbors, since this has not been done before, we do not  
1233 have a precedent in the County of Henrico, and it might be wise to see how this works.

1234  
1235 Mr. Kirkland - How many years do you want to see?

1236  
1237 Ms. Harris - Fifteen months to two years.

1238  
1239 Mr. Blankinship - I don't know how long it's going to take her to obtain a State  
1240 license and really begin this.

1241  
1242 Mr. Kirkland - We could say "two years from the date of her licensing."

1243  
1244 Mr. Blankinship - Oh, that's good.

1245  
1246 Mr. Kirkland - I'll second her motion with all those conditions.

1247  
1248 Mr. Blankinship - What I have is we're going to add a third condition, on the  
1249 proposed third condition, we would add a clause that she would also have to obtain a  
1250 County Business License, and then a forth condition that this permit would be valid for  
1251 two years from the date she obtains her State license.

1252  
1253 Mr. Nunnally - Then we'll get a copy of the State license.

1254  
1255 Mr. Blankinship - Right, we'll follow up with her to find out when the State  
1256 license is issued.

1257  
1258 Mr. Nunnally - Motion by Ms. Harris that we approve it, second by Mr.  
1259 Kirkland, with the conditions. All in favor say aye. Opposed. It's carried.

1260  
1261 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
1262 Kirkland, the Board **granted** application **UP-26-2005** for a conditional use permit to  
1263 provide 24-hour family day care at 2805 Sandy Lane (Sandy Lane) (Parcel 807-730-  
1264 3414). The Board granted the variance subject to the following conditions:

1265  
1266 1. The hours of operation for this facility shall be from 6 AM Monday until 7 AM  
1267 Saturday.

1268  
1269 2. This use permit authorizes a maximum of 12 children, exclusive of the provider's  
1270 own children.

1271  
1272 3. [AMENDED] The applicant shall comply with the requirements of the Virginia  
1273 Department of Social Services and shall obtain a business license from the County.

1274  
1275 4. [ADDED] This permit shall be valid for two years from the date of approval of a  
1276 state license.

1277  
1278 Affirmative: Harris, Kirkland, Nunnally 3  
1279 Negative: 0  
1280 Absent: Dwyer, Wright 2

1281  
1282 The Board granted the request because it found the proposed use will be in substantial  
1283 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1284  
1285 **UP-27-2005 PROSPECT HOMES** requests a temporary conditional use permit  
1286 pursuant to Section 24-116(c)(1) to locate a temporary sales trailer  
1287 at 3002 Triple Notch Way (Three Notch Place) (Parcels 739-759-  
1288 5357 and 5460), zoned RTHC, Residential Townhouse District  
1289 (Conditional) (Three Chopt).

1290  
1291 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
1292 please stand and raise your right hand.

1293  
1294 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1295 truth, the whole truth, and nothing but the truth, so help you God?

1296  
1297 Ms. Leonard - I do. My name is Jennifer Leonard. I am representing  
1298 Prospect Homes. We are requesting a conditional use permit to set up a temporary  
1299 sales trailer at our new townhouse subdivision, Three Notch Place.

1300  
1301 Mr. Kirkland - Are you going to be hooked to County water and sewer?

1302  
1303 Ms. Leonard - We are going to be hooked to County water, and we are  
1304 having temporary septic holding tanks brought in. They will be 250 gallons, and they  
1305 will be placed underneath the trailer.

1306  
1307 Mr. Kirkland - Do we need to note that in the conditions, Mr. Blankinship?

1308  
1309 Mr. Blankinship - Yes sir, we probably should.

1310  
1311 Mr. Nunnally - You have read all the conditions on here, and you agree with  
1312 them?

1313  
1314 Ms. Leonard - Yes sir. We also have pictures showing how the  
1315 landscaping will be around the trailer too.

1316  
1317 Mr. Blankinship - You have that already? Good.

1318  
1319 Ms. Leonard - This is an example, another trailer that we have set up

1320 somewhere else. We will do the same landscaping.  
1321  
1322 Ms. Harris - I was going to ask about your handicap ramp, but you've  
1323 placed this right on the first level, so there's no need for a ramp, is that how it is?  
1324  
1325 Mr. Tarbona - I am Sam Tarbona, Prospect Homes. There may be a ramp  
1326 with this trailer. This trailer will have a handicap ramp; it will be accessible. I have  
1327 interior photos of the trailer. It's what they call a GE Deluxe Trailer; it's handicap  
1328 accessible. It has handicap bathrooms with grab bars, and it's made for that purpose.  
1329 If you'd like these pictures, I can give them to you.  
1330  
1331 Mr. Nunnally- How many homes are going to be built in here?  
1332  
1333 Mr. Tarbona - There will be 79 town homes.  
1334  
1335 Mr. Nunnally - You think you'll be through with them by May 8?  
1336  
1337 Mr. Tarbona - Yes, we're going to have a model home in there, so that the  
1338 trailer is just going to be a temporary sales center. We'll have one builder  
1339 representative in there.  
1340  
1341 Mr. Nunnally - Any other questions of the staff or Board? Is anyone here in  
1342 opposition to this request? Hearing none, that concludes the case. UP-27-2005,  
1343 Prospect Homes.  
1344  
1345 Ms. Harris - I move that we approve.  
1346  
1347 Mr. Nunnally - Motion by Ms. Harris that it be approved.  
1348  
1349 Mr. Kirkland - Second, including the condition about the restroom facilities  
1350 being approved by the Health Department. The standard one we usually put in for  
1351 those trailers.  
1352  
1353 Mr. Nunnally - Motion by Ms. Harris, second by Mr. Kirkland that it be  
1354 approved, with the added condition. All in favor, say aye. Opposed? It's been  
1355 approved.  
1356  
1357 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
1358 Kirkland, the Board **granted** application **UP-27-2005** for a temporary conditional use  
1359 permit to locate a temporary sales trailer at 3002 Triple Notch Way (Three Notch Place)  
1360 (Parcels 739-759-5357 and 5460). The Board granted the variance subject to the  
1361 following conditions:  
1362  
1363 1. Only the improvements shown on the plan filed with the application may be  
1364 constructed pursuant to this approval. No substantial changes or additions to the layout

1365 may be made without the approval of the Board of Zoning Appeals. Any additional  
1366 improvements shall comply with the applicable regulations of the County Code..

1367  
1368 2. The trailer shall be skirted on all sides with a durable material as required by the  
1369 building code for a permanent installation.

1370  
1371 3. A detailed landscaping and lighting plan shall be submitted to the Planning  
1372 Department with the building permit for review and approval. Approved landscaping  
1373 shall be installed during the fall planting season. All landscaping shall be maintained in  
1374 a healthy condition at all times. Dead plant materials shall be removed within a  
1375 reasonable time and replaced during the normal planting season.

1376  
1377 4. The trailer shall be removed from the property on or before May 8, 2006, at which  
1378 time this permit shall expire.

1379  
1380 5. [ADDED] The bathroom in the trailer shall be connected to sanitary facilities  
1381 approved by the Virginia Department of Health.

1382  
1383 Affirmative: Harris, Kirkland, Nunnally 3  
1384 Negative: 0  
1385 Absent: Dwyer, Wright 2

1386  
1387 The Board granted the request because it found the proposed use will be in substantial  
1388 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1389  
1390 **A-99-2005** **MHH BUILDERS INC.** requests a variance from Section 24-94 to  
1391 build a one-family dwelling at 196 E. Berry Street (Hunters Run)  
1392 (Parcel 828-715-1500), zoned R-3, One-family Residence District  
1393 (Varina). The lot width requirement is not met. The applicant has  
1394 78 feet lot width, where the Code requires 80 feet lot width. The  
1395 applicant requests a variance of 2 feet lot width.

1396  
1397 Mr. Blankinship - Before we go any farther, Mr. Chairman, Mr. O’Kelly brought  
1398 it to my attention today, that across the front of this lot, there is a planting strip  
1399 easement that’s noted on the subdivision plat as “No Ingress or Egress Allowed.” I  
1400 don’t know how in the world I missed that in my review of this case, but I certainly did.  
1401 So if this variance were to be approved, we would need a condition requiring them to  
1402 vacate that planting strip easement to the Planning Commission or the Board of  
1403 Supervisors.

1404  
1405 Mr. Nunnally - Is anyone else interested in this case? Would you raise your  
1406 right hand and be sworn please?

1407  
1408 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1409 truth, the whole truth, and nothing but the truth, so help you God?

1410

1411 Mr. Paris - I do.  
1412  
1413 Mr. Nunnally - Are you agreeable with what Mr. Blankinship just said?  
1414  
1415 Mr. Paris - If you could just go over that a little bit more; I'm not too  
1416 familiar with that. As you mentioned, it just came up right now.  
1417  
1418 Mr. Blankinship - Put that plat back up Paul. See the note just above the  
1419 street right-of-way says "25-foot planting strip easement – No ingress or egress  
1420 allowed," and that's between the buildable area and Berry Street. Berry Street is the  
1421 only street frontage you have, so you would have to have that requirement removed  
1422 from the subdivision plat, which is a procedure that goes through the Board of  
1423 Supervisors.  
1424  
1425 Mr. Paris - So we'd just have to have that removed? What would be the  
1426 outcome of that?  
1427  
1428 Mr. Blankinship - It will be additional steps.  
1429  
1430 Mr. Paris - Such as?  
1431  
1432 Mr. Blankinship - Taking it to the Board.  
1433  
1434 Mr. Paris - Taking it to the Board again.  
1435  
1436 Mr. Blankinship - Not this Board, but the Board of Supervisors.  
1437  
1438 Mr. Kirkland - The Big Board.  
1439  
1440 Mr. Paris - And you feel that would be something that would go  
1441 through?  
1442  
1443 Mr. Blankinship - That's unknown. You'll have to take it to them and see.  
1444  
1445 Mr. Paris - I'm just wondering how many times I'll have to go in front.  
1446 Just to give you a little history on this, MHH Builders became the developer of Section E  
1447 of Hunters Run, which is the final section. We were not actually involved in the overall  
1448 plan drawing, so when this lot came up, actually we'd finished the rest of the subdivision  
1449 on Casey Street, which was the final section. We got our tax bill and found out we were  
1450 the owners of this lot, along with two others, off of East Berry Street. The other two  
1451 properties, which I've spoken to Mr. Blankinship about, are not buildable lots.  
1452  
1453 This one here meets all the requirements except for the two feet needed for a complete  
1454 80-foot street width. It's actually 78.5 or .4 feet, so it's really about a foot and a half  
1455 variance is what I'm looking for. We will keep with all the other restrictions in regards to  
1456 the side yard setbacks, front yard setbacks, and rear yard setbacks of the property. The



1457 actual lot itself is much larger than the requirements of 8,000 square feet. I believe this  
1458 one's over 10,000 square feet. Here today, I'm just basically asking for a foot and a  
1459 half, or a two-foot variance on the 80-foot requirement. Currently the property is  
1460 completely treed, overgrown, and you can hardly walk through there, just because of  
1461 the growth, not only just the trees, but all the underbrush also. With walking back there,  
1462 I can tell that kids have been back there, kids or older adults. There are beer cans back  
1463 there. Right now it's just being used as a hangout by someone; it's not being  
1464 maintained at all.

1465  
1466 I've actually even spoken to the neighbor directly behind, for whom we built a house,  
1467 which is 209 Casey Street. Landre Toulson is his name. He was the purchaser of that  
1468 house that we built. He's actually interested, if we do have the variance passed, to  
1469 have a house built there for his mother, so his mother would live directly behind him.  
1470 He's the only one who actually called me on it, after receiving the letter from the County,  
1471 but he was very favorable about it. He's actually interested, and we do have other  
1472 people who are interested in that lot also, not due to the letter coming out, but just who  
1473 want to be in that area. It's a very good area.

1474  
1475 When we came in and built Hunters Run Subdivision, which consists of about 150 to  
1476 175 homes, the values of all the homes surrounding the area have dramatically  
1477 increased. That area was an old military base at one time, with just little ranch  
1478 bungalows almost. Prior to the new subdivision coming on line, those houses were  
1479 probably selling for \$70,000 to \$80,000, and the latest one I just sold for about  
1480 \$130,000, so with the Hunters Run Subdivision coming in, it has dramatically improved  
1481 the surrounding neighborhoods, and more people are now putting money into their  
1482 homes, where you see vinyl siding being put up, or replacement windows being put into  
1483 these older homes, so they are being economically encouraged to improve even their  
1484 houses there. Basically, if the Board were to pass the zoning ordinance in giving us the  
1485 two feet allowable space to build on here, we would build a house similar to what we  
1486 built in Hunters Run. I have pictures of homes that we built there. All these houses, I  
1487 feel, except for maybe the two-story with the garage, would fit on that lot, meeting all the  
1488 current R-3 requirements for setbacks.

1489  
1490 Mr. Blankinship - Have you attempted to buy another two feet of land from that  
1491 adjoining property?

1492  
1493 Mr. Paris - We have not spoken to the guy next door. I just know that  
1494 with going in front and trying to purchase a piece of land from him, and then having to  
1495 subdivide the lot again, we'd probably be looking at even more work. Currently right  
1496 now, he's using one of the plots of land that we actually picked up with the split, at the  
1497 end of Olson Lane, as you can see that coming across. If you come down Berry Street,  
1498 the box where you see the 72 feet wide, a little bit further down, the next spot down, just  
1499 south of that one, that is also owned by MHH Builders, and currently the owners at  
1500 Merridew, they are using that property as a driveway to get to their property, as  
1501 opposed to that 10-foot easement that they have, or I see a 24-foot easement going  
1502 across there. We are going to approach them in regards to purchasing that piece of

1503 land there. Whether they'd be interested, I don't know. Currently, there is actually even  
1504 asphalt on that land. So I don't know if the County came in and put asphalt down on it; I  
1505 very much doubt if the homeowner did, but he's basically been using that land as  
1506 access to his driveway.

1507  
1508 Mr. Blankinship - Looks like you ought to be able to work out a swap with him,  
1509 where you give them that, in exchange for a strip along the side of yours, that would  
1510 bring yours into conformance.

1511  
1512 Mr. Paris - I don't know. I know he has a fence going completely down  
1513 the side there, on his property, a fence going down, and then a fence going across.

1514  
1515 Mr. Kirkland - So basically he's got his driveway on your property?

1516  
1517 Mr. Paris - Yes, but on another parcel of property.

1518  
1519 Mr. Kirkland - Right, on another piece.

1520  
1521 Mr. Paris - If you look directly below the section that says "200" on it,  
1522 that section right there is also a parcel of property that we picked up when we took on  
1523 Hunters Run Subdivision. That parcel, as you can see right now, is asphalted, and he's  
1524 using it too as a driveway, as opposed to the other plot you were showing, which shows  
1525 the easement, the 24-foot section to the left which he should be using as his driveway.  
1526 So currently, yes, he is using that. We are going to approach them. We just kind of  
1527 found out about this when the tax bills came out, so we were going to approach him and  
1528 see if he was interested in purchasing that, or even the person in front of that piece of  
1529 property, whether they were interested in purchasing it. As of right now, it's actually  
1530 being used more as a road, and it's possibly maintained by the County, I don't know.

1531  
1532 Mr. Nunnally - It's a nice lot there.

1533  
1534 Mr. Paris - It is, and even the homeowner directly behind, as I  
1535 mentioned, he's looking to have his mother live there. I spoke to the lady on lot # 24,  
1536 which is at Raines and East Berry, and she even said that she'd be very happy to see  
1537 something done with that land. She's currently a tenant there, not the owner.

1538  
1539 Mr. Nunnally - Seems like to me it should be Casey Street instead of Berry  
1540 Street. I've been living there for 58 years, and it took me two hours to find it.

1541  
1542 Mr. Paris - I've been working there for two years, and I had trouble  
1543 finding it.

1544  
1545 Mr. Nunnally - David Mehfoud helped me to find it, the guy who sold you  
1546 the property.

1547  
1548 Mr. Paris - The lot directly to the north of that and the one directly to the

1549 left, those are the largest lots in Hunters Run Subdivision, so I think when they were  
1550 originally drawing them, due to the size of the lots, to have it continue all the way back  
1551 to East Berry, almost seemed ridiculous. We were not involved in the original Hunters  
1552 Run Subdivision drawing of the lots.

1553  
1554 Ms. Harris - May we see the pictures of Hunters Run that you have? I  
1555 drove down Olson Lane, looking for the property, not realizing that I was right at the  
1556 intersection of the property, so the street, private driveway, that's next to 200, that is not  
1557 your driveway at all?

1558  
1559 Mr. Paris - No, it is not. Actually, if you look at the original plot plan, I  
1560 believe it was supposed to be 200's driveway, but they've kind of taken over, going  
1561 across that other piece of land, and then made their driveway on the right side of the  
1562 house, as opposed to the left.

1563  
1564 Ms. Harris - I even saw the structure back in the woods.

1565  
1566 Mr. Paris - Yes, there is an old shed or something back in there.

1567  
1568 Ms. Harris - I think that belongs to 22 Raines Avenue.

1569  
1570 Mr. Paris - Yes, it's a little deceiving with the power lines that run across  
1571 there, if you actually follow the power line, that's actually the property line out there. We  
1572 actually had a plot plan done to see if that power line was within our property line, and  
1573 they said no, it actually runs directly on the side property line and their back property  
1574 line, so it is a little deceiving there. There is some kind of structure, a little further back  
1575 there, that's completely dilapidated, hasn't been used in years, but there's a lot of trash  
1576 back there. You can tell people are going back there and hanging out, or whatever.

1577  
1578 Mr. Nunnally - Any other questions of the Board? Hearing none, that  
1579 concludes the case.

1580  
1581 Mr. Paris - You want to keep those pictures?

1582  
1583 Mr. Nunnally - Yes, we need to keep them for thirty days; then you'll get  
1584 them back. A-99-2005 MHH Builders, Inc. Do I hear a motion on that?

1585  
1586 Mr. Kirkland - I make a motion we approve it.

1587  
1588 Mr. Nunnally - Motion by Mr. Kirkland we approve it. Is there a second?

1589  
1590 Ms. Harris - Second.

1591  
1592 Mr. Nunnally - Second by Ms. Harris. All in favor, say aye. Been approved.

1593

1594 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.  
1595 Harris, the Board **granted** application **A-99-2005** for a variance to build a one-family  
1596 dwelling at 196 E. Berry Street (Hunters Run) (Parcel 828-715-1500). The Board  
1597 granted the variance subject to the following condition:

1598  
1599 1. This variance applies only to the minimum lot width. All other applicable  
1600 regulations of the County Code shall remain in force.

1601  
1602 Affirmative: Harris, Kirkland, Nunnally 3  
1603 Negative: 0  
1604 Absent: Dwyer, Wright 2  
1605

1606 The Board granted this request, as it found from the evidence presented that, due to the  
1607 unique circumstances of the subject property, strict application of the County Code  
1608 would produce undue hardship not generally shared by other properties in the area, and  
1609 authorizing this variance will neither cause a substantial detriment to adjacent property  
1610 nor materially impair the purpose of the zoning regulations.

1611  
1612 Mr. Nunnally - Let's start decisions from the rear.

1613  
1614 Mr. Kirkland - Any minutes, Mr. Chairman?

1615  
1616 Mr. Nunnally - No minutes.

1617  
1618 Mr. Blankinship - Put on your reading glasses. Remember the June and July  
1619 meetings both ran very long. June I think Mr. Gidley is proofing, and July is well under  
1620 way, because it included those cases that were appeals.

1621  
1622 Mr. O'Kelly - Mr. Chairman, I have some information for the Board  
1623 members. I know you and Mr. Kirkland attended a Board of Supervisors Work Session  
1624 regarding the Cochran decision, and two Board members have requested that the  
1625 County Manager consider amending the zoning ordinance for accessory buildings, the  
1626 location for accessory buildings, and possibly making that a use permit rather than a  
1627 variance, so we're looking into that. We have a resolution prepared for the Planning  
1628 Commission to consider at their meeting next week to begin that process. I just wanted  
1629 to share that with you.

1630  
1631 Mr. Nunnally - So now we'll get more use permits than we get variances.

1632  
1633 Mr. O'Kelly - But that allows you to place conditions on the case. The  
1634 staff, of course, will be looking at them and recommending conditions, but the use  
1635 permit process does allow you to add additional conditions and things like that.

1636  
1637 Mr. Kirkland - So if somebody wants to put a communication tower in their  
1638 side yard setback, we will hear that one, right?  
1639

1640 Mr. O’Kelly - If it’s over fifty feet in height, it’s already required.  
1641  
1642 Mr. Kirkland - Thank you, Mr. O’Kelly; it sounds like they’re going that way  
1643 now.  
1644  
1645 Mr. Nunnally - Do I hear a motion that we adjourn?  
1646  
1647 Mr. Kirkland - Yes, I make it.  
1648  
1649 Ms. Harris - Second.  
1650  
1651 Mr. Nunnally - All in favor, say let’s go home.  
1652  
1653 There being no further business, and on a motion by Mr. Kirkland, seconded by  
1654 Ms. Harris, the Board adjourned until **November 17, 2005**, at 9:00 am.  
1655  
1656 Affirmative: Harris, Kirkland, Nunnally 3  
1657 Negative: 0  
1658 Absent: Dwyer, Wright 2  
1659  
1660  
1661  
1662  
1663  
1664  
1665 James W. Nunnally, Esq.  
1666 Chairman  
1667  
1668  
1669 Benjamin Blankinship, AICP  
1670 Secretary  
1671