

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
2 **HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**
3 **HENRICO COUNTY GOVERNMENT COMPLEX, ON THURSDAY, AUGUST 26, 2004,**
4 **AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
5 **DISPATCH ON AUGUST 5 AND 12, 2004.**
6

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

Also Present: David D. O'Kelly, Assist. Dir. of Planning
Benjamin Blankinship, Secretary
Lee J. Tyson, County Planner
Priscilla M. Parker, Recording Secretary

7
8 Mr. Wright - Ladies and gentlemen, welcome to the August meeting of
9 the Henrico County Board of Zoning Appeals. Would you stand for the **Pledge of**
10 **Allegiance to the Flag of our Country.**
11

12 Before we begin our agenda this morning, I'd like to take this opportunity to welcome to
13 the Board, our newest member, Ms. Helen E. Harris. I thank Ms. Harris for agreeing to
14 serve, and we hope she will be with us for a long time to help us in adjudicating these
15 cases.
16

17 Ms. Harris - Thank you, Mr. Wright. I look forward to my association with
18 this Board.
19

20 Mr. Wright - Mr. Secretary, would you read the rules, please.
21

22 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies
23 and gentlemen. The rules for this meeting are as follows. As Secretary, I will call each
24 case. At that time the applicant should come to the podium. I will ask everyone who
25 intends to speak on that case, in favor or in opposition, to stand and be sworn in. The
26 applicants will then present their testimony. After the applicant has spoken, the Board
27 will ask them questions, and then anyone else who wishes to speak will be given the
28 opportunity. After everyone has spoken, the applicant, and only the applicant, will have
29 an opportunity for rebuttal. After hearing the case, and asking questions, the Board will
30 take the matter under advisement. They will render all of their decisions at the end of
31 the meeting. If you wish to know their decision on a specific case, you can either stay
32 until the end of the meeting, or you can call the Planning Office later this afternoon, or
33 you can check the website. The vote on each case will be posted to our website within
34 an hour of the end of the meeting. This meeting is being tape recorded, so we will ask

35 everyone who speaks, to speak directly into the microphone on the podium, to state
36 your name, and everyone other than the applicant, to spell your last name please for the
37 record. And finally, out in the foyer, there are two binders, containing the staff report for
38 each case, including the conditions that have been recommended by the staff. Mr.
39 Chairman, we have one withdrawal from the 9:00 o'clock agenda, which is the first
40 case, A-60-2004.

41
42 **A-60-2004** **JOSEPH P. MARCHETTI, JR.** requests a variance from Section
43 24-94 to allow the existing building to remain at 3301 Church Road
44 (Parcel 746-757-7922), zoned A-1, Agricultural District (Three
45 Chopt). The minimum side yard setback is not met. The applicant
46 has 7 feet minimum side yard setback, where the Code requires 20
47 feet minimum side yard setback. The applicant requests a variance
48 of 13 feet minimum side yard setback.

49
50 After an advertised public hearing, the Board allowed withdrawal of the application for
51 the above-referenced variance.

52
53 **A-89-2004** **LORI L. BRENDLINGER** requests a variance from Sections 24- 9
54 and 24-94 to build a one-family dwelling at 2431 Pump Road
55 (Parcel 741-753-0370 (part)), zoned A-1, Agricultural District
56 (Tuckahoe). The public street frontage requirement and total lot
57 area requirement are not met. The applicant proposes 0.88 acre
58 total lot area and 0 feet public street frontage, where the Code
59 requires 1 acre total lot area and 150 feet public street frontage.
60 The applicant requests a variance of 0.12 acre total lot area and
61 150 feet public street frontage.

62
63 Mr. Wright - Does anyone else desire to speak with reference to this
64 case? Would everyone raise your right hand and be sworn please?

65
66 Mr. Blankinship - Do you swear that the testimony you are about to give is the
67 truth, the whole truth, and nothing but the truth, so help you God?

68
69 Mr. Brendlinger - I do. Robert Brendlinger; I'm the representative for Lori
70 Brendlinger, the applicant. This is to request a variance from Sections 24-9 and 24-94
71 to build a one-family dwelling at 2431 Pump Road. The public street frontage
72 requirement and the total lot area requirement are not met. The applicant proposes a
73 .88 acre total lot area and 0 feet public street frontage, where the Code requires 1 acre
74 total lot area and 150 feet public street frontage. The applicant requests a variance of
75 .12 acre total lot area and 150 feet public street frontage. I guess, to begin with, it
76 appears there are three people who wrote letters of complaint. I think they were Ms.
77 Gravett, Ms. Clary, and Ms. Herrington. I guess to start with, as far as the hardship
78 qualification, the applicant is diagnosed with chronic multiple sclerosis. She bought the
79 house in 2002; she lives with her daughter there. She tries to keep the property up; her
80 doctor, Dr. Horowitz is at the University of North Carolina at Duke. He can gladly verify

81 her condition as far as a current MRI that shows more lesions in the brain, as far as in
82 the lower lumbar area. If there is any doubt in that, you can go ahead and contact Dr.
83 Barry Horowitz; he's a specialist in the multiple sclerosis field.

84
85 Ms. Brendlinger - I'm Lori Brendlinger; he has a copy of my most recent MRI.

86
87 Mr. Brendlinger - The applicant has been very active with the property for
88 almost two years, trying to do modifications to the property. She has kept the yard up
89 and is trying to make improvements today, even as we are here. So she does have a
90 need to have another dwelling in the back; the lot size is almost two acres; it's 1.89
91 acres. It's a large area for an individual to try to keep up and maintain. As far as the
92 other situations with these people, Ms. Gravett and Ms. Herrington, these people live on
93 Thistledown Drive, and I guess one on Crown Crest Drive. Ms. Gravett lives on
94 Thistledown; it's the second house, and Ms. Herrington lives on Crown Crest, and Ms.
95 Clary lives on Thistledown. The structure that's proposed to be built on this area is in
96 the center. The drainage in this area goes to the north; there's a culvert on the northern
97 part of the property, which is on the left-hand side.

98
99 Ms. Dwyer - Toward Gayton, is that what you're saying?

100
101 Mr. Blankinship - Toward Crown Crest.

102
103 Mr. Brendlinger - There's a culvert that comes down, and then it discharges
104 into a little stream that comes in between, back on Crown Crest to the right, there's a
105 drainway that comes around and goes into an underground culvert there. The property
106 itself, from Thistledown looking towards the north, all slopes; there's more than a five-
107 foot slope in that direction, so there are residents on Thistledown, as far as having any
108 drainage problems associated with the structure. The structure would be down from
109 those residences. Even on Crown Crest Drive, with Ms. Herrington, the structure itself,
110 the drainage would be draining towards that drainway, which goes down in that lower
111 part of Crown Crest. So I don't see how the drainage problem is going to affect the
112 people who have complained about the problem. Has there been a problem with this
113 drainway that goes down to Crown Crest? I have some pictures of that. It appears it's
114 not eroded. I guess I understand that the drainage is a problem, but it doesn't appear to
115 me that the drainway that's existed is a problem; it's not been eroded. Is there a history
116 of any problems that I'm not aware of?

117
118 Mr. Kirkland - Mr. Blankinship, did he receive a copy of this engineering
119 report?

120
121 Mr. Blankinship - No, I was going to hand him a copy in a second. The
122 opponents will address that.

123
124 Mr. Brendlinger - That will go ahead and address the water itself. As far as
125 the structure, I think there were some comments made about a driveway. In front of her
126 property, it's a public four-lane road; I think there are plans for that to be made four-

127 lane, connected through on Pump. I don't see how one additional dwelling coming out
128 of that single driveway would cause any harm. In front of her house it is four lanes, so a
129 car can easily pull out.

130
131 Ms. Brendlinger - They will also be removing those trees and taking part of that
132 fence out and widening that curb.

133
134 Mr. Brendlinger - The driveway itself would be on an existing part of the
135 driveway, which would help reduce the amount of sedimentation disturbed area. The
136 driveway could be gravel to help also reduce the amount of watershed and would be a
137 gravel-stone type base road going back to the proposed house on the back lot, the .89
138 acre. As far as the proposed drive itself, the use of probably over 100 feet is already
139 intact. There would probably be no more than 200 feet that would be along the fence
140 line. I don't see that posing a hazard for access to the people who live on Crown Crest
141 to the north. They have access easily out to the front drive on Crown Crest, but having
142 a road on the back of them appears to me that even for access, if there were problems,
143 the road is a better means of access if it is already in place. By having that road in the
144 back of those structures, it does provide better access for those people in case of an
145 emergency if needed. As far as the environmental controls can be put in, there can be
146 grass line ditches put in that would help with the absorption of the water and also the
147 retention of the water; there can be rock checks put in that can also help with the
148 sedimentation issues. The structure itself, as far as the disturbed area, I think that can
149 be kept to a minimum – silt fences, a lot of different things are out today that can help
150 with sedimentation control. Things can be grassed over very quickly, so I think as far as
151 the disturbed area, and as far as the increase in the flow of water or disturbed sediment,
152 I think that will be very minimal for a short period of time. We do request that this
153 variance be approved, and it would meet the requirements of the Code. There is a
154 house plan here; it's already purchased from Lincoln Log Homes. You can verify that
155 through Rocky Mount, North Carolina.

156
157 Ms. Brendlinger - It's what, 2,000 square feet – I forget?

158
159 Mr. Brendlinger - The lower level is 3800 square feet. As far as the quality of
160 the home, I think that it is comparable to the existing homes in both the subdivisions.

161
162 Ms. Brendlinger - It'll improve their properties, just like I did when I took the
163 dump and fixed it up.

164
165 Mr. Wright - Where would this be located on the plot?

166
167 Mr. Brendlinger - It would be put lengthwise, facing in the same western
168 direction.

169
170 Ms. Dwyer - So it would be facing north?

171
172 Mr. Brendlinger - It would be actually facing west; the front of the house would

173 be facing west.
174
175 Ms. Dwyer - I thought last time that you said it would be facing north.
176
177 Mr. Blankinship - See where the word "brick" is? Is that the front of the
178 house?
179
180 Mr. Bendlinger - Yes, that would be the front there, facing north. Okay, I think
181 that should address the problems that were brought up in the letters.
182
183 Ms. Brendlinger - I think another issue is, when the people bought in Crown
184 Crest, I think my house was built in '59; it was there first. The people who purchased
185 their homes should have checked into the drainage and known that there was a
186 drainage problem. There is a stream that runs through there, and the man on the
187 corner told me it's always been there. So the issue with the house is, my house was
188 there first, and they built around that house, and apparently they bought it without
189 checking into drainage issues, or whoever was the developer did not act accordingly.
190 The man who owned the house before me, there was mention of him in one of these
191 letters from Ms. Gravett, that he was going to put up some houses, but it was too
192 expensive. I think what she was thinking was, that Luther wanted to do some rezoning
193 for residential. I don't want to rezone for residential; I want to keep it agriculture; I want
194 to put another home there and move my mother into mine.
195
196 Mr. Wright - Ms. Brendlinger, there's one little flaw in your statement is
197 that people bought with your house there, but they didn't buy with the other house there.
198 The whole point of this argument is, that if you put another house there, what you have
199 to do, to take trees down, and what you have to do for the house and the drive and the
200 parking, that will increase and cause the water situation to become worse.
201
202 Ms. Brendlinger - The back yard, there are not going to be any trees taken
203 down.
204
205 Mr. Wright - But that's the argument; it's not the same as it was when the
206 people move in.
207
208 Ms. Brendlinger - But I'm going to be taking care of those drainage issues. By
209 the way, I don't think that he approached the situation. He's an environmental engineer,
210 so I don't think he discussed that.
211
212 Ms. Harris - You said you would take care of the drainage issues – how?
213
214 Ms. Brendlinger - He just told you things that can be done, and I'm sure the
215 other engineer will have some proposals too. I'm not taking care of their present
216 drainage problems, but anything that has to do with that house, those issues will be
217 taken care of. When you apply for a permit, I'm sure with Henrico and the Code, they
218 have to be taken care of. And it will not be a rental property, as someone discussed

219 with me. I bought two acres, and I don't want any further neighbors than what I'm going
220 to have with the one other structure.

221
222 Mr. Brendlinger - I guess one other thing as far as the entrance, the right-of-
223 way, that would be a deeded right-of-way to the .89-acre area. There would be a
224 survey done, certified, with the right of access would be the right-of-way, which is the
225 common thing done; it gives a legal access to and from the property for ingress and
226 egress. Does anybody need me to address the drainage?

227
228 Ms. Dwyer - Yes, I think that would be good to have some specifics about
229 that. You did mention some things that could be done. Have you analyzed the property
230 to determine what you would do?

231
232 Mr. Brendlinger - It's a sandy type soil; I think a lot of times the grass/lawn
233 type of ditches, they absorb water, and they also can slow the velocity of the water
234 down. There are also things like porous rock check that can be put in place, with a
235 small little retention pond. In essence what these do, the water can be directed into the
236 small little sump, and then that water basically has time to settle and be absorbed
237 before it would go into this ditch that's existent on the northern side of the property. The
238 property all drains to that northern corner at the present, and as far as the slope of the
239 land itself, the house would be built up some, and as far as the drainage, the way that
240 it's currently going, there's nothing that would actually be done with that. There could
241 be drains put around the house to direct all that drainage towards that existing culvert,
242 the ditch itself. There's weep drains and things like that, so once you got into the sub-
243 surface, you could kind of find out if there are any type of springs and things like that.
244 There are a lot of things out today that people can do to help with drainage problems.

245
246 Ms. Dwyer - These things tend to be very expensive; have you looked
247 into the cost of and what have you determined?

248
249 Mr. Brendlinger - Yes.

250
251 Ms. Dwyer - Have you determined that you are going to put the ditches
252 in, and where, or

253
254 Mr. Brendlinger - There needs to be some soil sampling and things like that to
255 determine if there are any wet, springy areas?

256
257 Ms. Dwyer - You haven't really analyzed the property to determine
258 exactly what you might do.

259
260 Mr. Brendlinger - I think once you go and you do a little more evaluation, you
261 can decide which method or methods would be more appropriate for the situation.

262
263 Ms. Dwyer - So if I understand you correctly, there are ways to handle
264 drainage, but you haven't really analyzed this property at this point to make an

265 assessment.
266
267 Mr. Brendlinger - If the Board denies this, there's no use spending all the time
268 and money to do all the testing to determine what would be best. That is a condition
269 that could be put on this if it is approved, that proper soil conservation methods would
270 be applied to this type of drainage to provide at least a minimal amount of additional
271 flow and sedimentation. I think with this structure too, when you put in additional shrubs
272 and things like that, there's a lot more things like that to absorb the water.
273
274 Ms. Harris - Have you met with the neighbors on Thistledown Drive or
275 Crown Crest to allay their fears of what would happen to their property, which clearly
276 has, according to the engineers' report, has water damage already. Have you met with
277 them?
278
279 Mr. Brendlinger - No, I haven't met with them. So there are damage claims
280 from the adjoining property owners already?
281
282 Ms. Harris - On Crown Crest, if you look at the engineer's report.
283
284 Mr. Brendlinger - No, I haven't looked at it; I just received it. On that, again,
285 the house was built in 1949. The house was there before the development, so it looks
286 like the developer or whoever put these developments in, there should have been some
287 drainage concerns addressed when the developments went in. I think something pre-
288 existing like that, the developer should have taken measures like I was telling you would
289 be taken on this structure. Evidently those were not properly addressed, and when
290 these individuals bought these homes, evidently there's been a problem there for some
291 time, so that's something they should have seen before they bought the property, and
292 made a proper evaluation of the drainage before they purchased the properties.
293
294 Ms. Dwyer - Mr. Blankinship, will Mr. Brendlinger have a chance to speak
295 to us again, after he's heard what the opponents have to say and maybe had a chance
296 to look at this report that we're all referring to?
297
298 Mr. Blankinship - Yes, the applicant has that opportunity.
299
300 Ms. Dwyer - Do you have a copy of this report?
301
302 Mr. Brendlinger - Yes, he gave it to me earlier.
303
304 Mr. Blankinship - You can certainly carry this over to the end of the agenda if
305 you want to take another hour or two.
306
307 Mr. Kirkland - Had you explored the possibility of adding a suite or an
308 addition to your home, to expand what you have, to let your mother live there? Versus
309 building a new building.
310

311 Ms. Brendlinger - I do not want her living with me. I think there is no home big
312 enough for two families, and now that I look at the situation, she needs to live on her
313 own and be as independent as she can, and she's with my step-dad, and my son, he
314 will probably live with her during the college years that are coming up, and he doesn't
315 need to live with me either.
316
317 Mr. Wright - How old is your mother?
318
319 Ms. Brendlinger - My mom is 72.
320
321 Mr. Wright - Is that your case; have you presented everything you need
322 to present to us?
323
324 Ms. Brendlinger - I do need my MRI report back. You can make a copy of it.
325
326 Mr. Blankinship - We're supposed to. I can return it to you this afternoon.
327
328 Ms. Brendlinger - Or I can get a copy of it from Dr. Horowitz.
329
330 Mr. Wright - In your report, Mr. Blankinship, you said the staff had
331 requested a report from the Department of Public Works – do we have that?
332
333 Mr. Blankinship - No sir, we have not; yesterday afternoon, not having heard
334 from them, I asked that they have somebody attend the meeting, and I don't see
335 anyone.
336
337 Mr. Wright - The engineer that you refer to as having been retained is the
338 engineer that we have this report from?
339
340 Mr. Blankinship - Yes.
341
342 Mr. Wright - It appears to me that we need to give the applicant a little
343 time to review this engineering report. My recommendation would be that we defer this
344 to a little later in the docket, till after they've had a little time to review it, and then we'll
345 have the opposition come on and we'll decide.
346
347 Ms. Dwyer - Defer this case till the end of the meeting?
348
349 Mr. Wright - Not till the end of the meeting; I'd say to a point when they
350 have an opportunity to do it; I don't think we ought to defer it to the end of the meeting;
351 that's not fair to these people who have come here today. Is the Board in accord with
352 that – give them a few minutes to review. Let's call the next case, and then we'll give
353 the applicant an opportunity to review this engineering report.
354
355 Mr. Blankinship - There was one other page of this, if somebody could pass it.
356

357 **(Resumption, after A-90-2004)**

358

359 Mr. Wright - We'll hear from the opposition now on **A-89-2004**.

360

361 Mr. Cornell - Good morning. Paul Cornell. I reside at 2458 Crown Crest
362 Drive, and I've got a presentation. I also made some notes as the Brendlingers were
363 speaking.

364

365 Ms. Dwyer - What was your address again?

366

367 Mr. Cornell - 2458 Crown Crest Drive. I'm actually in the property that
368 was addressed as being directly north where the drainage problem is most serious.
369 Move to the next slide please. A couple of things in looking at this, this variance really
370 would be a substantial detriment to my adjacent property. I cannot speak directly for the
371 others, but I will be able to speak directly for mine. I don't think the variance would
372 clearly alleviate a demonstrable hardship at this point in time, but once again, that's a
373 decision for the Board to make. With what I can see, I believe that the variance would
374 further exacerbate the existing drainage and erosion problems. Where they're looking
375 to put the road, it would essentially become a viaduct, rain water and runoff would
376 actually be channeled into my property, based upon the elevation and the topography
377 currently. Also, the creation of impervious surfaces, building a home, walkways,
378 whatnot, the additional compaction of the soil, and the removal of the additional trees
379 and grass would also increase the volume of storm water run-off. This is from the
380 Federal Inter-agencies Stream Restoration Working Group, and it shows that even a
381 change of only 10 to 20% actually doubles the amount of run-off, and with the situation
382 we currently have, that would be a 100% increase and would create a severe problem
383 for us. At least where our property's located, once again the plan is very vague and
384 very ambiguous right now, so I had to make an assumption as to what a driveway would
385 look like and how the house would be situated. Given where our property sits, the
386 proposed road would become a viaduct. The green circles are actually arrows pointing
387 to where pictures have been taken. Go to the next slide.

388

389 Here's a shot from my back yard. You can see the erosion that's occurred. There's
390 actually a 24-inch drop, and that's just eight inches back from the property line, and I
391 know that issue was addressed, that we bought the property like that; that actually is not
392 true. We purchased the property seven years ago. During that time period, Luther
393 Maupin, who did own the property, continually filled in and made changes in the
394 elevations to the property. We complained to the Department of Public Works; we got
395 the same response we got today. They didn't show up. We complained bitterly
396 because we've had problems for years, so what you're looking at there, and there's
397 another close-up of that shot, that is a gate going into the Brendlinger's back yard. If
398 you see there, that actually shows the drop in elevation. If you look closely towards the
399 bottom, that's where the property line, the level of property used to be, where the ruler
400 is. That's the old fence; we had a split rail fence; that was in there. Before Luther sold
401 the property, he put in a new fence in the back here. But you can see parts of the old
402 split rail fence he used to keep the erosion from getting any worse. We complained

403 during this time, as well, to the County and to the Department of Public Works, and we
404 got the same response we got today. They didn't show up.

405
406 Ms. Dwyer - So the difference in elevation that we're observing here is
407 the result of former property owner's infill, filling in with additional dirt to raise the
408 elevation of his property.

409
410 Mr. Cornell - Correct. To enhance it till he could sell it.

411
412 Ms. Dwyer - And that occurred during the last seven years?

413
414 Mr. Cornell - Correct. Go to the next slide please. Here's another shot
415 looking down the property line. You can see, it's very significant. Go to the next slide
416 please. This is in the back corner of my lot; it's very hard to see, and this is where I get
417 into another issue. I'm zoned Residential; I have to keep that cut; it's a swamp back
418 there. What you can't see in the lower corner there is a drainage pipe. When Luther
419 changed his elevation of the property, he also went out and put in an eighteen-inch
420 drain pipe that runs down to a creek in the back. We fought that; we were told he was
421 on Agricultural; he can do that. We suffered for that. You can see the old fence. If you
422 look, and this is amazing, that fence right there, that is the top. If you look at the top of
423 the fence there, that's the old split rail fence; the top of the new privacy fence, that's ten
424 feet above my property line in the corner, and that is a swamp back there, constant
425 standing water because of the drainage issue.

426
427 Mr. Wright - Who put that fence in?

428
429 Mr. Cornell - Luther Maupin, previous owner of the other property.

430
431 Mr. Wright - So that's on their property?

432
433 Mr. Cornell - Correct. If you look though, the metal I-beam is actually on
434 our property that's holding the fence up. If you step back one, that's a metal I-beam
435 that's driven about five feet into the ground, supporting that fence. If it wasn't there, that
436 fence would fall down.

437
438 Ms. Dwyer - Help me understand, since we can't see the pipe, where
439 does the drainage pipe run?

440
441 Mr. Cornell - If you'll look directly into that corner, there's an eighteen-inch
442 opening, there's a metal pipe, actually it's a piece of sewer pipe that I don't know where
443 he got it from, but it runs down the length of the two properties next to me, and it dumps
444 into an existing creek, that from what I understand, wasn't designed to handle the flow
445 of water that it's now receiving, because of the changes in the topography. We can step
446 to the next. A is a shot of where that gate was in the pictures we looked at. The arrow
447 pointing to that corner is where that drainage pipe is, and it runs down to the end of that
448 property we're discussing, the property on Pump Road, and dumps into that drainage

449 ditch. So it runs past 2456 and goes a little way into 2454.
450
451 Mr. Blankinship - And that pipe is entirely on the subject property?
452
453 Mr. Cornell - No that is on the property line; when Luther put that in, he
454 laid it right on the edge of his property line and filled it in.
455
456 Ms. Harris - Where is the creek in proportion to this? I understood that
457 there was a creek involved? Where is the creek?
458
459 Mr. Cornell - The creek runs actually along the back of the property, runs
460 directly from 2454 directly down to 10506 Thistledown. It runs directly across the back
461 line of that property.
462
463 Ms. Harris - Did you not notice this creek or water problem when you
464 purchased the property?
465
466 Mr. Cornell - There wasn't a problem at that time, because the properties
467 were level, and they sloped very gently; there was grass and that whole area where the
468 house is proposed, contained trees. It wasn't cleared.
469
470 Ms. Harris - But there was a creek there, right?
471
472 Mr. Cornell - Correct, correct. Go on to the next. Currently that's what's
473 occurring is where we have the erosion problems, and I'm concerned with this new road
474 being put in and actually creating a viaduct and creating a greater problem for me.
475 What we're looking at now is a strict application in the terms of the Henrico Code; it
476 wouldn't actually prohibit, but it would unreasonably restrict the use of the property. The
477 property was acquired by the applicant in good faith, with a foreknowledge of her
478 medical condition, as well as the zoning laws regarding the property. A couple of other
479 points too, and once again, I do want to address this from the standpoint of the illness,
480 and I'm certainly very sorry about that, I truly am. From that standpoint, I am sorry. But
481 in looking at this, several issues have been raised.
482
483 Mr. Blankinship - Mr. Chairman, do you want to get into that? Into the
484 applicant's physical condition? Do you think that's relevant?
485
486 Mr. Wright - I don't think it's relevant, but they had brought it up, so I think
487 they ought to be able to address it.
488
489 Mr. Cornell - I truly am very sorry for that. There's nothing I can do about
490 that.
491
492 Mr. Wright - It's in the record that they brought it up.
493
494 Mr. Cornell - They did point out correctly in terms of the drainage issue;

495 she did state the existing drainage problems are not being taken care of currently, which
496 is true. When Luther was there, our other option was to get into a civil suit with him,
497 which we chose not to do, for obvious reasons. They are our neighbors. And we have
498 the same case right now. We were basically informed by the County that if we wanted
499 to do something, it was a civil matter, not Department of Public Works. So that's where
500 we stand right now on that. We've chosen not to. The other area that I'm looking at
501 right now, is she had mentioned that they didn't want to make the investment right now
502 in looking at what it would cost to make the improvement properly. I'm not in opposition
503 to the house, but I have no choice but to oppose it completely. This is a very black and
504 white issue, as I understand. So my concern right now is, if they're not willing to make
505 an investment in something that's supposed to be so important to them at this point in
506 time, yet they're saying, "no, we don't want to invest that kind of money." It doesn't
507 make a whole lot of sense.

508
509 Mr. Wright - If they would take care of the drainage problems, you
510 wouldn't have any objection to their constructing the house?

511
512 Mr. Cornell - I would like to see a very clearly defined plan as to how they
513 would handle it, what would be done, and have the issue resolved. I have a drainage
514 problem; it's not going away.

515
516 Mr. Wright - Has this owner contacted you about this problem at all?

517
518 Mr. Cornell - No. So my concerns are that the plans are currently vague,
519 ambiguous, and they can't even tell you what direction the house is going to be facing.
520 I've got really serious concerns about them moving forward and getting a variance at
521 this point in time to build something back there.

522
523 Mr. Wright - Anything further?

524
525 Mr. Cornell - No, thank you.

526
527 Mr. Wright - Thank you very much for appearing.

528
529 Ms. Miller - My name is Catherine Mueller. I live at 2404 Crown Crest
530 Drive. If you could point out my house on this map, I can explain a lot of this. I
531 purchased my house in 1977, and I've lived in the same house this entire time. At the
532 time I purchased my house, Crown Crest Drive was a dead end. The house next door
533 to me, a little bit further north or east, I guess, was the last house in Crown Grant. The
534 street ended there. The builder told us there was a possibility that the street would be
535 cut through, but that he didn't have any idea because of the way Crown Grant was
536 developed, it was built with lots of developers, lots of builders, and the hope was to not
537 have a lot of houses in a development all by the same builder. So they tried to spread
538 around different builders.

539
540 At that time, there was a creek, that appeared to be fairly natural, running the property

541 line between my house, 2404, and 2406. That line going straight out to Crown Crest
542 Drive is where the creek is located. At that point, there were stones at the bottom, and
543 there was a culvert installed at the house line, between my neighbor and me, that I
544 assumed carried the water into the sewer system. At that point, the land behind me
545 was a level piece of land flush with my back yard. Neither of us had fences, and there
546 were lots of trees and some small outbuildings, but there was definitely a full stand of
547 trees back there. That was one of the reasons we purchased our lot, because of the
548 wooded background and the intention and the hope that it would never be developed.
549 Approximately five years later, or within the first five years, somebody came in and cut
550 through, and Crown Crest Drive, as you can see, now goes up around a curve and
551 actually comes out on Pump Road at a different place. That was done to keep through
552 traffic from racing through the neighborhood, but what it created was a cul-de-sac at the
553 very top of the screen, to the top right corner of the yellow. All of a sudden all of the
554 water from that entire subdivision funneled down that property line to this single stream.
555 At some point along there, the County came along and put concrete on top of the
556 stones on my property line, and all of a sudden, there was tons of water running through
557 there, and it became a problem for us. At various time the County came out and looked
558 at it, but nobody ever did anything about it. They just said that they'd studied it, and
559 there was enough culvert there to sustain however much water came from the new
560 area.

561
562 Then, within the past five years, Luther Maupin approached me and suggested that he
563 wanted to put up a fence because he had these dogs, and he didn't want them to be
564 running loose, and would I consider sharing the cost of a fence with him? He proposed
565 that if I would buy the lumber, he would put up a fence. We did that, with the
566 understanding that it would be down the property line. What happened, after he got the
567 fence up, he then went in there and got road grading equipment, first tearing down lots
568 of the trees that were back there, and beginning to backfill. So the elevation of that
569 back property changed as much as five feet, and the big evidence, I'm sorry I don't have
570 pictures to show, but I have the exact same situation along my back property. The
571 entire back of my lot, which is the middle part of that, has got that same fence, and it's
572 so washed away and degraded, it required him to come back and put in those steel
573 beams to hold up every single fence post, because it's a muddy swamp there. The
574 other thing that came from that fence being there and changing the elevation, is that it
575 creates a waterfall. Not only does it run down the creek and overflow, Pam Herrington,
576 who lives on the other side of me, our property line has become another river. Any time
577 it rains, whether it's a large rain or small, all the water from that lot behind us, is
578 funneled down either our property line or the property line on the other side of my
579 property. The culvert is not able to carry the flow, to the point that it's, even in small
580 rain, it overflows its banks, and when it's a big rain, it comes over the banks so much
581 that it's gotten into the crawl space of my house. It's washed away part of my back
582 yard, and I had a Florida room on the back of my house, and so this water coming from
583 under the fence up against the back of my house, was seeping through the walls, it's
584 such a flow of water.

585
586 So the first thing I did was to bring in my construction people. They dug out a trench

587 around my house and put in what they called a French drain around the perimeter of the
588 back of my house and covered that with river gravel. This continued to erode; the water
589 level continued to grow, to the point that I had standing water in my yard, and down the
590 entire side perimeter of my house, and so I had to have construction people come in
591 and dig a trench around the back of my house and down the entire side of my house, all
592 the way to my driveway, and then fill it, dig out a foot or eighteen inches, put in more
593 drainage pipes, and then put in highway grade gravel or stone to make a drainage bed,
594 just to keep the water from standing on my property. Pam, on the other side, we both
595 have had rotted timbers and standing water to the point that it's washed away our yards;
596 it's washed away all kinds of stuff there, but my biggest concern is that both sides of this
597 are getting worse, and I stand to be washed out or flooded and having damage to my
598 home from any more water flow from anywhere. I feel like the property owners, even
599 though they may not have known that it was filled when they purchased the land, I think
600 they should have questioned why there are steel beams holding up their fence. I also
601 wonder why they couldn't tell that all this erosion's going on, but I think something
602 should be done to correct this, because I've suffered ever since the previous owner did
603 this, changing the elevation of the land. It's going to continue to get worse, and I think
604 it's the County's responsibility to enforce this culvert situation, because they're the ones
605 who approved that, and then the idea that somebody's trying to build more and make
606 more run-off is just unacceptable. Thank you.

607
608 Mr. Wright - Thank you very much. The applicant has a few minutes to
609 rebut; the opposition is finished.

610
611 Ms. Dwyer - Mr. Chairman, as he's coming up, is there anyone here to
612 speak to this engineer's report, or is that just to be submitted to us?

613
614 **(Unidentified voice)** - Pam Herrington actually had that study done. She is very ill
615 today and could not attend, so she submitted it as to speak for itself.

616
617 Mr. Wright - We have it.

618
619 Mr. Brendlinger - I have a few pictures here. This one here that's behind the
620 Herrington-Mueller residences, the area that shows, the Brendlinger area where the
621 fence is, shows the trees, shows the fence, shows the back side of the Herrington
622 property, also the Mueller property. These trees are fairly large size trees. You can
623 look at the base of these trees, and it appears that there's no fill that was put around
624 these trees. This area here looks like it was to me undisturbed, and there was no fill put
625 in this area. This would be another picture of the fence, which again parallels that with
626 the Herrington-Mueller areas, and then there's also a picture of the Herrington house.
627 This is a picture of the existing drain that I guess Ms. Mueller was referring to. That
628 would be the drain that he's putting up now.

629
630 Ms. Dwyer - I don't know if anyone else is having trouble seeing the drain,
631 but I can't see it in this picture.

632

633 Mr. Kirkland - What's the wavy line, Mr. Blankinship?
634
635 Mr. Blankinship - I don't know; I've never known it to do this before.
636
637 Ms. Dwyer - What is the picture on the bottom left?
638
639 Mr. Brendlinger - The bottom left would be behind the Herringtons; that's
640 bordering the Brendlinger residence property.
641
642 Ms. Dwyer - It's whose back yard?
643
644 Mr. Brendlinger - That would be Ms. Herrington's property.
645
646 Ms. Dwyer - Is this taken over your fence, looking into their yard?
647
648 Mr. Brendlinger - Yes.
649
650 Ms. Dwyer - And it's up here to show what?
651
652 Mr. Brendlinger - That just shows their yard itself.
653
654 Ms. Dwyer - The picture on the bottom right -- what is that?
655
656 Mr. Brendlinger - That's the stream, creek, I refer to it as a channel; I don't
657 know if it was man-made, but that's basically where the drainage goes to, and it goes
658 into a culvert under the development on Crown Crest.
659
660 Mr. Wright - Sir, would you go ahead and give your rebuttal, because
661 we've been on this case a lot longer than we intended.
662
663 Mr. Brendlinger - These existing problems that the adjoining neighbors have, it
664 appears that they have had those for some time, and even before the former owner put
665 the fence up, it appears they evidently had problems. I think the problems appear that
666 they have come from the development, and it appears that Luther tried to go ahead and
667 remedy the problems somewhat with the drainage pipe that he put in, the culvert pipe.
668 The fence itself; it's elevated. I think you can see from the pictures themselves, there's
669 no erosion on Ms. Brendlinger's property. From what was presented, as far as the
670 water that's coming off of Ms. Brendlinger's property, there's no erosion whatsoever
671 over any of the property. So what happens when the water leaves the Ms. Brendlinger
672 property, I don't quite understand the erosion factor, because you have this fence. You
673 can see that lower board in the upper left-hand picture. The board is in the lower part,
674 and it would be very hard to have an enormous amount of water to penetrate that and to
675 go into these adjoining surface owners' properties, to cause these erosion problems that
676 they're talking about. That's the rebuttal on that. The areas behind the Herrington
677 house, elevation wise, I guess in this engineering report, I don't know if they did any
678 type of surveys or anything like that, but there is a drop that goes from the Herrington

679 house down to this drainway, which is down in this lower right-hand corner, so there is
680 an elevational drop of five feet or so that goes down. There's more than that if you go to
681 the base of that drainway, so there is a natural elevational directional change to direct
682 the water to that location. This so-called water when it rains or what happens, I'm not
683 sure if it's in back of Ms. Herrington's house; it appears that it slopes back in that
684 direction, so she probably has her own surface water that comes back in that direction
685 and causes problems there. Some of the problems may be just site specific on those
686 lots that those people own, and isn't really being caused by Ms. Brendlinger's property.
687 As far as the engineering report, I hadn't even seen the report. Mr. Blankinship gave it
688 to me, but I think in my comments that I initially made, as far as the gravel road, some of
689 the controls, I think that addressed some of the concerns that the engineer. I think that
690 with anything, proper soil sampling analysis needs to be performed to determine exactly
691 the characteristics of the soil, how much water retention it has. It is a sandy type of
692 material. There are ways of controlling the drainage. There are ways to put drains in.
693 There are ways on the access road to direct that drainage into a system to collect it to
694 put into that drainway. So I think if you look at the modern methods of engineering
695 today that are available, you can put that drainage and actually help the problems of
696 some of the adjoining owners by putting that drainage into a system of sump hole and
697 piping that into this drainway. Then I think that would help everybody concerned there.
698

699 Mr. Wright - But you haven't made any proposal to take care of that?
700

701 Mr. Brendlinger - Until we know the concerns and the problems, really you can
702 spend a lot of time and efforts, and then you'd switch 180 degrees of what you're doing.
703 That can all be done, but then again if the Board isn't going to approve this variance,
704 there's no use spending the money on this. The property is zoned Agricultural, and I
705 think Ms. Brendlinger at the present time, if she wanted to, she could put a road
706 alongside the fence, and I think as one of the residents said, Luther had several
707 buildings there in the back. I think the improvements that Ms. Brendlinger made have
708 improved the overall property, so I think since she's been there, she's helping it.
709 Anybody who's going to be spending a quarter of a million dollars on a house is surely
710 going to take care of the drainage problems, because they're not going to make that
711 kind of investment and then have drainage problems there.
712

713 Mr. Wright - Thank you very much. That concludes the case.
714

715 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.
716 Kirkland, the Board **denied** application **A-89-2004** for a variance to build a one-family
717 dwelling at 2431 Pump Road (Parcel 741-753-0370 (part)).
718

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

720 Negative: 0

721 Absent: 0

722

723 The Board denied the request as it found from the evidence presented that authorizing
724 this variance would be of substantial detriment to adjacent property or would materially
725 impair the purpose of the zoning regulations.
726

727 **A-90-2004** **GENWORTH FINANCIAL** requests a variance from Section 24-
728 104(g)(3) to install a second sign at 6610 West Broad Street
729 (Parcel 769-744-0752), zoned O-3, Office District (Brookland). The
730 maximum sign area and number of signs per building are not met.
731 The applicant proposes a second sign on the building, where the
732 Code allows only 1 sign on a building. The applicant requests a
733 variance to add an additional sign.
734

735 Mr. Wright - Does anyone else desire to speak with reference to this
736 case? Would you raise your right hand and be sworn please?
737

738 Mr. Blankinship - Do you swear that the testimony you are about to give is the
739 truth, the whole truth, and nothing but the truth, so help you God?
740

741 Mr. Stevens - I do. My name is David Stevens; I'm representing Superior
742 Sign and Genworth Financial here today. First of all, I have unfortunately not been able
743 to provide the Board with a signature of an authorized agent and an attestation; well I
744 had provided that, but it was a request to have an attestation that he was authorized
745 and how he was authorized to sign it. I have not been able to provide that, as of this
746 morning, to the Board. I'll be happy to present whatever, but I also wanted to make that
747 point before I went further. I spoke with Mr. Lehmann about it yesterday, and if I'm not
748 able to move forward because of that point, I'd like to ask for a deferment.
749

750 Mr. Wright - What is he referring to?
751

752 Mr. Blankinship - The owner's signature on the application; if I understand
753 correctly, we do have the correct person's signature, but we don't have evidence that it
754 is the correct person's signature.
755

756 Mr. Stevens - That is my understanding, based on the returned comments
757 back from the County, and I spoke with Genworth yesterday, asking them to give me
758 that, and they were supposed to have sent me a fax of that; I did not receive it as of this
759 morning.
760

761 Mr. Blankinship - If the Board approves the variance, and it turns out we don't
762 have the right person's signature, they have a problem.
763

764 Mr. Kirkland - You have no problem with a deferral for thirty days?
765

766 Mr. Blankinship - I don't think that's any reason for us not to go forward either.
767

768 Mr. Wright - I think we could go ahead and approve it, subject to that.

769
770 Mr. Stevens - That would be fine with me. Good morning, ladies and
771 gentlemen. We have a scenario that what we would like to do, very simply put, is that
772 according to ordinance, we are allowed to put one sign per building, up to 50 square
773 feet. We already have a permit, which has allowed us, and which has already been
774 installed, one sign on this one building. What we would like to do – there are some
775 issues from past signs on this location that I don't know if they're actually relevant or
776 not, but what we would simply like to do is take one of the allowed signs from another
777 building and place on this particular building, in addition to the one that's already
778 allowed. This proposed new sign is of the same square footage that would be allowed
779 on a second building, and put it up there. The reason we want to do that is because of
780 the visibility that we feel that it promotes, where on the other buildings, it's not really a
781 visible sign. We would, certainly within the terms of the variance, state giving up the
782 ability to put a sign on that additional building, on the other building at any time, unless
783 something changes, and it comes back and brings itself to the ordinance. That's very
784 simply the case that we present to you. We feel that the size, that the ordinance is very
785 restrictive to a project this size, this immense, with this many buildings. Though we are
786 allowed to put signs on buildings, they are not really found visible outside of the
787 complex. So we would like to just exchange, or whatever term we place on it, put the
788 sign that would be allowed on that second building, on this one building.

789
790 Mr. Wright - Which building are you taking the sign from?
791

792 Mr. Stevens - We would like to take the sign off of Building, up in the right
793 deck, where the hand is, and take the sign that would be allowed there and put it over in
794 the location where it says "Requested placement of additional sign."
795

796 Mr. Blankinship - Is that 6604?
797

798 Mr. Stevens - Yes sir, 6604.
799

800 Ms. Dwyer - You're allowed three signs for three buildings, and you're
801 taking the sign that you would normally put on the shorter building and asking to put it
802 on the taller building where it would be more visible? And it would be visible from I-64,
803 is that your intent?
804

805 Mr. Stevens - That is correct. That is correct.
806

807 Ms. Dwyer - So it's a total of three signs?
808

809 Mr. Stevens - No, we're only requesting one sign. We've had one sign on
810 that building as permitted. We're only asking for a second sign on that one building.
811 We would be allow a third sign on another building, but we're not even addressing that
812 or moving forward with it.
813

814 Ms. Dwyer - I'm just sort of looking at the totality of it. You have three

815 buildings and three signs, and you want to move one from one building to another.
816
817 Mr. Stevens - Yes ma'am.
818
819 Mr. Kirkland - Is the sign that you're going to move from the other building,
820 are you going to put one up that is identical to the other one that's already up on that
821 one side now?
822
823 Mr. Stevens - Yes sir, I believe it is 50 square, or maybe a little less than 50
824 square feet.
825
826 Mr. Kirkland - I went out on 64 yesterday, and you'd be hard pressed to
827 see that.
828
829 Mr. Blankinship - I think the existing sign is 50 square feet, and the one he's
830 requesting is 65, so it is a little bit larger, is that right?
831
832 Mr. Stevens - One second again please. I'm sorry, no, we reduced the
833 signages. It is my understanding that the sign that we are requesting for is going to be
834 reduced as well to the 50 square feet.
835
836 Mr. Blankinship - Okay, so the 65 is an older number.
837
838 Mr. Stevens - Evidently, yes sir.
839
840 Ms. Dwyer - I was confused by the pictures that were presented, because
841 there were four signs that were presented as being existing signs and recommended
842 new signs, so that's why I was trying to clarify that you really wanted just the 50-foot
843 sign.
844
845 Mr. Kirkland - You also have at least an eight-foot by eight-foot one on
846 Broad Street that says Genworth Financial, don't you?
847
848 Mr. Stevens - That is the sign at the entrance.
849
850 Mr. Kirkland - I was just trying to figure out what was another sign for
851 people to find the place.
852
853 Mr. Stevens - That's a monument, not a building sign.
854
855 Ms. Dwyer - So what are the dimensions of the sign you're requesting?
856
857 Mr. Stevens - It's roughly 32 feet in length, with an overall height, with the
858 logo at four feet 9 inches. The letters of Genworth Financial are at two feet four inches,
859 as far as the capitals, or the upper case letters.
860

861 Ms. Harris - The other signs that were there illegally, have they been
862 replaced?

863
864 Mr. Stevens - They have been removed. To my understanding, there are
865 no nonconforming nor illegal signs on the location; everything has been removed.

866
867 Mr. Blankinship - I believe that's correct.

868
869 Mr. Wright - So the purpose of this sign would be so the building would
870 be able to be seen from 64?

871
872 Mr. Stevens - Sixty-four and surrounding areas, yes sir.

873
874 Mr. Wright - Anything further you wish to present?

875
876 Mr. Stevens - It's my understanding that this consideration has been given
877 before by the Board, insomuch for a couple of signs at a couple of other locations,
878 where someone gave up something to be allowed in a different location or something.
879 I'm just asking or the same consideration here, and if we allow the sign, and but it
880 doesn't present, because of the ordinance reason, it doesn't effectively allow signage to
881 do what it does, and we have the ability to just change the location of the sign, I'd ask
882 the Board to consider it and grant it for us.

883
884 Mr. Wright - Any further questions of members of the Board? Is anyone
885 here in opposition to this request?

886
887 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
888 Nunnally, the Board **granted** application **A-90-2004** for a variance to install a second
889 sign at 6610 West Broad Street (Parcel 769-744-0752). The Board granted the
890 variance subject to the following conditions:

891
892 1. This variance applies only to the number and area of signs. All other applicable
893 regulations of the County Code shall remain in force.

894
895 2. [Added] Any additional attached signs for the three buildings shall be submitted
896 to the Board of Zoning Appeals for review and approval.

897
898 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

899 Negative: 0

900 Absent: 0

901
902 The Board granted this request, as it found from the evidence presented that, due to the
903 unique circumstances of the subject property, strict application of the County Code
904 would produce undue hardship not generally shared by other properties in the area, and
905 authorizing this variance will neither cause a substantial detriment to adjacent property
906 nor materially impair the purpose of the zoning regulations.

907
908 **A-91-2004** **EUGENE M. WASHINGTON**, II requests a variance from Section
909 24-95(b)(4) to build a one-family dwelling at 11 Lowell Street (E. S.
910 Read) (Parcel 817-725-4081), zoned R-2A, One-family Residence
911 District (Varina). The total lot area requirement is not met. The
912 applicant has 9,776 square feet total lot area, where the Code
913 requires 10,000 square feet total lot area. The applicant requests a
914 variance of 224 square feet total lot area.

915
916 Mr. Wright - Does anyone else desire to speak with reference to this
917 matter? Would you raise your right hand and be sworn please?
918

919 Mr. Blankinship - Do you swear that the testimony you are about to give is the
920 truth, the whole truth, and nothing but the truth, so help you God?
921

922 Mr. Washington - I do. Eugene M. Washington II. I purchased a house at 9
923 Lowell Street probably about eight months ago. With me purchasing a house, I
924 purchased a vacant lot beside it. The house right now I'm using as a rental-type home,
925 and the vacant lot I plan on building a single-family dwelling to sell. That piece of
926 property right there was zoned R-2A, which means I had to have 10,000 square feet
927 minimum building footage on that lot. When we did the survey on it, it came up to being
928 9,776 square feet of total lot size. I'm filing for the variance as far as the 224 feet that I
929 need in order to build that house on this lot. The house that I'm going to put on it is
930 going to be a 46 by 26, which will be 1196, in this area here.
931

932 Mr. Nunnally - Are you going to build that house for yourself, Mr.
933 Washington?
934

935 Mr. Washington - No sir, I'm going to build it to sell.
936

937 Mr. Nunnally - Are you going to build it, or are you going to sell it to a
938 builder?
939

940 Mr. Washington - I'm the builder. I purchased the house and the lot.
941

942 Mr. Nunnally - Is that cinder block on the north side of the lot, is that on
943 your lot, or is that on the
944

945 Mr. Washington - That's my construction sign right there. The lot right there,
946 from that sign to where the shrubbery is in the back corner, that's the back corner of it,
947 facing it at the right far corner, and then it comes towards the left.
948

949 Mr. Nunnally - And all those trucks back there belong to Moore, is that right,
950 who runs that repair service? There's trucks parked all the way back on Lowell Street.
951

952 Mr. Washington - Right here where we can see?

953
954 Mr. Nunnally - No, it's up there on Nine Mile Road.
955
956 Mr. Washington - Where the lawn mower shop is? Right there on the corner,
957 yes sir. The proposed lot is what you have in the green right there. That's the rental
958 house that I have right there beside it. The property line stops right on, right now the
959 Newbridge Church put a road right through the edge of my property, going through that,
960 going to the church where they put the addition in there. That's my far left-hand lot line.
961
962 Ms. Harris - So those cars that we were seeing in the background, they
963 were cars from the church's parking lot?
964
965 Mr. Washington - Yes ma'am, where they're doing the new construction. You
966 can almost see the grass line in there where the lot actually is.
967
968 Ms. Dwyer - So this subdivision was platted in 1890, and these two lots
969 were laid out at that time, is that correct? So this is an old subdivision? And then
970 subsequently it was zoned, probably originally, to the 2A classification which required a
971 larger area.
972
973 Mr. Washington - Yes ma'am, yes ma'am.
974
975 Mr. Wright - Mr. Washington, did you say you purchased this property?
976
977 Mr. Washington - Yes sir.
978
979 Mr. Wright - In your statement, Mr. Blankinship said it was inherited. I
980 didn't understand. When did you purchase it?
981
982 Mr. Washington - I purchased this property probably about eight or nine
983 months ago. No, this was not inherited.
984
985 Mr. Blankinship - We must have misread something in the record.
986
987 Mr. Wright - Nine months ago?
988
989 Mr. Washington - Yes sir, I purchased the house and the lot together. When I
990 first got it, I had to come down to the County, because the County had put both lots
991 together. Then I had to come down here and get it resurveyed and get a new GPIN
992 number for it, because what they had done was set the house in the lot and put them
993 together, and then I had to go back and get the new GPIN number and get it re-
994 surveyed.
995
996 Mr. Wright - Were the lots separate? Did you buy them as separate
997 properties?
998

999 Mr. Washington - No, all of it came together when I bought it all.
1000
1001 Mr. Wright - Mr. Blankinship, are any other lots in this area as small as
1002 this?
1003
1004 Mr. Blankinship - We go back to the site map, and you can kind of get a sense
1005 of how close together the rest of the houses are coming down the street there. It looks
1006 like they're typically built on two lots.
1007
1008 Mr. Wright - But the Code requires 10,000 square feet per lot?
1009
1010 Mr. Blankinship - Yes sir.
1011
1012 Mr. Wright - Are there any other houses on a less than 10,000 square-
1013 foot lot, do we know?
1014
1015 Mr. Blankinship - I should be prepared to answer that, but I'm not.
1016
1017 Mr. Nunnally - A lot of those lots on that street are mighty close.
1018
1019 Mr. Washington - I notice there's one right up there catty-cornered, lot 12 right
1020 there; that's a real small lot right there.
1021
1022 Mr. Wright - So this would be in keeping with whatever the other lots that
1023 are there, the other houses on that street, that's my point.
1024
1025 Mr. Washington - Yes, I'll stay within the Code as far as the setbacks on the
1026 front yard, back yard, and side yards, that's no problem. I was just basically filing for the
1027 variance so I could build.
1028
1029 Ms. Harris - I have a question. Have you thought about putting one
1030 house on those two lots? I'm familiar with the section, and they're very narrow lots.
1031
1032 Mr. Washington - There's a house already on

1033
1034 Ms. Harris - I know. I'm talking about tearing it down and building a nice
1035 home out there.
1036
1037 Mr. Washington - To be honest with you, the money that I've put in this house
1038 already, as far as renovating it, I can't tear it down.
1039
1040 Mr. Wright - So you've renovated the house that's already there?
1041
1042 Mr. Washington - Yes sir, the existing house now.
1043
1044 Mr. Wright - How many square feet are in that house?

1045
1046 Mr. Washington - The existing house is 1262.
1047
1048 Mr. Wright - The new one would be what?
1049
1050 Mr. Washington - 1196, three bedrooms, two full baths.
1051
1052 Mr. Wright - Any other questions from members of the Board? Anyone
1053 here in opposition to this case?
1054
1055 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
1056 Kirkland, the Board **granted** application **A-91-2004** for a variance to build a one-family
1057 dwelling at 11 Lowell Street (E. S. Read) (Parcel 817-725-4081). The Board granted
1058 the variance subject to the following conditions:
1059
1060 1. This variance applies only to the public street frontage requirement. All other
1061 applicable regulations of the County Code shall remain in force.
1062
1063 2. Connections shall be made to public water and sewer.
1064
1065 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1066 Negative: 0
1067 Absent: 0
1068
1069 The Board granted this request, as it found from the evidence presented that, due to the
1070 unique circumstances of the subject property, strict application of the County Code
1071 would produce undue hardship not generally shared by other properties in the area, and
1072 authorizing this variance will neither cause a substantial detriment to adjacent property
1073 nor materially impair the purpose of the zoning regulations.
1074
1075 **A-92-2004** **GARY L. PRICE** appeals a decision of the Director of Planning
1076 pursuant to Section 24-116(a) regarding the property at 9490
1077 Osborne Turnpike (Parcel 806-673-1937), zoned A-1, Agricultural
1078 District (Varina).
1079
1080 Mr. Wright - All persons who would speak with reference to this case,
1081 please stand? Would you raise your right hands and be sworn please?
1082
1083 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1084 truth, the whole truth, and nothing but the truth, so help you God?
1085
1086 Mr. Chisholm - I do. James A. Chisholm. I'm the attorney for Mr. Price.
1087 First of all, I'd like to make it clear that this appeal does not in any way, whatsoever,
1088 involve, or is in no way related to the prior case that was heard before the Board, the
1089 ruling entered on September 1, 2003. Reading that letter, the last paragraph says that
1090 "no assumption should be made about the compliance with other sections of the Code,

1091 relative to the granting of this variance. This appeal involves 24-108, which requires the
1092 issuance of a building permit, and it also involves the 24-94, which regulates the side lot
1093 line, front and rear lot line setbacks, and also 24-95(i)(3), which deals with the side lot
1094 line requirements for anything over the rear yard. I don't know really where, I think the
1095 problem that started here was someone, I don't know whether it was Mr. Bowden or the
1096 County, got the wrong impression that this was a farm and a farm structure, and
1097 therefore no building permit was required. This went on for a few months, and then it
1098 was kind of up in the air, and it was clearly decided that this was not a farm. Mr.
1099 Blankinship, in the minutes, addressed this issue. There's no farming going on. The
1100 only mention of anything that could even remotely relate to the issue of farming, was
1101 that Mr. Bowden indicated in the minutes that someone was cutting the grass or the hay
1102 on the front of the lot, and you said the lot apparently, so an acre or two out there is
1103 such that there's only one place on it where he can even put a stable, according to him,
1104 so the topography, I don't know how they get tractors on it to cut the hay. First I'd like to
1105 go to the definitions in the County Code, the Zoning Ordinances. There are certain
1106 things that I think are important. The word "shall," as used in the Code, basically states
1107 that "the word 'shall' is mandatory, not directatory," so that's Code Section 24-3. The
1108 definitions are the very first one. The word "shall"; it's opposition that we don't have any
1109 options here; it is mandatory.

1110
1111 Mr. Wright - I'm having difficulty understanding what your position is.
1112 Would you state what your position is for the grounds for your appeal. I don't know
1113 whether I asked you sir, to identify yourself for the record; I don't believe I did; would
1114 you identify yourself.

1115
1116 Mr. Chisholm - I did, sir, James A. Chisholm; I'm attorney for Mr. Price. Mr.
1117 Price is concerned about the fact that no building permit was ever issued. In the prior
1118 minutes, Mr. Bowden indicated that this stable was built approximately three feet from
1119 the side property line in the front yard. Mr. Price has a well that's very close to it; there
1120 is a slope down to the well. The minutes of the prior meeting reflect the fact that the
1121 stable is built up at the highest point. It's approximately three feet from the property
1122 line; the Code clearly says it should be twenty feet from the property line.

1123
1124 Mr. Wright - We've heard that case and ruled on that case.

1125
1126 Mr. Chisholm - This issue involves 24-10(b). Please take a look at 24-10
1127 (b).

1128
1129 Ms. Dwyer - I thought this was an appeal, Mr. Chairman, from the early
1130 decision issued by the Board.

1131
1132 Mr. Blankinship - It's not an appeal of that decision; it's an appeal of a decision
1133 by the Director of Planning that the stable does not have to comply with 24-95(i)(3), that
1134 it does have to comply with 24-95(i)(2).

1135
1136 Mr. Wright - This is not an appeal from the decision of the Board; that

1137 was my point.

1138

1139 Mr. Chisholm - This has nothing to do with the prior case. If you'll look at
1140 24-10 distance requirements (b), a variance was granted insofar as the distance
1141 requirement of 200 feet from my client's house. If you look at the last sentence, in (b), it
1142 says that "any buildings or enclosures shall further meet the minimum side and rear
1143 requirements for other permitted uses in the district in which located. So the minimum
1144 side requirements for other permitted uses in this district are set forth in 24-94. Just
1145 because he was given the authority or granted a variance to put the structure in the
1146 front yard, 170 feet from my client's house, he was not given a variance to put it three
1147 feet from the property line when the Code says 20 feet. He was not given a variance to
1148 violate the front setback requirements. He was not given a variance to raise sheep up
1149 there. He was not given a variance from Code Section, the provisions of 24-94. Please
1150 take a look at the two pertinent sections here are actually in 24-95(i)(2) and 24-95(i)(3),
1151 because they modify 24-94.

1152

1153 Ms. Dwyer - May I stop here to clarify something, because it wasn't clear
1154 to me when I first read the staff report. Previously the Board granted a variance for 24-
1155 10 and 24-95(i)(2), so that's not what we're considering here? What we're considering
1156 here is this application's assertion that 24-95(i)(3) applied to this case. The staff
1157 decided that 24-95(i)(3) does not apply, so this application now is appealing that
1158 decision? The only thing before us is whether 24-95(i)(3) applies to this case. Is that
1159 correct?

1160

1161 Mr. Wright - That's what I understand. If 24-95(i)(3) applies, what would
1162 be the consequence of that, Mr. Blankinship?

1163

1164 Mr. Blankinship - Before I answer that question, let me also introduce Mr.
1165 Roger Wiley, who is your legal counsel this morning. Since these parties are already
1166 involved in a suit involving the Board, we kept Hefty and Wiley as your legal counsel. If
1167 you have legal questions, Mr. Wiley can help with those. As to your question, what
1168 would be the consequences if the Board overturned the Director's decision, the stable
1169 would then be in violation of this Section 95(i)(3). The County would notify the Bowdens
1170 that there is a violation that we were not previously aware of, I guess, and I anticipate
1171 that he would apply for a third variance, once again to leave the same structure in the
1172 same location.

1173

1174 Mr. Wright - Now I think we've clarified the issue a little better.

1175

1176 Mr. Chisholm - It's very clear that 24-10 does not set forth what the side lot
1177 line requirements are for either the front yard or the back yard. It does set forth the
1178 distance requirements from other structures, but it makes reference to, it says it shall
1179 meet the minimum side yard requirements for other permitted uses in the district in
1180 which located, so we have to go look at 24-94 as modified by 24-95. If you don't look at
1181 24-95, 24-94 says in (a)(1), the minimum side lot line requirements are twenty feet.
1182 Then if you go look at 24-95 (I)(2), which the Planning Director says for some reason,

1183 he says applies.

1184

1185 Ms. Dwyer - But that's not an issue today, because as I understand it, the
1186 Board has already granted a variance for that, and that's not an issue today.

1187

1188 Mr. Chisholm - It is an issue today. The variance granted only applied to
1189 putting the property in the front yard and meeting the distance requirements as set forth
1190 in 24-10(b). 24-10(b) also says that the structure shall also be required to meet the side
1191 lot line requirements as imposed by the other pertinent sections of the zoning
1192 requirements.

1193

1194 Mr. Wright - Now what do you say to that, Mr. Blankinship, if it clearly
1195 states that?

1196

1197 Mr. Blankinship - It's the Director's position that the side lot requirement is
1198 found in 24-95(i)(2), which is the setbacks for accessory structures in the rear yard of a
1199 one-family dwelling. This structure is not in the rear yard, but it is an accessory
1200 structure to a one-family dwelling, and the Director's position is that of the three
1201 subsections of 24-95(i), the first one applies to any yard, the second one applies to
1202 accessory buildings to one-family dwellings, and the third one applies to everything other
1203 than accessory structures to one-family dwellings. We believe that 95(i)(2) is
1204 applicable, and 95(i)(3) is not applicable.

1205

1206 Mr. Wright - Mr. Chisholm, proceed.

1207

1208 Mr. Chisholm - It requires a rather careful reading of these Code Sections,
1209 but 25-95(i), one, talks about projections of portions of buildings in the yards, so it really
1210 has nothing to do with this. Then we go to 2, and it says "in a rear yard." When you're
1211 talking about in a rear yard, we're also talking about occupy or project into these
1212 minimum side lot line requirements, so we start off with the side lot line requirements
1213 are twenty feet all the way around the property. Well, on the side lot lines, fifty in the
1214 front, fifty in the back. This Code says, if you have this structure in the rear, you can put
1215 it three feet off the property line. I don't think anybody here today would dispute the fact
1216 that it's not in the rear yard. If it's not in the rear yard, then the rear yard sideline
1217 setback requirements are not applicable. If anybody would have taken the other
1218 position, just because it's in the front yard, then maybe the front yard setback
1219 requirements don't apply. I was told over a period of two months, that this was a
1220 violation, and something would be done about it, and I wrote the Planning Director, and
1221 it took him over two months to respond, and he wrote back some letter, and if I spent
1222 the rest of my life reading it, I wouldn't be able to understand it.

1223

1224 Mr. Blankinship - That's the May 18th letter that's in your packet.

1225

1226 Mr. Chisholm - What applies is 24-95(i)(3), and it says location in any yard,
1227 unless otherwise provided, so we're in a rear yard, we have three feet, we're not in a
1228 rear yard. It says "shall," doesn't say "may," observe the same required minimum yards

1229 for the principal use building or structures, except for the following. There are no
1230 exceptions that are pertinent.

1231
1232 Ms. Dwyer - I'm trying to understand your position. It sounds to me like
1233 you're saying, if the Board has granted a variance so that paragraph 2, which normally
1234 would apply, does not apply, because the structure's no longer in the rear yard;
1235 therefore, what does apply, in sort of that vacuum, you're saying paragraph 3 applies.

1236
1237 Mr. Chisholm - What if you had a 20-foot rear lot setback requirement, the
1238 rear yard? If you are allowed to put it in the front, would you be able to put it twenty feet
1239 from the front lot line – no. If you put it in the front yard, the Code provisions, unless the
1240 Board grants a variance to the contrary, the Zoning Administrator's required to impose
1241 the pertinent Code sections, and it's 20 feet; there's no question about it; it's black and
1242 white. Unless otherwise provided, it also says buildings in the back yard can't be more
1243 than fifteen feet in height, but we don't really care about that. I don't think there's any
1244 provision regarding the front yard. My client's concern is that it's sitting up on the
1245 highest point, it slopes away, the water runs down on his lot, he's been told that he may
1246 have to dig another well on the other side of his house, or grout his well down ten or
1247 twelve feet, and take water samples. He's also concerned about, it is a nonconforming
1248 structure under this Code Section, and if he ever goes to sell this property, he can give
1249 a disclosure statement, which tells whether he knows there are any problems, or he can
1250 just say nothing and hope nobody notices, in which case, or he could give a disclosure
1251 statement, in which he would have to disclose the violation to anybody buying his
1252 house. It says location in any yard for other permitted uses, unless otherwise provided.
1253 The Code says back yard, three feet, and we have to go and see what it is for the front
1254 yard or anything other than the back yard, and it's twenty feet. (It) shall observe the
1255 same required minimum yards for the principal use.

1256
1257 Mr. Wright - Is it your position that if this stable were twenty feet from the
1258 line, you wouldn't be here?

1259
1260 Mr. Chisholm - That is correct.

1261
1262 Mr. Wright - What difference would that make with respect to your client's
1263 digging a well and all that kind of stuff?

1264
1265 Mr. Chisholm - The other problem is that we want Mr. Bowden to get a
1266 building permit because we hope the County will address the issue of the proximity of
1267 the well to the stable and any of these other issues and review of the plans and the
1268 location.

1269
1270 Mr. Wright - How far is it from the line now?

1271
1272 Mr. Chisholm - In the minutes they mentioned three feet or less.

1273
1274 Mr. Wright - So another seventeen feet, you say, would make a lot of

1275 difference with respect to that location and the well and whatever you're talking about?
1276
1277 Mr. Chisholm - We don't know. Mr. Price will testify what the Health
1278 Department told him. It may need to be further than that, due to the fact that the slope
1279 of the land, and the water running to his house, and the proximity of the well to the
1280 stable, it may need to be further than that.
1281
1282 Mr. Wright - Why wasn't this brought up at the hearing?
1283
1284 Mr. Chisholm - We didn't know that it was three feet from the property line
1285 until we came to the hearing.
1286
1287 Mr. Kirkland - How far is the dwelling that this gentleman lives in to this
1288 stable?
1289
1290 Mr. Blankinship - It's approximately 175 feet.
1291
1292 Mr. Kirkland - How far is the well to this stable?
1293
1294 Mr. Chisholm - The well is adjacent to the house on the side closest to Mr.
1295 Bowden's property, probably 170 to 200 feet. We haven't measured it.
1296
1297 Ms. Dwyer - Mr. Blankinship, given that the Board granted a variance
1298 from 24-10 and 24-95(i)(2), which eliminates the 200-foot requirement from the nearest
1299 residence and allows the stable to be in the front yard. Given that was done, what is the
1300 staff's position about what rules then would govern where this stable could be located.
1301 Does the granting of the variance from those two Code sections mean that the stable
1302 can go anywhere, or are there other Code sections that would then restrict the location
1303 of the stable?
1304
1305 Mr. Blankinship - The Director's position is that 24-95(i)(2) regulates
1306 accessory structures to one-family dwellings. So all of the restrictions in 24-95(i)(2)
1307 would apply in this situation. One of those is that the structure has to be in the rear
1308 yard. This one is not, and that's why the variance was required. It has to be at least ten
1309 feet from the principal structure; it has to be at least six feet from any other accessory
1310 structure; it has to be ten feet from any street or alley, and has to be three feet from the
1311 side or rear lot lines.
1312
1313 Mr. Wright - When the Board approved the variance, we approved the
1314 location of the stable at that time.
1315
1316 Mr. Blankinship - Yes sir.
1317
1318 Mr. Wright - It was specifically stated and had to be constructed where it
1319 supposedly was.
1320

1321 Mr. Kirkland - Plus other conditions, trees.
1322
1323 Mr. Chisholm - The distance requirement is what was approved; no mention
1324 was made of Section 24-94 or 24-95, and 24-10(b) clearly makes reference to these
1325 other Code sections. They clearly apply. The setback requirements are not set forth in
1326 24-10(b) because it makes reference to these other sections. How you can say that just
1327 because you grant a variance to allow somebody to put a stable in the front yard, and
1328 you grant a variance to allow it to be 175 feet from the nearest structure, do you read
1329 between the lines and say that also means you can put it anywhere else on the lot you
1330 want? You can put it up on the front lot line; you don't have to have any setback. What
1331 does apply?
1332
1333 Mr. Wright - At the time the Board grants a variance, it puts conditions on
1334 the granting of the variance, and we specifically said that the stable had to be located
1335 where it was shown.
1336
1337 Mr. Blankinship - It specifically lists 24-95(i)(2) as one of the two sections of
1338 the variance.
1339
1340 Mr. Chisholm - Only because (i)(2) says it applies to it being in the rear of
1341 the yard.
1342
1343 Mr. Blankinship - Right.
1344
1345 Mr. Chisholm - Well, 24-10(b) requires reference to 24-94 and 24-95, and if
1346 you. All I'm asking is that you ladies and gentlemen think a little about the ordinances,
1347 and it's ever so clear what applies. The rear setback line is, it's allowed to protrude into
1348 the twenty-foot side lot line requirements to the extent that it's three feet off the property
1349 line. That's rear; rear is not front. There is a good reason for that. In the back, nobody
1350 really cares where the structure is, and nobody's going to be back there, or it's not going
1351 to be right adjacent to my client's yard right next door.
1352
1353 Mr. Wright - If it's not permitted in the front yard, then there's no set
1354 requirement of where it would be in the front yard.
1355
1356 Mr. Chisholm - It's not permitted? But the variance was granted.
1357
1358 Mr. Wright - I know the variance granted that, but what reference do you
1359 have that says it's got to be twenty feet from the side line in the front yard? It seems to
1360 me that it's begging the issue.
1361
1362 Mr. Chisholm - I don't think it could be more clear. Please take a look at 24-
1363 10 again, Section B. It says, last sentence, "any buildings or enclosure shall further
1364 meet the minimum side yard requirements for other permitted uses in the district in
1365 which located, and shall further meet. If it doesn't meet the minimum side line
1366 requirements for structures in the front yard. You grant a variance, you allow it to be put

1367 in the front yard, you grant a variance that allowed it to be put 175 feet from my client's
1368 house. I wasn't at that meeting; I read the notes later. I said, "Gary, it's three feet from
1369 your property line.
1370

1371 Mr. Wright - What are the requirements that it refers to for a structure,
1372 accessory structure, in the front yard? There is no such requirement in the front yard. It
1373 doesn't permit it in the front yard; therefore it doesn't set forth any requirements there.
1374

1375 Mr. Chisholm - All you have to do is go to A-1 District, 24-94, and it says
1376 minimum side lot. The minimum side lot line on A-1 is twenty feet all the way around
1377 the property. It's 24-94 in the A-1 District; it's both side lot lines. This section says if
1378 you're in the rear, you're allowed to protrude within the minimum side lot line
1379 requirements to the extent where you're three feet from the property line; that's in the
1380 rear. If you look at 24-94 and then the regulations under A-1 District, it regulates
1381 everything except to the extent otherwise modified. It's modified by 24-95(i)(2) if it's in
1382 the rear. If it's in the front, it's not modified. And the intent is, if you have eight acres,
1383 and you have two houses right next door, big massive houses, half million dollar houses
1384 plus, whatever, if you're going to allow them to put it in the front yard, then why do we
1385 ignore the side lot line requirements?
1386

1387 Ms. Dwyer - Mr. Blankinship, is the stable in the side yard?
1388

1389 Mr. Blankinship - No, it's in the front yard.
1390

1391 Mr. Chisholm - It's in the front yard.
1392

1393 Mr. Wright - This is a peculiar piece of property, if you look at the
1394 configuration of the property.
1395

1396 Mr. Chisholm - You have side lot line requirements for the front yard; you
1397 have them for the back, and they're twenty feet, but if you look closely at this Code
1398 Section, it says that accessory structures can protrude into the twenty-foot setback
1399 requirement for the rear yard up to a minimum of three feet from the property line, but
1400 it's not in the back yard. So 24-10(b) makes reference to other sections of the Code
1401 which apply. So we've got to look at the other sections of the Code, and they apply.
1402

1403 Ms. Dwyer - Mr. Blankinship says that the stable is not in the side yard,
1404 so even if your argument is true, then the side yard requirement would not apply.
1405

1406 Mr. Chisholm - Excuse me, but what do you mean by not in the side yard?
1407

1408 Mr. Blankinship - It's in the front yard.
1409

1410 Mr. Chisholm - We're talking about side lot line setback requirements. It's in
1411 the front yard, but the side lot line requirements apply. It has to be twenty feet off of the
1412 side lot lines. Mr. Blankinship, would you speak to that?

1413
1414 Mr. Blankinship - I'm not sure how to reply to that; that thought hadn't really
1415 occurred to me. Lee, move the hand down a little bit; do you know where the stable is?
1416 A little bit further toward the street from there; that's where the stable is, and it's three
1417 feet from that side lot line. The stable stands right between Mr. Price's house and
1418 Osborne Turnpike.

1419
1420 Mr. Chisholm - The point is, if you're talking about side yard, it's not really a
1421 side yard. The side yards on the right-hand side runs from the front to the back; on the
1422 left-hand side, it runs from the front to the back; that's a side yard, but you have side
1423 yards in the front yard, and you have side yards in the back yard, or side line setback
1424 requirements for the front and the back, and it's not met for the front. The problem for
1425 this thing is, everybody wants to make Mr. Price a victim. Perhaps Mr. Bowden wasn't
1426 clearly informed as to what he should do, and we sympathize with him. He came to my
1427 client and asked if he had a problem with this. My client said no. He didn't tell my client
1428 it was a violation. My client didn't know it was 175 feet from his house. My client didn't
1429 know it was nonconforming, and that was in the early stages, and if you read the
1430 minutes, from that point on, everything is kind of in limbo. We don't really have any
1431 decision, one way or another, but Mr. Bowden just keeps plowing ahead and builds
1432 between February and May, or for a couple of months, and then after he's gone forward
1433 with this process, then he's told it's nonconforming. I don't think my client should have
1434 to move his well, and it couldn't be any more clear that a building permit is required, but
1435 everybody seems to want to do everything in the world to accommodate Mr. Bowden.

1436
1437 Mr. Wright - Do you have any specific professional opinion that the well
1438 has got to be moved? Do you have anything to present to us on that? We need to get
1439 on with the opposition, because we've got other cases to hear, and I think we've heard
1440 everything you need to say.

1441
1442 Mr. Chisholm - On the uniform building code, let's see if I can find the
1443 section real quick, the Health Department faxed Mr. Price. Why don't you let the
1444 opposition speak, and I'll find it, unless Mr. Price wants to speak.

1445
1446 Ms. Price - Good morning. My name is Annette Price, and I'm here to
1447 speak for Gary Price, my brother-in-law. I talked last week with Mr. Blankinship about
1448 the problems that we're seeing with this barn structure in front of Mr. Price's house.
1449 Number 1, I'm surprised that you haven't gone out and taken some pictures of the
1450 actual structure itself. These houses that you see along this section of Osborne
1451 Turnpike are in the range of \$700,000 homes; they're very nice houses, well kept. The
1452 barn structure itself is not attractive. Maybe when it was put up, it was a little newer
1453 looking; within the time space here, it's starting to weather, the back of it being T-111 or
1454 plywood, what have you, is starting to turn brown. It's not been painted; it's just not a
1455 good view from your front porch, and as they were saying, where this is sitting, is a view
1456 from Mr. Price's front porch. I understand that when the barn was put up, and it is a
1457 pole barn, it is not a foundation structure, that he did sign a variance at some point, in
1458 good faith, that this pole barn structure would be screened from the back, and that was

1459 maybe more than a year ago that we were looking that this would be done. That has
1460 not been done, as of yet. So you're looking at a year's worth of road for a screen
1461 across the back of this that may have grown, hidden this from his house, but it's still not
1462 there now.

1463
1464 Mr. Wright - Have you notified the Planning Office of this, because this
1465 should have been done.

1466
1467 Mr. Blankinship - The reason they haven't planted the landscaping yet is
1468 because they haven't finished the litigating, the Price's appeal of their variance yet, or
1469 they just like a few weeks ago finished that litigation. Actually, no, Mr. Price had said
1470 that he was going to appeal the Circuit Court's decision to the Supreme Court, so I don't
1471 know whether that appeal was filed or not, but they may not be finished litigating yet.

1472
1473 Ms. Price - Also, when I was talking with Mike Hill at the County, and he
1474 was pulling out different things that were telling me why that shouldn't have been built
1475 there in the first place; I know that there was a concern that Mr. Price's garage on the
1476 other side of his house, that other small garage, that might have been in violation too,
1477 but Mr. Price bought that house with that garage already built there, and that might have
1478 been grandfathered into that house a long time ago, so that shouldn't have come up as
1479 being a concern as to where the position of that garage is, as opposed to the position of
1480 where that barn is in front Mr. Price's house and alongside the Bowden's house. Also,
1481 where the Bowden's property sits, as you can see, these properties are all L-shaped;
1482 They come off from the side of Osborne and then flow down to the houses. The two
1483 other pieces of property that sit in front of Mr. Bowden's property, as you can see, they
1484 do not contain houses, and the view that he has from his front porch is across one piece
1485 of property, and then another person's property, and then they are vacant. He has a
1486 straight clean shot of somebody else's property through his property. If somebody else
1487 came out there and dropped a barn in his front yard, I don't think it would be a very nice
1488 thing to do, or go unnoticed.

1489
1490 Mr. Wright - I hate to interrupt you; we have a long agenda today, and I
1491 don't think what you are telling us is pertinent to the issue here. We have a legal issue
1492 of whether or not this ordinance applies. Do you have anything to say with respect to
1493 that?

1494
1495 Ms. Price - As I have been talking with the County, they told me that
1496 with the variance that was signed, that everything should have been screened; it hasn't
1497 been.

1498
1499 Mr. Wright - But he's already addressed that; they're waiting to get these
1500 appeals satisfied before they move forward, because if they lose on appeal, they'll have
1501 to tear it down.

1502
1503 Ms. Price - Yes sir, that was just my suggestion today; maybe the barn
1504 could be moved to the other side yard of the house where it wouldn't be out of the

1505
1506 Mr. Wright - They don't have any control over that; that was caused by
1507 Mr. Price's appeal. That's not the issue that's before us today. I'm trying to get to the
1508 issue, so that we can get on with the case.

1509
1510 Ms. Price - I understand that, sir, but that was just only my point today.
1511 Thank you so much.

1512
1513 Mr. Wright - Can we hear from the opposition?
1514

1515 Mr. Johnson - Good morning, ladies and gentlemen. My name is James
1516 Johnson; I'm a friend of Mr. Bowden's. I'm going to help him; I'm a little surprised that in
1517 all due respect to Mr. Chisholm, he began his presentation by saying that this had
1518 nothing to do with the previous issue that was heard before the Board, and yet I don't
1519 know how many times he's sited "if you look at the minutes," or kept reciting things. The
1520 other issue before the Board has everything to do with this. This Board approved the
1521 location of this barn at this particular place. That was the approval of it. If you look at
1522 the ordinance issue approval of this, it stated the current section in question was
1523 approved, the location of it.

1524
1525 To briefly address the issue of screening, Mr. Blankinship is absolutely, precisely
1526 correct; the only reason we haven't put any screening up is because Mr. Price won't let
1527 us. The Board approved six trees; we agreed to do that. Mr. Blankinship wanted 41
1528 trees along the whole boundary line. I'm sorry, Mr. Price, I apologize. So this issue is
1529 appealed by Mr. Price; he lost there, and now he's bringing, basically the same issue.
1530 You can hear it from his witnesses; that's what they're concerned about, not the fact
1531 that the barn is whether it's three feet off the line, or twenty feet off the line, and I submit
1532 to you that if you approve this today, they'll probably come up with something else,
1533 because the whole issue here is they don't want the barn there.

1534
1535 Mr. Wright hit the nail right on the head. It's the unusual configuration of this piece of
1536 property that's causing all this problem. They can't put it in the back yard. So this
1537 Board allowed them to put it in the front yard. When you look at the property and see
1538 that the barn is this black place right there, the property line right behind there, I
1539 suppose, technically is a side line, but it's almost the same as a back line, because
1540 when you look at the whole piece of property, it's only just a very short back property
1541 line, down river. If you look at the whole piece of property, you're talking about a very,
1542 very short piece of back property, and because the configuration is where it's located,
1543 we take the position, and Mr. Silber knew exactly what he was talking about, when he
1544 said that part two applies. This is a three-foot setback; this Board considered it in the
1545 whole totality of the situation. Ms. Dwyer mentioned a few minutes ago, look at the
1546 totality of the picture here, and the Board approved that location. They didn't say
1547 anything about any more setbacks because the building was there when the Board
1548 approved it.

1549
1550 I can understand Ms. Price 's concern about the condition of the barn, but Mr. Bowden

1551 has not been able to do anything to that barn for almost eighteen months, because Mr.
1552 Price has got this thing tied up in litigation. We can't do anything to it; it's just sitting
1553 there. This Board approved it; the Circuit Court approved it, and now he's coming back
1554 and saying, "well if that isn't good enough, how about something else?" "How about
1555 let's go to Section 3 and see if that doesn't apply." Section 3 doesn't apply, just like Mr.
1556 Wright said, because there's no provision for that in this code section.

1557
1558 Mr. Bowden - Good morning, ladies and gentlemen. My name is Edward
1559 Lanier Bowden, Jr. The first time I was here was for the variance. Maybe to break the
1560 ice, first of all, I don't have any goats. I do have a Jack Russell with some Australian
1561 Sheepdog in him, keeps the dogs off of my property. I wanted to address the issue on
1562 the well real quickly, because that could be a concern. It would be a concern of mine. I
1563 have my plat, approved by the County; we can look at it up here, but you can see my
1564 drain lines run closer to his well than where his horse is living in this stable. My
1565 property, I paid a ton of money for it; it was split up as an old cow pasture, and I got the
1566 little piece of the pie; Gary's got 27-28 acres, whatever you've got over there, I don't
1567 know, but I know he's got 3-4-5 times what I've got. If he wants to regrout his well,
1568 because I spoke to the previous owner, who was O. B. Meade, who I bought the
1569 property from, and we addressed that. I think there might be two wells on that property,
1570 or he was thinking about drilling another well. The grouting of it is something he might
1571 have to maintain, I don't care where it is. When a well gets that old, maybe you've got
1572 to regrout it, I don't know.

1573
1574 Certainly we need to look at the topo, which was brought up in the minutes, of the last
1575 meeting, and when they keep telling you that this barn is flushing down on that property,
1576 I don't have to talk the talk, I can walk the walk with this. You want to put it up there and
1577 look at it. This barn has not got a problem, I know, and I can't finish it. I've got two
1578 loads of topsoil and stonedust that's coming in, to try to get it to where this water that's
1579 running off of his crown, which is right on his topo now, is running into my barn. I tried
1580 to do, I asked Mr. Price, and we're not going to go over that again; he had no problem
1581 with it; it's your property, and you can do what you want to with it. The reason the barn
1582 looks in that terrible condition, I have three things here. First of all, I sent Green Spaces
1583 over, you know when I got the variance applied; by September 12, which I know I sent it
1584 over there. September 1 we finally got the approval from the County saying that, but we
1585 had to buffer. This lady goes over, this is a letter from her where she suggested what to
1586 do. Mr. Price said that wasn't acceptable, so she left. She still calls me. I'm going to
1587 cut this off, because I know you want to get out of here. This is 2003, September 12, so
1588 I was ready to buffer, had the lady hired to do it; they wouldn't let me do that.

1589
1590 Then I get a gag order from the lawyer; this is a cute one; I can't talk to Mr. Price now. I
1591 can't talk to him; I can't say anything to him. I'm pleasant to him; I see him once in a
1592 while at the store or something, but I'm not supposed to direct anything, so I've lost
1593 communication. I want to finish the barn. We go to Circuit Court. That costs me; it's
1594 very expensive, and the hardship and stress this has put on my family and me, I'll
1595 probably be very cautious because of this. My blood pressure right now is ready to
1596 explode, so I'm going to shut up. I have another letter from; I had to stop, and I can't

1597 continue, so after the Circuit Court came and my approval, I asked my lawyer, “now
1598 what are you going to do next?” He said he’s got 21 days; they said they were going to
1599 take it to the Supreme Court, so I waited for like 24 days, and I finally called my lawyer
1600 and asked him what they were doing. He said “they’re up to something at the BZA;
1601 they’ve called it off, don’t do anything.” I’ve got the siding crew working next door; I
1602 want to finish this thing. When it’s finished, it will be very attractive. It’ll be more
1603 attractive than what he says is grandfathered in, which is completely false, his barn and
1604 his front yard. That’s not the issue here. That’s all I’ve got to say. I’m asking you to
1605 please stand by what you did in the first place and what the Circuit Court’s judgements
1606 decided in the case. Do you have any questions?
1607

1608 Mr. Wright - No questions. I think we’ve got the picture. That ends the
1609 opposition, and before we hear a short rebuttal, I want to ask Mr. Wiley if he has
1610 something to say on behalf of the County.
1611

1612 Mr. Wiley - Mr. Chairman, thank you. My name is Roger Wiley; I’m a
1613 partner in the firm of Hefty and Wiley. My partner, Bill Hefty, represented this Board
1614 during the court appeal that has just been mentioned. I would first clarify the status of
1615 that for you. The Circuit Judge did make a ruling from the bench, upholding the
1616 variance, but it’s my understanding that the final order incorporating that ruling has not
1617 yet been signed, so the 21 days for the appeal has not begun to run, and that’s why the
1618 case is not yet moving forward. I think that will probably happen shortly. I think Mr.
1619 Blankinship explained Mr. Silber's ruling on this better than I could possibly do, and I
1620 believe from your comments that most of you understand it pretty well. All I would say
1621 to you is that one could hope that the Zoning Ordinance might be worded a little more
1622 clearly to handle this kind of situation, but it is an unusual one because you have an
1623 accessory structure which your previous grant of variance has allowed to be placed in a
1624 location where such structures aren't ordinarily placed, and that's why the ordinance
1625 doesn't real clearly address the situation. I have looked at this and puzzled over it
1626 myself for a while yesterday, and I'm satisfied that Mr. Silber's interpretation is a
1627 reasonable application of the ordinance. I would not be prepared to say it's the only
1628 way you could apply it, and it may well be that what Mr. Chisholm is arguing is another
1629 reasonable application, but legally case law says that the interpretation by an
1630 administrative official whose job it is routinely to make these interpretations, is entitled to
1631 a presumption of validity. Given the fact that Mr. Silber's interpretation is a reasonable
1632 one and certainly not plainly wrong in my judgment, I would say that it's appropriate for
1633 this Board to uphold it.
1634

1635 Mr. Wright - All right sir, thank you.
1636

1637 Ms. Dwyer - Given that the ordinance didn't really anticipate the situation
1638 because it didn't expect these structures to be in the front yard to begin with, we are
1639 sort of in a no-man's land of trying to piece together, in the absence of that application,
1640 what then does apply. So it's possible to say that 24-10(b), which requires the side yard
1641 or, I guess, other limitations to apply, says that other limitations could apply to the
1642 location structures, so that one could interpret that then to mean that the stable would

1643 have to be twenty feet off the side yard.

1644

1645 Mr. Wiley - I think that's certainly another possible reading of the
1646 ordinance. What Mr. Silber is saying, I believe, is that the County's position has been,
1647 when you're dealing with a single-family dwelling, the location of accessory structures is
1648 governed by 24-95(i)(2), and I think that certainly is the consistent way the County has
1649 viewed that, and here you have a situation where you have taken a building that is
1650 subject to the requirements of that paragraph, and by your action in granting the
1651 variance, you've allowed it to be moved from the back yard to the front yard, although
1652 given the very strange shape of this lot, it's not even a typical front yard. What Mr.
1653 Silber is saying, is that, although you've allowed by your variance, that move from the
1654 rear to the front, the other requirements that would have applied in the rear yard
1655 continue to apply. I think that is certainly one logical way to look at it in this situation.

1656

1657 Ms. Dwyer - Other requirements meaning the twenty foot

1658

1659 Mr. Wiley - The other requirements in that paragraph, and I don't have it
1660 in front of me, but the distance to other accessory structures, the distance from the
1661 primary structure, etc.

1662

1663 Ms. Dwyer - But not the twenty-foot side yard

1664

1665 Mr. Wiley - But not the twenty-foot side yard -- that's what he's saying. I
1666 think, realistically, you have to look at this in a practical way too, and that is to say, well,
1667 even if we disagree with the zoning administrator's ruling on this and think that the
1668 twenty-foot side yard setback requirement does apply, given the history of this, you're
1669 going to simply get another application for a variance to allow the stable to be located
1670 where it is and has been all along, and that you're going to then come back and be
1671 faced with exactly the same considerations that applied to the previous one. That
1672 seems to me to be kind of a legalistic exercise that will simply draw this out without
1673 much purpose. Presumably, you're going to have the same view of that variance as you
1674 had of the variance moving it from the rear to the front. Adding that to what I think is
1675 already a reasonably logical position, that the Zoning Administrator is taking, I don't
1676 think you gain a whole lot by backing up and saying, "let's go through this exercise
1677 another time."

1678

1679 Ms. Harris - Does Mr. Price's consent to Mr. Bowden's request to erect
1680 the stable have any bearing on this issue, or was that in writing

1681

1682 Mr. Wiley - I'm not familiar with exactly what sort of consent there was
1683 addressed in the previous variance hearing, and it may have been a part of what you
1684 based your decision on at that time, so it could have bearing in that sense. I don't think
1685 that a consent in that type of situation would be legally binding, but it may well have
1686 been a part of why the Board granted the first variance.

1687

1688 Mr. Wright - All right. Thank you very much. We'll allow you a short

1689 rebuttal, Mr. Chisholm.

1690

1691 Mr. Chisholm - First of all, I don't think there's anything in the Code that
1692 says it's a presumption of correctness of any decision made by the Planning Director.
1693 I'll tell you how reasonable he is. If you get on the internet site for the County, it says
1694 "do you need a building permit," you go to "shed," it says "yes," if the structure stays 150
1695 square feet. It goes on and on, how you get it, when you get it. Mr. Silber will not
1696 require a building permit to be issued, and it's just incomprehensible, requesting a
1697 building permit. "Do you need it?" tells you all about what you need. He's really
1698 reasonable in his interpretation is not slanted; he's just, I don't know. If you want to say
1699 the word "rear" means "front," then dismiss this appeal. If you read these code sections
1700 carefully, and you're all very intelligent people, and I'm sure you will, you won't rule
1701 against my client. If you do, you rule in favor of my client. As far as the health issues
1702 with the well, if Mr. Silber had simply required that a building permit be issued in the first
1703 place, it's my understanding that issue would come up and would be addressed, as
1704 would the side lot line requirements and everything else in the world, all these other
1705 problems, the height of the building. I made reference to the minutes for one reason
1706 and one reason only, and that's because nothing in the minutes addresses the issue of
1707 this side lot line violation, nothing whatsoever. It says that the only reason three feet
1708 came up is because these trees were supposed to be planted on Mr. Bowden's
1709 property, but there was not sufficient distance on his property to plant them, and they
1710 were supposed to serve as a barrier between my client's property and the barn, and Mr.
1711 Bowden proposed to put up four trees. The barn's 36 feet long and twelve feet in depth
1712 on either side, so he wanted to put up four trees. He keeps repeating, and this is his
1713 message. The appalling thing, he keeps calling my client's garage a barn. It is a very
1714 large, very nice garage with bay doors; it was constructed in 1980. There's been no
1715 issue whatsoever. If that bothers him so terribly much that my client has a barn on the
1716 opposite side of my client's lot, that he just can't get over it, he just brings it up again
1717 and again. Well, if this barn that is on his property, if we're to ignore that, and he's so
1718 concerned about my client's garage, I don't understand his position.

1719

1720 Mr. Wright - He's saying that just because it's in the front yard.

1721

1722 Mr. Chisholm - My client's house was built in 1978, and a year or so later he
1723 built a

1724

1725 Mr. Wright - I didn't want to get into all that, because we're really going
1726 long here. Do you have anything else to say, Mr. Chisholm, that's on the issue?

1727

1728 Mr. Chisholm - No, I only would like to say that I hope you ladies and
1729 gentlemen will read the Code and give the proper interpretation to the word "rear," and I
1730 don't have that information on the well. Mr. Price is here and can testify as to what he
1731 was told.

1732

1733 Mr. Wright - Thank you very much for appearing. That concludes the
1734 case.

1735
1736 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
1737 Kirkland, the Board **denied** application **A-92-2004** appealing a decision, and sustained
1738 the decision of the Director of Planning pursuant to Section 24-116(a) regarding the
1739 property at 9490 Osborne Turnpike (Parcel 806-673-1937).

1740
1741 Affirmative: Dwyer, Kirkland, Nunnally, Wright 4
1742 Negative: 0
1743 Abstain: Harris 1

1744
1745 The Board denied the request as it found from the evidence presented, that the Director
1746 of Planning was correct in his interpretation and application of the County Code.

1747
1748 **A-93-2004** **PINKHAS PINKHASOV** requests a variance from Section 24-
1749 95(i)(2)(a) to build a detached garage at 4722 Wistar Road
1750 (Westwood Heights) (Parcel 765-751-9713), zoned R-3, One-family
1751 Residence District (Brookland). The accessory structure area
1752 requirement is not met. The applicant proposes accessory
1753 structures totaling 1,376 square feet, where the Code allows 960
1754 square feet total. The applicant requests a variance of 416 square
1755 feet accessory structure area.

1756
1757 Mr. Wright - Does anyone else desire to speak with reference to this
1758 case? Would you raise your right hand and be sworn please?

1759
1760 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1761 truth, the whole truth, and nothing but the truth, so help you God?

1762
1763 Mr. Pinkhasov - I do. Pinkhas Pinkhasov. Just want to build a garage.

1764
1765 Mr. Wright - Tell us about it. We need to know something about it.
1766 We've got information, but you have to put something in the records so it will be there
1767 for review.

1768
1769 Mr. Pinkhasov - I went to Lumber 84 and got this -- they have a package, 32
1770 by 40, and I like that size.

1771
1772 Mr. Blankinship - What will the garage be used for sir?

1773
1774 Mr. Pinkhasov - What for, you mean? For putting my belongings and put my
1775 cars in there.

1776
1777 Mr. Kirkland - How big is this garage compared to your home? What size
1778 is your house?

1779
1780 Mr. Pinkhasov - 750 square feet. It is small.

1781
1782 Mr. Kirkland - The house is 750 square feet? And your garage is going to
1783 be how many square feet?
1784
1785 Mr. Pinkhasov - Twelve hundred I think.
1786
1787 Mr. Blankinship - One thousand, three hundred seventy-six.
1788
1789 Mr. Wright - So your garage is almost twice the size of your house.
1790
1791 Mr. Pinkhasov - Yes, but the house is small. 700 square feet, one bedroom.
1792
1793 Ms. Harris - Would you be satisfied with a smaller garage? Rather than
1794 three door, maybe a two-door?
1795
1796 Mr. Pinkhasov - Fifty years ago this house at 700 square feet was okay, but
1797 today nobody builds that kind of house. Everybody builds three times more. Garage is
1798 the same thing, used to be that small, now nobody builds that small a garage. I doing
1799 for the future, for me and enjoy for my son.
1800
1801 Mr. Wright - Why does the garage have to be this big?
1802
1803 Mr. Pinkhasov - Why? I don't know. I want to make myself happy. People
1804 are happy when they have a big house. I am happy when I have a big garage.
1805
1806 Mr. Kirkland - You couldn't live with a 960 square foot garage, in other
1807 words?
1808
1809 Mr. Blankinship - You're allowed to build a garage 24 feet deep and 40 feet
1810 wide, and it would still be larger than your house.
1811
1812 Mr. Pinkhasov - I know, but that's why I've come here, to ask is I may have.
1813
1814 Mr. Kirkland - We're trying to find a hardship in this situation. Just because
1815 it makes you happy doesn't count.
1816
1817 Mr. Pinkhasov - I know that, but I'm not asking to live there. I'm a working
1818 man; I like to have everything to put it in place and enjoy it myself.
1819
1820 Mr. Wright - What sort of construction would this garage be?
1821
1822 Mr. Pinkhasov - Like this.
1823
1824 Mr. Wright - I can't see that.
1825
1826 Mr. Pinkhasov - It will be two door, not three door.

1827
1828 Mr. Wright - Does it have an upstairs? A loft, an upstairs?
1829
1830 Mr. Pinkhasov - No, it's going to be ten feet high.
1831
1832 Mr. Wright - So it won't have any upstairs?
1833
1834 Mr. Pinkhasov - No, it's one floor, from the ground up, it's ten feet.
1835
1836 Mr. Wright - Is it going to be brick?
1837
1838 Mr. Pinkhasov - No, it's vinyl siding and up to two feet, it's going to be blocks.
1839
1840 Mr. Wright - Cinder block base, and vinyl siding.
1841
1842 Mr. Pinkhasov - Vinyl siding.
1843
1844 Mr. Blankinship - Over standard wood frame construction.
1845
1846 Mr. Wright - It will have an A roof on it.
1847
1848 Mr. Blankinship - Yes sir, a gable roof.
1849
1850 Ms. Dwyer - How much property do you have, how much land?
1851
1852 Mr. Pinkhasov - Big.
1853
1854 Mr. Kirkland - Mr. Blankinship, what size is the lot?
1855
1856 Mr. Blankinship - I don't see that in the record here. Zoning is R-3, so it has to
1857 be at least 8,000 square feet.
1858
1859 Ms. Dwyer - And you have to subtract, in order for it to comply with Code,
1860 you have to subtract the square footage of the existing shed, is that how I read your
1861 report?
1862
1863 Mr. Blankinship - The existing shed is to be removed, is that correct? No, we
1864 have added the size of the shed to the proposed garage, I believe.
1865
1866 Mr. Pinkhasov - The garage is actually smaller size, but they include the
1867 shed together, plus. The total has become 416 square feet is extra.
1868
1869 Mr. Blankinship - The reason we came up to 1376 is we added the 96 square
1870 foot shed to the 1280 square foot garage.
1871
1872 Mr. Wright - Anything further you have to present? Any further questions

1873 from members of the Board? Anyone here in opposition to this request?

1874

1875 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
1876 Nunnally, the Board **denied** application **A-93-2004** for a variance to build a detached
1877 garage at 4722 Wistar Road (Westwood Heights) (Parcel 765-751-9713).

1878

1879 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

1880 Negative: 0

1881 Absent: 0

1882

1883 The Board denied the request as it found from the evidence presented that there was
1884 no "hardship approaching confiscation."

1885

1886 Mr. Wright - The Board will take a five-minute recess.

1887

1888 **A-94-2004** **BRUCE A. MILLER** requests a variance from Section 24-9 to build
1889 a one-family dwelling at 7060 Charles City Road (Parcel 860-693-
1890 9106 (part)), zoned A-1, Agricultural District (Varina). The public
1891 street frontage requirement is not met. The applicant has 0 feet
1892 public street frontage, where the Code requires 50 feet public street
1893 frontage. The applicant requests a variance of 50 feet public street
1894 frontage.

1895

1896 Mr. Wright - Does anyone else desire to speak with reference to this
1897 case? Would you raise your right hand and be sworn please?

1898

1899 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1900 truth, the whole truth, and nothing but the truth, so help you God?

1901

1902 Mr. Miller - I do. My name is Bruce Miller. In accordance to the
1903 proposal here, and as you can tell, I'm requesting the variance for the road frontage; it
1904 says I need 50 feet. As you can tell by the plat, I'm landlocked, and so without access
1905 to that property, I obviously could not purchase and build. I'd like to build a house on
1906 that 3.75 acres, and I'm just requesting a variance, and I would have access through Mr.
1907 Royster's property, a gravel road that would run adjacent to that easement there,
1908 coming in from the east side.

1909

1910 Mr. Wright - You have a 50-foot right-of-way in through Royster's
1911 property? The application refers to a 20-foot right-of-way, but you have to have 50 feet.
1912 Do you have that?

1913

1914 Mr. Miller - The 20 feet, I guess, is what we figured that the road size
1915 would have to be, but he would allow me access, whatever is required.

1916

1917 Mr. Nunnally - And you're going to build this house for yourself?

1918

1919 Mr. Miller - Yes sir.
1920
1921 Ms. Dwyer - Mr. Blankinship, it says the property was divided in '87.
1922 Does that count as the single division that's permitted without a subdivision?
1923
1924 Mr. Blankinship - I'm sorry, where does it say this?
1925
1926 Ms. Dwyer - In the staff report, it says the property's not been divided
1927 since prior to 1987
1928
1929 Mr. Blankinship - Right, has not been divided; so this would be the first.
1930
1931 Ms. Dwyer - So we begin counting from 1987?
1932
1933 Mr. Blankinship - Yes, September 1.
1934
1935 Ms. Dwyer - What about the concept roads that cross this property?
1936 Should we put anything in the conditions that say right-of-way for those concept roads
1937 should be preserved for the County in case those roads are built. It's hard to believe
1938 now, but Short Pump just ten or fifteen years ago looked just like this. I'm always
1939 concerned about future roads and future access, and it looks like these two concept
1940 roads on the thoroughfare plan cross this property.
1941
1942 Mr. Blankinship - Yes ma'am, and we did get comments from Public Works
1943 stating that it did not appear to them that the construction of the dwelling would interfere
1944 with those concept roads, but that's a great idea, I think, to add a condition regarding
1945 the right-of-way.
1946
1947 Ms. Dwyer - What would that condition be?
1948
1949 Mr. Blankinship - I'm not sure exactly; I'll get with Mr. O'Kelly to work out the
1950 wording of that.
1951
1952 Mr. Wright - Well, the concept roads, a condition that would protect the
1953 County in the future if those roads are built.
1954
1955 Mr. Blankinship - Do we have a standard condition language?
1956
1957 Mr. O'Kelly - Do we want to ask for the dedication, is that the question?
1958
1959 Mr. Blankinship - I'm not sure if we ask for dedication or just to have it
1960 reserved.
1961
1962 Ms. Dwyer - I'm just concerned about the future concept roads, and I
1963 want to make sure that the County's options for those roads are preserved. How best to
1964 do that, I guess is the question to you. Dedication?

1965
1966 Mr. O'Kelly - Either the right-of-way could be reserved for future road
1967 construction, or we could add a condition that it could be dedicated for the use to serve
1968 as a Certificate of Occupancy. I don't know if these roads have been designed.
1969
1970 Mr. Blankinship - It probably would be hard to dedicate them at this point.
1971
1972 Mr. O'Kelly - I'm sure that the right-of-way would be maintained ultimately,
1973 so it might be better to add a condition that the right-of-way be reserved.
1974
1975 Mr. Wright - But you can't take it without compensation.
1976
1977 Mr. Dwyer - Right. When we do subdivisions, that's typically part of the
1978 rezonings; more particularly that's usually part of that case, and we're sidestepping that
1979 through this process. But reservation is your recommendation?
1980
1981 Mr. Wright - Mr. Miller, have you seen the conditions that have been
1982 proposed if this is approved?
1983
1984 Mr. Miller - Yes sir.
1985
1986 Mr. Wright - Are you in accord with those?
1987
1988 Mr. Miller - Yes sir.
1989
1990 Mr. Wright - And evidently I would suggest that we add another condition
1991 that has something to do with these concept roads. You saw those on the plat?
1992
1993 Mr. Miller - I see the proposed, yes sir.
1994
1995 Mr. Wright - Evidently nothing is in the wind about that; no plans have
1996 been made, but it could be down the road fifty years from now, or something.
1997
1998 Mr. Miller - Right, and actually the way they're drawn, I'm not sure why
1999 they wouldn't follow that same easement that I'm looking at, because the one that
2000 comes from Charles City Road actually goes across, or right through the middle of two
2001 properties.
2002
2003 Mr. Blankinship - That's just a line on a map at this point.
2004
2005 Mr. Miller - Right.
2006
2007 Mr. Wright - All right. Anything further? Any further questions of
2008 members of the Board. Anyone here in opposition to this request?
2009

2010 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
2011 Kirkland, the Board **granted** application **A-94-2004** for a variance to build one-family
2012 dwelling at 7060 Charles City Road (Parcel 860-693-9106 (part)). The Board granted
2013 the variance subject to the following conditions:

2014
2015 1. This variance applies only to the public street frontage requirement. All other
2016 applicable regulations of the County Code shall remain in force.

2017
2018 2. Approval of this request does not imply that a building permit will be issued.
2019 Building permit approval is contingent on Health Department requirements, including,
2020 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
2021 of a well location.

2022
2023 3. At the time of building permit application, the applicant shall submit the
2024 necessary information to the Department of Public Works to ensure compliance with the
2025 requirements of the Chesapeake Bay Preservation Act and the code requirements for
2026 water quality standards.

2027
2028 4. The applicant shall present proof with the building permit application that a legal
2029 access to the property has been obtained.

2030
2031 5. The owners of the property, and their heirs or assigns, shall accept responsibility
2032 for maintaining access to the property until such a time as the access is improved to
2033 County standards and accepted into the County road system for maintenance.

2034
2035 6. [Added] The owner shall reserve the necessary right-of-way for concept roads
2036 232-1 and 232-2.

2037
2038 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2039 Negative: 0
2040 Absent: 0

2041
2042 The Board granted this request, as it found from the evidence presented that, due to the
2043 unique circumstances of the subject property, strict application of the County Code
2044 would produce undue hardship not generally shared by other properties in the area, and
2045 authorizing this variance will neither cause a substantial detriment to adjacent property
2046 nor materially impair the purpose of the zoning regulations.

2047
2048 **A-95-2004** **ANGELA L. GOODE** requests a variance from Section 24-94 to
2049 allow a one-family dwelling to remain at 12111 Pinefields Court
2050 (Whispering Pines East) (Parcel 821-695-3102), zoned C-1,
2051 Conservation District and R-2AC, One-family Residence District
2052 (Conditional) (Varina). The front yard setback is not met. The
2053 applicant has 44 feet front yard setback, where the Code requires
2054 45 feet front yard setback. The applicant requests a variance of 1
2055 foot front yard setback.

2056
2057 Mr. Wright - Does anyone else desire to speak with reference to this
2058 case? Would you raise your right hand and be sworn please?
2059
2060 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2061 truth, the whole truth, and nothing but the truth, so help you God?
2062
2063 Mr. Mistr - I do. I'm Spud Mistr, representing the applicant. This house
2064 was built; it was originally designed for the garage to be on the left-hand side of the
2065 house as you're facing it. The applicant had wanted it on the right-hand side. When the
2066 building permit was approved, it was on the left. After the foundation was built, the
2067 purchaser and the builder went out, and they said the garage needs to be on the right,
2068 which it does because of the topography and the way the lot sits. In order to alleviate
2069 the concerns, the builder said he could just flip the house, which he could, but then the
2070 bedrooms were not big enough, so he said he'd give them a one-foot cantilever on the
2071 right side to make it the same size as it would have been, which is about 275 feet
2072 additional in the house. Well, everything was fine; they got the house built; they were
2073 ready to have closing. Within a week of closing, when we did the mortgage survey on it,
2074 we found that each corner of the house meets the front yard setback. The center of the
2075 house doesn't, where it was cantilevered out. It was about six or seven inches over the
2076 line. This was done in good faith by the builder to give the purchaser the house that
2077 they wanted and that they had intended to build. The problem is, they couldn't really
2078 move the house back. There's a big gully behind the house; it's a large lot, but it's
2079 triangular-shaped, and so they really had almost no useable back yard now. So the
2080 County issued a temporary CO so the people could move into the house, pending our
2081 requesting a variance from this Board.
2082
2083 Mr. Nunnally - The triangular shape of the lot is what caused this six-inch
2084 variance, isn't it, the way the lot is shaped?
2085
2086 Mr. Mistr - It is more the ravine than the shape of the lot, and then that
2087 they had to switch the garage from the left side to the right side of the house.
2088
2089 Mr. Wright - There's also a twenty-foot easement behind the house, is
2090 that correct?
2091
2092 Mr. Mistr - Yes, and I think that's an old easement. I'm not even sure
2093 it's still in use. It's either a telephone or an electrical easement, but that was existing
2094 when the subdivision was recorded.
2095
2096 Mr. Wright - Evidently it's recorded; it's in the deed book 2580, page
2097 1671.
2098
2099 Mr. Mistr - Oh yes, it is recorded.
2100
2101 Mr. Wright - Any further questions of members of the Board? Anyone

2102 here in opposition to this case?
2103

2104 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.
2105 Harris, the Board **granted** application **A-95-2004** for a variance to allow a one-family
2106 dwelling to remain at 12111 Pinefields Court (Whispering Pines East) (Parcel 821-695-
2107 3102). The Board granted the variance subject to the following condition:
2108

2109 1. No substantial changes or additions to the layout may be made without the
2110 approval of the Board of Zoning Appeals. Any additional improvements shall
2111 comply with the applicable regulations of the County Code.
2112

2113 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2114 Negative: 0
2115 Absent: 0
2116

2117 The Board granted this request, as it found from the evidence presented that, due to the
2118 unique circumstances of the subject property, strict application of the County Code
2119 would produce undue hardship not generally shared by other properties in the area, and
2120 authorizing this variance will neither cause a substantial detriment to adjacent property
2121 nor materially impair the purpose of the zoning regulations.
2122

2123 **A-96-2004 TAMARA KRANTZ FLEMING** requests a variance from Sections
2124 24-95(b)(5) and 24-95(c)(4) to build a one-family dwelling at 8715
2125 Midway Road (Westhampton Settlement) (Parcel 751-739-8189),
2126 zoned R-3, One-family Residence District (Tuckahoe). The lot
2127 width requirement and total side yard setback are not met. The
2128 applicants have 50 feet lot width and 14 feet total side yard
2129 setback, where the Code requires 65 feet lot width and 15 feet total
2130 side yard setback. The applicants request a variance of 15 feet lot
2131 width and 1 foot total side yard setback.
2132

2133 Mr. Wright - Does anyone else desire to speak with reference to this
2134 case? Would you raise your right hand and be sworn please?
2135

2136 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2137 truth, the whole truth, and nothing but the truth, so help you God?
2138

2139 Ms. Fleming - Yes. Tamara Krantz Fleming. I currently own 8715, which is
2140 right adjacent to the lot for which I am asking a variance. I have 50 feet width in that lot,
2141 and a total side yard setback of 14 feet. The Code requires that I have 65 feet width
2142 and 15 total side yard, so I'm asking for a variance of 15 feet in the lot width and one
2143 foot of the total side yard setback. The subdivision was established in 1912, and so that
2144 requires me to meet the criteria for subdivisions completed before 1960. So as R-3, I
2145 am required to have 8,000 square feet, which I have 8200 square feet. I just need the
2146 variance in the width of the lot for it to be a buildable lot.
2147

2148 Ms. Dwyer - Is the house for yourself or for rental?
2149
2150 Ms. Fleming - I just want the lot to be a buildable lot. I have a contractor
2151 who has devised a plan for a two-story.
2152
2153 Ms. Dwyer - One of my thoughts as I looked at the lot, was the fact that
2154 all the other houses really within sight of this lot are single-story houses. This would not
2155 only be, I think there is another, newer two-story house down the street, but in this
2156 vicinity, so we not only have an unusually small lot, but we would have an unusually
2157 large house on it if you were to construct a two-story house, and I think that it would not
2158 fit in with the neighborhood.
2159
2160 Ms. Fleming - There are a number of newer, larger homes down Midway,
2161 down the opposite way. However, I'd like to bring those nice aesthetics to my end of
2162 Midway, because of course I own the adjacent property, so it would increase the value
2163 of the home that I currently own, as well as to increase the revenue of the County
2164 overall, and I'd increase the value, like I said, of the neighboring properties.
2165
2166 Mr. Wright - How long have you owned this property?
2167
2168 Ms. Fleming - Since 1997.
2169
2170 Mr. Wright - You purchased it at that time?
2171
2172 Ms. Fleming - Yes, but what happened is, my mother purchased it, and
2173 when she passed, she was financing it for me and keeping the money in the family, but
2174 what happen, she passed, unfortunately, before the year was up, and it was going to be
2175 a balloon payment at the end of the year, and so I happened to inherit that along with
2176 her home.
2177
2178 Mr. Wright - Do you own other property in this area?
2179
2180 Ms. Fleming - Adjacent to that. I own the home at 8715. Lot 20, on the
2181 other side of Lot 21.
2182
2183 Mr. Wright - Do you live there?
2184
2185 Ms. Fleming - No sir, I currently rent that.
2186
2187 Ms. Dwyer - I appreciate your statement that you'd like to increase and
2188 improve the aesthetics; I just question whether having an out-of-place, large home, I
2189 think it would seem out of place to have the two-story home in that area, while the
2190 others are singles, and some of the newer ones are ranch houses, so it's just a thought.
2191
2192 Ms. Fleming - Okay.
2193

2194 Mr. Wright - How many square feet would you propose for this home?
2195
2196 Ms. Fleming - 1800 square feet.
2197
2198 Mr. Marinos - Mike Marinos. There is a demand for a family-sized home in
2199 that area. It's a good school district, and I think it will help that neighborhood a little bit
2200 and fit in pretty well. It's a nice looking two-story.
2201
2202 Mr. Wright - Are you the contractor?
2203
2204 Mr. Marinos - The home builder, yes sir.
2205
2206 Ms. Dwyer - So you're committing to build?
2207
2208 Mr. Marinos - Yes, I submitted plans on this plat to Jim Lehmann last week
2209 for your review.
2210
2211 Mr. Wright - What type of construction do you propose?
2212
2213 Mr. Marinos - Frame house, masonry foundation.
2214
2215 Ms. Dwyer - Do you have a copy of it with you?
2216
2217 Mr. Marinos - Yes, sure, I've got a plat and a set of plans.
2218
2219 Ms. Fleming - I have done renovations to the home that I rent, inside. I
2220 plan to do outside to improve the aesthetics because if you've ridden down that way
2221 recently, that end of the road is the worst-looking end of the road actually. They've
2222 really improved with the newer homes.
2223
2224 Mr. Wright - Anything further you wish to present?
2225
2226 Ms Fleming - No sir.
2227
2228 Mr. Wright - Any further questions of the Board? Is anyone here in
2229 opposition to this request? Hearing none, that concludes the case.
2230
2231 After an advertised public hearing and on a motion by Mr. Dwyer, seconded by Mr.
2232 Kirkland, the Board **granted** application **A-96-2004** for a variance to build a one-family
2233 dwelling at 8715 Midway Road (Westhampton Settlement) (Parcel 751-739-8189). The
2234 Board granted the variance subject to the following conditions:
2235
2236 1. Only the improvements shown on the plan filed with the application may be
2237 constructed pursuant to this approval. No substantial changes or additions to the layout
2238 may be made without the approval of the Board of Zoning Appeals. Any additional
2239 improvements shall comply with the applicable regulations of the County Code.

2240
2241 2. [Added] This approval only applies to a one-story or Cape Cod (1-1/2 story)
2242 dwelling.

2243
2244 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2245 Negative: 0
2246 Absent: 0

2247
2248 The Board granted this request, as it found from the evidence presented that, due to the
2249 unique circumstances of the subject property, strict application of the County Code
2250 would produce undue hardship not generally shared by other properties in the area, and
2251 authorizing this variance will neither cause a substantial detriment to adjacent property
2252 nor materially impair the purpose of the zoning regulations.

2253
2254 **A-97-2004 DAVID R. AND MARY B. WINSLOW** request a variance from
2255 Section 24-95(i)(2)b to build a detached garage at 2700 Lacywood
2256 Lane (Parcel 841-722-8854 (part)), zoned A-1, Agricultural District
2257 (Varina). The accessory structure height requirement is not met.
2258 The applicants propose an accessory structure 22 feet in height,
2259 where the Code allows an accessory structure height of 15 feet.
2260 The applicants request a variance of 7 feet accessory structure
2261 height.

2262
2263 Mr. Wright - Does anyone else desire to speak with reference to this
2264 case? Would you raise your right hand and be sworn please?

2265
2266 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2267 truth, the whole truth, and nothing but the truth, so help you God?

2268
2269 Mr. Winslow - I do. I'm David Winslow; we're requesting a variance for a
2270 two-story garage with unfinished storage space upstairs. We're a one-family dwelling,
2271 and our only intentions are to build a garage to have storage space, since the house is
2272 limited to its storage space. We're just requesting a seven-foot variance for the
2273 structure.

2274
2275 Mr. Wright - Why do you say you have to have a fifteen-foot structure?

2276
2277 Mr. Winslow - Because we've acquired quite a few things since we've been
2278 married, and we don't have much storage space in our house, so we thought we'd put a
2279 loft over top of the garage, unfinished space, where we could store things up there.

2280
2281 Mr. Nunnally - No living up there, just storage.

2282
2283 Mr. Winslow - Just storage area; it's unfinished.

2284
2285 Ms. Winslow - My name is Mary Winslow. The house that we're building is

2286 a Cape Cod, and the style of the roof, it's a 12/12 pitch, which is very steep, which limits
2287 with the dormers, the attic space of the house, and that's why we had opted also to
2288 match the architectural design of the garage, so it would match the house to be more
2289 pleasing. We have five and a half acres; we're on a wooded lot, so it's not going to be
2290 visible by anyone. We're back in the woods, and like my husband said, it's just for
2291 storage. You know, over the years, you accumulate so much stuff. I'm sure everybody
2292 can relate to that, and that's all it would be used for.

2293
2294 Mr. Nunnally - You say the wooded area is on your property?

2295
2296 Ms. Winslow - Yes, you can see up there, the topography; it's totally
2297 wooded.

2298
2299 Mr. Wright - Did you say you are in the process of constructing your
2300 residence?

2301
2302 Mr. Winslow - Yes sir, we are.

2303
2304 Mr. Wright - So you're not living there at this point? I was wondering
2305 what the foundation was.

2306
2307 Mr. Winslow - That's for our house.

2308
2309 Ms. Dwyer - How tall will your house be? What's the height of your
2310 house, the top of your roof?

2311
2312 Mr. Winslow - I'm really not sure.

2313
2314 Mr. Blankinship - Two stories, with the Cape roof on top.

2315
2316 Mr. Wright - How tall would that be, Mr. Blankinship, roughly?

2317
2318 Mr. Blankinship - I can't even guess without seeing the plan.

2319
2320 Mr. Wright - Fifteen feet?

2321
2322 Mr. Blankinship - Oh certainly, it would be taller than this; this is one story with
2323 a 12/12 pitch.

2324
2325 Mr. Wright - So the house would be substantially taller than the garage.

2326
2327 Mr. Winslow - Quite a bit larger, yes sir.

2328
2329 Ms. Winslow - Also, the grade of the land kind of slopes a hair, so one side
2330 of the house, we had to build up the foundation; if you kind of pan out on that, you can
2331 see, so the house will be considerably taller. You can't see it from that viewpoint.

2332
2333 Ms. Harris - Is there public road access to this property? I see the road
2334 foundation.
2335
2336 Mr. Winslow - We had a road maintenance agreement drawn up, and
2337 everybody signed it and everything, so it's a dirt road going into our property.
2338
2339 Ms. Winslow - It's a private lane, Lacywood Lane.
2340
2341 Mr. Wright - We granted a variance for this in the past, for access?
2342
2343 Mr. Blankinship - We must have; I don't remember the research on it right at
2344 the moment.
2345
2346 Mr. Wright - We'd have to. They couldn't build on it if we didn't. Did you
2347 come before the Board for a variance to?
2348
2349 Mr. Winslow - No we didn't.
2350
2351 Ms. Winslow - His parents originally purchased the land. The house, you
2352 can see that brown building in the bottom right-hand corner; that house was constructed
2353 in 1926, and his parents, all the land around there was owned by the Binns's, and they
2354 purchased the 120-acre
2355
2356 Mr. Wright - Did you get a building permit to build the house?
2357
2358 Mr. Winslow - Yes we did.
2359
2360 Ms. Winslow - They did a family division, and they deeded us five and a
2361 half acres, and we went forward to get the building permit for the garage and the home
2362 together, and that's when we were told that the garage was over the accessory height
2363 structure.
2364
2365 Mr. Wright - Mr. Blankinship, how could that be if they don't have
2366 access?
2367
2368 Mr. Kirkland - How do you get a building permit without access?
2369
2370 Mr. Blankinship - I'm sure there's an answer to that; Mr. Tyson's pulling out
2371 the file right now, so perhaps he can tell us.
2372
2373 Ms. Winslow - Would this address it on the plat where it says ingress and
2374 egress to Lacywood Lane?
2375
2376 Mr. Blankinship - Not exactly, but thank you.
2377

2378 Mr. Wright - Is Lacywood Lane a public road?
2379
2380 Mr. Blankinship - It is, up to a point.
2381
2382 Mr. Wright - It obviously doesn't address this property though; it doesn't
2383 appear to.
2384
2385 Ms. Dwyer - I see a number of roads here. How do you access the
2386 property?
2387
2388 Mr. Winslow - It's a gravel road belonging to our property.
2389
2390 Ms. Dwyer - And that gravel road goes to
2391
2392 Mr. Winslow - Out driveway is where it says "dirt road"; that's our driveway
2393 right there.
2394
2395 Ms. Dwyer - So you come in from the gravel road below; then there are
2396 two roads that are labeled "dirt road," but Lacywood is to the left, isn't it, so do you come
2397 off of Lacywood?
2398
2399 Ms. Winslow - Yes ma'am.
2400
2401 Mr. Winslow - It's all connected. Lacywood Lane just merges into that
2402 basically. We're at the very end.
2403
2404 Mr. Blankinship - We'll have to get with the Permit Center staff to straighten
2405 that out.
2406
2407 Mr. Wright - Can we approve this before you do that?
2408
2409 Mr. Blankinship - You're being asked to approve the height of the garage; I
2410 think the two questions are independent.
2411
2412 Mr. Kirkland - You can't build a garage, though, without the property
2413 access.
2414
2415 Mr. Blankinship - But they have a building permit. They've already framed up
2416 their house. The research must have already been done.
2417
2418 Ms. Dwyer - We need to check and make sure.
2419
2420 Mr. Wright - Any further questions of members of the Board? Anyone
2421 here in opposition to this request? Hearing none, that concludes the case.
2422

2423 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
2424 Kirkland, the Board **granted** application **A-97-2004** for a variance to build a one-family
2425 dwelling and a detached garage at 2700 Lacywood Lane (Parcel 841-721-5234 (part)).
2426 The Board granted the variance subject to the following conditions:

2427
2428 1. This variance applies only to the height requirement. All other applicable
2429 regulations of the County Code shall remain in force.

2430
2431 2. Approval of this request does not imply that a building permit will be issued.
2432 Building permit approval is contingent on Health Department requirements, including,
2433 but not limited to, soil evaluation for a septic drain field and reserve area, and approval
2434 of a well location.

2435
2436 3. At the time of building permit application, the applicant shall submit the
2437 necessary information to the Department of Public Works to ensure compliance with the
2438 requirements of the Chesapeake Bay Preservation Act and the code requirements for
2439 water quality standards.

2440
2441 4. At the time of building permit application the owner shall demonstrate that the
2442 parcel created by this division has been conveyed to members of the immediate family,
2443 and the subdivision ordinance has not been circumvented.

2444
2445 5. The applicant shall present proof with the building permit application that a legal
2446 access to the property has been obtained.

2447
2448 6. The owners of the property, and their heirs or assigns, shall accept responsibility
2449 for maintaining access to the property until such a time as the access is improved to
2450 County standards and accepted into the County road system for maintenance.

2451
2452 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2453 Negative: 0
2454 Absent: 0

2455
2456 The Board granted this request, as it found from the evidence presented that, due to the
2457 unique circumstances of the subject property, strict application of the County Code
2458 would produce undue hardship not generally shared by other properties in the area, and
2459 authorizing this variance will neither cause a substantial detriment to adjacent property
2460 nor materially impair the purpose of the zoning regulations.

2461
2462 **A-98-2004** **E. CHARLES HIATT, JR.** requests a variance from Sections 24-94
2463 and 24-95(i)(1) to build a sunroom and deck at 2551 Brookstone
2464 Lane (Kingcrest) (Parcel 737-754-0870), zoned R-4C, One-family
2465 Residence District (Conditional) (Tuckahoe). The rear yard setback
2466 and setback for a deck are not met. The applicant proposes 29 feet
2467 rear yard setback and 21 feet setback for the deck, where the Code
2468 requires 35 feet rear yard setback and 25 feet setback for the deck.

2469 The applicant requests a variance of 6 feet rear yard setback and 4
2470 feet setback for the deck.

2471
2472 Mr. Wright - Does anyone else desire to speak with reference to this
2473 case? Would you raise your right hand and be sworn please?

2474
2475 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2476 truth, the whole truth, and nothing but the truth, so help you God?

2477
2478 Mr. Hiatt - I do. My name is Buddy Hiatt, and I am the owner of the
2479 property at 2551 Brookstone Lane. My wife's and my goal is to turn our deck into a
2480 sunroom. Also, we're going to be increasing the size of the attached shed on our
2481 property, very much keeping in style with the construction in the neighborhood. We love
2482 the neighborhood, don't want to move. Essentially our situation is we're on a reverse
2483 corner lot, which means we basically have a very large front yard and a side yard, and
2484 somebody built a house in what would be our back yard. That would be the reasons for
2485 the variance. Substantial vegetation along the back property line between myself and
2486 Ms. Sabin, our back-door neighbor. Also two-thirds of the homes in our neighborhood
2487 also have converted sunrooms, and probably the biggest reason we're looking to do
2488 this, is that we're expecting our second child in January. So a little extra space would
2489 be nice.

2490
2491 Ms. Dwyer - The shed that you're talking about, it's behind the umbrella in
2492 this picture?

2493
2494 Mr. Hiatt - Yes ma'am. What we intend to do is basically demolish that
2495 shed and then extend the roof line out. What you see in the foreground on the left is
2496 from my breakfast area, and we're just going to extend the roof line directly across the
2497 entire length of the house and then come out from there to basically double the size of
2498 that shed.

2499
2500 Ms. Dwyer - So it would be one roof line that constitutes the new
2501 sunroom and the new shed?

2502
2503 Mr. Hiatt - Correct. Yes ma'am.

2504
2505 Ms. Dwyer - And it would just extend out to approximately where your
2506 deck is now.

2507
2508 Mr. Hiatt - I believe you have a plot plan. My builder, unfortunately,
2509 couldn't stay. He had business to attend to, and what he put, actually, if you look at the
2510 house itself, the top left corner of the house, is where the shed is now, and essentially
2511 we're just going to demolish that, and he didn't have the exact drawing as far as that,
2512 but we're just going to double the size of the shed. Right there is a good demonstration
2513 of what it's going to look like.

2514

2515 Ms. Dwyer - I guess this isn't clear to me, because the "X" part is the
2516 existing shed?
2517
2518 Mr. Hiatt - Yes ma'am; that will be demolished.
2519
2520 Mr. Blankinship - It will all be enclosed with the new addition?
2521
2522 Mr. Hiatt - Yes sir.
2523
2524 Ms. Dwyer - And so this word that says "deck," you're not adding a new
2525 deck; you're just extending out.
2526
2527 Mr. Hiatt - Well, we are going to be adding a new deck to the right of
2528 the addition, where it says right now. This is a survey that was done in 1993. We have
2529 since made that driveway asphalt. Our other intention is to take the fence, which you
2530 can see the fence comes off the back of the house on the right-hand side, goes out and
2531 makes a left-hand turn, and then goes to the back of the property. We're going to
2532 demolish that, and make that equal with the outside of the house to the rear of the
2533 property, and then the deck is going to sit right there. We're going to construct another
2534 deck; obviously, that's why we're asking for the variance.
2535
2536 Ms. Dwyer - This plat we have doesn't show the new deck then.
2537
2538 Mr. Blankinship - Twenty-one feet is measured to the end of where the new
2539 deck will be, but the deck itself is not drawn, just that measurement.
2540
2541 Ms. Dwyer - Where it says "deck," that really means that's really the
2542 dimensions of the new sheds, and that heavy black line.
2543
2544 Mr. Hiatt - I think that might be from the original survey that was done.
2545
2546 Ms. Dwyer - That's why I was confused, because I thought you were just
2547 having a wrap-around deck.
2548
2549 Mr. Hiatt - No ma'am.
2550
2551 Mr. Wright - What's located on the side of your lot?
2552
2553 Mr. Hiatt - Which side, sir?
2554
2555 Mr. Wright - I guess it would be the east side.
2556
2557 Mr. Hiatt - Help me with my - there's a house there.
2558
2559 Mr. Wright - No, there doesn't appear to be a house. It seems to be kind
2560 of open. Well, the cul-de-sac.

2561
2562 Mr. Blankinship - Could we have the aerial, please.
2563
2564 Mr. Wright - It appears there's no houses on the right side; it's sort of
2565 open area there.
2566
2567 Mr. Hiatt - Very much so, and there is some substantial vegetation
2568 between on the back border of my property, Leyland cypress, crepe myrtles back there.
2569 Spring, summer, fall, you can't even see my neighbor's house.
2570
2571 Mr. Wright - Anything further? Any other questions of members of the
2572 Board? Is anyone here in opposition to this request? Hearing none, that concludes the
2573 case.
2574
2575 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.
2576 Harris, the Board **granted** application **A-98-2004** for a variance to build a sunroom and
2577 deck at 2551 Brookstone Lane (Kingcrest) (Parcel 737-754-0870). The Board granted
2578 the variance subject to the following conditions:
2579
2580 1. Only the improvements shown on the plan filed with the application may be
2581 constructed pursuant to this approval. No substantial changes or additions to the layout
2582 may be made without the approval of the Board of Zoning Appeals. Any additional
2583 improvements shall comply with the applicable regulations of the County Code.
2584
2585 2. The new construction shall match the existing dwelling as nearly as practical.
2586
2587 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2588 Negative: 0
2589 Absent: 0
2590
2591 The Board granted this request, as it found from the evidence presented that, due to the
2592 unique circumstances of the subject property, strict application of the County Code
2593 would produce undue hardship not generally shared by other properties in the area, and
2594 authorizing this variance will neither cause a substantial detriment to adjacent property
2595 nor materially impair the purpose of the zoning regulations.
2596
2597 Mr. Blankinship - Mr. Chairman, we're beginning the 10:00 o'clock agenda,
2598 and there are two withdrawals, the last two cases on your agenda, A-107-2004 and UP-
2599 21-2004 have been withdrawn.
2600
2601 **A-99-2004** **STEPHEN AND CAROLINE BOWE** request a variance from
2602 Section 24-94 to build an addition at 1711 Hollandale Road
2603 (Tuckahoe Village) (Parcel 735-744-6227), zoned R-2, One-family
2604 Residence District (Tuckahoe). The front yard setback and rear
2605 yard setback are not met. The applicants have 44 feet front yard
2606 setback and propose 26 feet rear yard setback, where the Code

2607 requires 45 feet front yard setback and 45 feet rear yard setback.
2608 The applicants request a variance of 1 foot front yard setback and
2609 19 feet rear yard setback.
2610

2611 Mr. Wright - Does anyone else desire to speak with reference to this
2612 case? Would you raise your right hand and be sworn please?
2613

2614 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2615 truth, the whole truth, and nothing but the truth, so help you God?
2616

2617 Ms. Bowe - I do. My name is Caroline T. Bowe. My husband and I own
2618 the property at 1711 Hollandale Road; we proposing to build a master suite on the first
2619 floor with a bedroom and a separate bath. Because of the shape of our lot, there's
2620 really no way to make any changes without a variance. The back yard is kind of
2621 triangular, and it cuts in so that there's not a proper setback in the back. The driveway
2622 is on the other side, so where we have our side yard we were hoping to add another
2623 bedroom, and we don't quite have the room for the setback.
2624

2625 Ms. Dwyer - I notice that the side of the house where you're enlarging,
2626 replacing the addition, is next to the rear yard of your next-door neighbor, and is quite a
2627 distance between your side yard and their home. I know the staff report says 85 feet
2628 from the shared property line.
2629

2630 Ms. Bowe - Yes, and all the side yard there is of my neighbors; we don't
2631 even see each other. We don't interfere at all, and they don't have a problem with it.
2632 Most of the neighbors around and across and behind me have additions to their house
2633 or attached garages or sunrooms, and because of the shape and the fact that mine is
2634 the last one on the road facing Hollandale, there's really no other place to make it.
2635 There's not even a way to put a garage on without a variance, so this is the only way
2636 that we can improve it. We really love the neighborhood, and we have four kids.
2637

2638 Ms. Dwyer - It quiet back there, isn't it.
2639

2640 Mr. Wright - Is there anything further?
2641

2642 Ms. Bowe - My builder is here if you have any questions.
2643

2644 Mr. Wright - I think you've got a detailed plan submitted here with the
2645 application, showing the construction, the type and so forth.
2646

2647 Ms. Dwyer - The problem with the rear yard setback is that unusual
2648 shape of your back yard.
2649

2650 Ms. Bowe - That's right. There's a flood plain that runs through, and
2651 there's drainage that runs down the back yards of all those and the easement and all,
2652 shaped from forty years ago. The original house is not to Code. It had to be on a

2653 variance to be built originally, so all the lots on that block are odd-shaped, and mine just
2654 happens to be the worst back yard of all of them.

2655
2656 Mr. Wright - Any further questions of members of the Board? Is anyone
2657 here in opposition to this request? Hearing none, that concludes the case.

2658
2659 After an advertised public hearing and on a motion by Mr. Dwyer, seconded by Mr.
2660 Kirkland, the Board **granted** application **A-99-2004** for a variance to build an addition at
2661 1711 Hollandale Road (Tuckahoe Village) (Parcel 735-744-6227)). The Board granted
2662 the variance subject to the following conditions:

2663
2664 1. Only the improvements shown on the plan filed with the application may be
2665 constructed pursuant to this approval. No substantial changes or additions to the layout
2666 may be made without the approval of the Board of Zoning Appeals. Any additional
2667 improvements shall comply with the applicable regulations of the County Code.

2668
2669 3. The new construction shall match the existing dwelling as nearly as
2670 practical.

2671
2672 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2673 Negative: 0
2674 Absent: 0

2675
2676 The Board granted this request, as it found from the evidence presented that, due to the
2677 unique circumstances of the subject property, strict application of the County Code
2678 would produce undue hardship not generally shared by other properties in the area, and
2679 authorizing this variance will neither cause a substantial detriment to adjacent property
2680 nor materially impair the purpose of the zoning regulations.

2681
2682 **A-100-2004** **WALTER S. AND SUSAN F. ROBERTSON** request a variance
2683 from Sections 24-95(i)(2) and 24-94 to build an addition and a
2684 detached garage at 16 Bridgeway Road (Chatham Hills) (Parcel
2685 763-731-5318), zoned R-1, One-family Residence District
2686 (Tuckahoe). The accessory structure location requirement and
2687 minimum side yard setback are not met. The applicants propose 4
2688 feet minimum side yard setback and a garage in the front yard,
2689 where the Code requires 20 feet minimum side yard setback and
2690 allows accessory structures in the rear yard. The applicants
2691 request a variance of 16 feet minimum side yard setback and an
2692 accessory structure in the front yard.

2693
2694 Mr. Wright - Does anyone else desire to speak with reference to this
2695 case? Would you raise your right hand and be sworn please?

2696
2697 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2698 truth, the whole truth, and nothing but the truth, so help you God?

2699
2700 Mr. Moore - I do. My name's Glenn Moore. I'm an attorney, appearing
2701 on behalf of Walter and Susan Robertson. Before I start my presentation, I'd like to ask
2702 a question or two of Mr. Blankinship, to make sure that I may not need one of these
2703 variances. Mr. Blankinship, the area between the existing home and the area with the
2704 "X," that's exactly correct, that area is going to be enclosed; it's going to be part of the
2705 house.
2706
2707 Mr. Blankinship - The breezeway; it's not a breezeway, it's an attachment,
2708 okay.
2709
2710 Ms. Dwyer - It's a hallway.
2711
2712 Mr. Moore - It's a hallway, exactly. In effect, what you have is this area
2713 that's going to be a garage is really a wing off the house.
2714
2715 Mr. Wright - Is it going to be enclosed?
2716
2717 Mr. Moore - Yes, it will be enclosed; it's going to be heated, air
2718 conditioned space.
2719
2720 Ms. Dwyer - You still have to deal with the side yard requirement.
2721
2722 Mr. Moore - Yes, I do have to deal with the side yard requirement, I know
2723 that, but I want to see if I can avoid dealing with the

2724
2725 Mr. Blankinship - If it's attached, it doesn't count. We were reading that as a
2726 breezeway, and a breezeway narrower than ten feet would still leave the garage as a
2727 detached structure. If the garage construction is actually integral with the house
2728 construction, then that ten-foot rule does not come into play.
2729
2730 Mr. Moore - We won't need that variance.
2731
2732 Ms. Dwyer - It's not accessory structure in the front yard, in other words?
2733 An addition to the home?
2734
2735 Mr. Moore - No it's not. It's going to be an addition to the home; it's
2736 going to be enclosed.
2737
2738 Ms. Dwyer - As long as we're asking questions, do you need a variance
2739 for the rear addition that's seventeen feet off the property line?
2740
2741 Mr. Moore - We do need the side yard variance; that applies to the
2742 seventeen feet, as well as to the four feet.
2743
2744 Ms. Dwyer - I didn't see that as part of this case.

2745
2746 Mr. Blankinship - Yes, it says it's the same side yard; it's all the same side
2747 yard setback.
2748
2749 Mr. Moore - It's as if it were less of a variance.
2750
2751 Mr. Wright - Does this house front on Ridgeway Road?
2752
2753 Mr. Moore - Yes it does, Mr. Wright,
2754
2755 Mr. Wright - Well this garage would be in the front yard, wouldn't it?
2756
2757 Mr. Moore - It's not a garage; it's a wing to the house that happens to be
2758 a garage. If it were a family room, which it could easily be, the fact is it's part of the
2759 house.
2760
2761 Mr. Blankinship - The Code reads like this, "Attached Accessory Buildings: A
2762 private garage or other accessory building may be attached to the principal building if
2763 made integral therewith, or may be attached thereto by a covered passageway, not less
2764 than ten feet wide."
2765
2766 Ms. Dwyer - How wide is this?
2767
2768 Mr. Blankinship - If it were a breezeway, a covered passageway, it's less than
2769 ten feet wide, so we would consider the garage a detached structure. But if it's integral
2770 therewith, then you don't get into that other clause.
2771
2772 Ms. Dwyer - So we just need to address the side yard.
2773
2774 Mr. Moore - Basically, the Robertsons just wanted to do an addition to
2775 this home that they purchased about a year and a half, two years ago. The addition that
2776 you see that's to the west, where it goes within seventeen feet of the side yard, that is a
2777 kitchen expansion, and basically what will happen is, that will be practically doubling the
2778 kitchen area and going in where that existing small portion of the house is, and coming
2779 out, what would happen is, the garage that exists to the rear of that is so close to the
2780 expanded area and it really would not make the expanded area very appealing. You
2781 would want to get rid of that garage and relocate it. It's probably not as close on the
2782 ground as it appears in that picture. I've been on the property. It's only ten or twelve
2783 feet away from where the expansion would be. So they want to remove the existing
2784 garage, which is not a particularly attractive structure now, and the wing off the house in
2785 the front would be a garage area, and the doors would face to the inside, rather than to
2786 the street, would face to the south. I think that's more attractive. I've got an architect's
2787 rendering of how that would appear, that I can show you. It's completely compatible
2788 with the existing architecture of the house, and you can imagine if they're going to put
2789 this in their front yard, they would want it to be attractive and compatible with the
2790 architecture of their home. It needs to be on this side, Ms. Dwyer; it's a pretty big lot as

2791 you can see from the site plan that you had, but the service area of the house is all at
2792 the north end of the house, the kitchen, family room, and all those appurtenances are all
2793 at the north end of the house, plus the driveway is at the north end of the house. I have
2794 a photograph which shows the house, and you'll see that at the south end of the house,
2795 you have a screened porch, and that's where the living room is as well. It just wouldn't
2796 make sense to make these expansions that are proposed at the south end of the house,
2797 which would be the left side of that photograph. You have an unusual situation here, in
2798 that the only logical place to do the kitchen expansion and also to relocate the garage
2799 as part of the home would be at the north side of the house. I would point out to you
2800 that the most affected neighbors to the north, Mr. and Mrs. Gene Webb, have submitted
2801 a letter indicating that they don't object to the proposal because the Robertsons have
2802 met with them, and they're going to do a nice job of landscaping. It's somewhat wooded
2803 there anyway, between their homes, and they're going to add some landscaping
2804 between the addition, the wing where the garage would be located, and the Webb's
2805 home. I think you have an unusual situation here, that would justify the granting of the
2806 variance, in that this is a logical area where the driveway exists and the service areas of
2807 the house are, to do the expansion of this nature. I'll be happy to any questions that
2808 Board members may have.

2809
2810 Ms. Dwyer - What is on the south end, did you say?

2811
2812 Mr. Moore - Well, it's a screened porch and a living room; it just wouldn't
2813 make sense to do a kitchen expansion there, and the kitchen expansion kind of drives
2814 the relocation of the garage.

2815
2816 Ms. Dwyer - What's to the rear of the house?

2817
2818 Mr. Moore - There's an existing garage that will need to be removed.
2819 There's also a swimming pool and a

2820
2821 Ms. Dwyer - That's part of the house, that wing that's part of the house,
2822 the two-story section here that's in the rear?

2823
2824 Mr. Moore - That's the existing home.

2825
2826 Mr. Wright - What's in there?

2827
2828 Mr. Moore - Oh, the kitchen area's in there.

2829
2830 Ms. Dwyer - That's the kitchen now.

2831
2832 Mr. Moore - So they're expanding that.

2833
2834 Ms. Dwyer - I'm not talking about the one-story part; I'm talking about the
2835 two-story part.

2836

2837 Mr. Moore - That's what I'm talking about, the two-story part. The kitchen
2838 is in the two-story part.
2839
2840 Ms. Dwyer - You have sixty feet that's on the south end that's just an
2841 existing kitchen on that section as well.
2842
2843 Mr. Moore - You want to expand where the kitchen is, unless you want to
2844 relocate the kitchen, and that's not their plan. The existing kitchen is on the north side
2845 of the house; they want to go out and expand that area; maybe they'll have a breakfast
2846 room area in there as well; I'm not sure of that. As a result of that, they want to remove
2847 the existing garage, which frankly is not particularly attractive anyway, and they want to
2848 upgrade their property by doing the wing in the front, which will really be a much nicer
2849 overall appearance from everybody's standpoint. I would also point out to you that that
2850 existing garage that's going to be removed is only two and a half feet from the property
2851 line anyway, so it's going to be less of an encroachment with the new one.
2852
2853 Ms. Dwyer - I don't have a problem with removing the garage or adding
2854 the garage or expanding the kitchen; I'm just wondering why the expanded kitchen and
2855 garage couldn't take place on the south side, since you already have an existing kitchen
2856 in the rear of the property anyway.
2857
2858 Mr. Moore - It's on the northwest corner, is where the existing kitchen is.
2859 In other words, the kitchen on the northern part of the house toward the rear, which
2860 would be in the northwest area of the house.
2861
2862 Mr. Wright - But that projection that you see there in that picture is more
2863 on the south side of the house.
2864
2865 Mr. Moore - No, that's more on the north side of the house.
2866
2867 Ms. Dwyer - But it juts to the west.
2868
2869 Mr. Blankinship - We're talking about two different things. Put the hand on the
2870 two-story portion.
2871
2872 Mr. Moore - That's storage. That's just storage.
2873
2874 Ms. Dwyer - So what's next to it? That's the existing kitchen.
2875
2876 Mr. Moore - No, that's not the existing kitchen; this area over here is
2877 where the existing kitchen is.
2878
2879 Ms. Dwyer - When I asked earlier what the other one was, you said the
2880 kitchen was there.
2881
2882 Mr. Wright - I thought you said the kitchen was in that two-story addition

2883 that's on the right side of that picture.

2884

2885 Mr. Blankinship - So what is in that other area, not the kitchen, but the other
2886 two-story portion?

2887

2888 Mr. Moore - Living room, and then you go beyond that to the porch.

2889

2890 Mr. Blankinship - So a kitchen addition couldn't be put on the other side of
2891 that, because the kitchen's way over here.

2892

2893 Mr. Wright - What do you go through to access the proposed garage that
2894 will be closed in? Is that a family room or what do you use that for?

2895

2896 Mr. Moore - I believe that it is, Mr. Wright. I honestly can't say for sure. I
2897 know the living room is on the south side of the house.

2898

2899 After an advertised public hearing and on a motion by Mr. Dwyer, seconded by Mr.
2900 Kirkland, the Board **granted** application **A-100-2004** for a variance to build an addition
2901 and a detached garage at 16 Bridgeway Road (Chatham Hills) (Parcel 763-731-5318).
2902 The Board granted the variance subject to the following conditions:

2903

2904 1. Only the improvements shown on the plan filed with the application may be
2905 constructed pursuant to this approval. No substantial changes or additions to the layout
2906 may be made without the approval of the Board of Zoning Appeals. Any additional
2907 improvements shall comply with the applicable regulations of the County Code.

2908

2909 2. [Amended] The new construction shall be architecturally compatible with the
2910 existing dwelling.

2911

2912 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

2913 Negative: 0

2914 Absent: 0

2915

2916 The Board granted this request, as it found from the evidence presented that, due to the
2917 unique circumstances of the subject property, strict application of the County Code
2918 would produce undue hardship not generally shared by other properties in the area, and
2919 authorizing this variance will neither cause a substantial detriment to adjacent property
2920 nor materially impair the purpose of the zoning regulations.

2921

2922 **A-101-2004** **SCOTT W. ZIEGLER** requests a variance from Section 24-94 to
2923 build an addition at 13537 Cotley Lane (Foxhall) (Parcel 731-761-
2924 8033), zoned R-2AC, One-family Residence District (Conditional)
2925 (Three Chopt). The rear yard setback is not met. The applicant
2926 proposes 33 feet rear yard setback, where the Code requires 45
2927 feet rear yard setback. The applicant requests a variance of 12 feet
2928 rear yard setback.

2929
2930 Mr. Wright - Does anyone else desire to speak with reference to this
2931 case? Would you raise your right hand and be sworn please?
2932

2933 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2934 truth, the whole truth, and nothing but the truth, so help you God?
2935

2936 Mr. Ziegler - I do. Scott W. Ziegler. My wife and I wish to construct an
2937 addition and new deck on the rear of our house to provide additional living space for
2938 several handicapped relatives. These would be built to replace the existing deck, and
2939 that would leave an additional 33 feet in the back. If you look at the overhead aerial
2940 view, you can see that behind the house is all woods. I have reviewed the plans with
2941 my neighbors, and they have submitted letters of approval for the proposal. I know
2942 you've got a full day, so I'll just leave it at that. If you've got any questions or concerns
2943 or anything in particular you'd like me to address, I'd be happy to do that. I could also
2944 point out on that aerial view the woods behind the house, are attached, if you expand
2945 the view, you can see that the front entrance of the neighborhood, there are soccer
2946 fields, and then you can just barely see that, that grass field is a soccer field, woods
2947 behind the soccer field that is owned by the homeowners association. That's what that
2948 property is.
2949

2950 Mr. Wright - Is there anything further? Any questions of members of the
2951 Board? Is there any opposition to this request?
2952

2953 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
2954 Kirkland, the Board **granted** application **A-14-2004** for a variance to build an addition at
2955 13537 Cotley Lane (Foxhall) (Parcel 731-761-8033). The Board granted the variance
2956 subject to the following conditions:
2957

2958 1. Only the improvements shown on the plan filed with the application may be
2959 constructed pursuant to this approval. No substantial changes or additions to the layout
2960 may be made without the approval of the Board of Zoning Appeals. Any additional
2961 improvements shall comply with the applicable regulations of the County Code.
2962

2963 2. The new construction shall match the existing dwelling as nearly as
2964 practical.
2965

2966 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2967 Negative: 0
2968 Absent: 0
2969

2970 The Board granted this request, as it found from the evidence presented that, due to the
2971 unique circumstances of the subject property, strict application of the County Code
2972 would produce undue hardship not generally shared by other properties in the area, and
2973 authorizing this variance will neither cause a substantial detriment to adjacent property
2974 nor materially impair the purpose of the zoning regulations.

2975
2976 **A-102-2004** **RUTH VAIDEN** requests a variance from Section 24-95(q)(5) to
2977 build a sunroom at 2625 Park Green Way (Mountain Glen) (Parcel
2978 773-765-7991), zoned R-3A, One-family Residence District
2979 (Fairfield). The rear yard setback is not met. The applicant
2980 proposes 27 feet rear yard setback, where the Code requires 30
2981 feet rear yard setback. The applicant requests a variance of 3 feet
2982 rear yard setback.
2983

2984 Mr. Wright - Does anyone else desire to speak with reference to this
2985 case? Would you raise your right hand and be sworn please?
2986

2987 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2988 truth, the whole truth, and nothing but the truth, so help you God?
2989

2990 Mr. Britt - I do. George Britt, with Melani Bros., representing the
2991 applicant. This will be a very short, simple request. They simply wish to add a sunroom
2992 to the existing deck portion of their home. The room was designed to minimally
2993 interfere or encroach into the rear yard setback. The actual size of the room will be ten
2994 by fourteen, and as indicated, it is on the plat that you see there. The complication here
2995 is that the house is located minimally on the setback requirements, and we simply
2996 request a three-foot variance so she can enjoy her sunroom.
2997

2998 Mr. Wright - What type of construction would this be?
2999

3000 Mr. Britt - The framing is actually extruded aluminum, but I have a
3001 picture if you'd like to see a similarly constructed sunroom. I have others if you wish to
3002 see other pictures.
3003

3004 Ms. Harris - Mr. Britt, had you considered reducing the size of the
3005 sunroom by three feet?
3006

3007 Mr. Britt - The problem that we have there is that, on the original home,
3008 there is an encasement for a gas fireplace that protrudes out into the room, and if we
3009 brought it back to seven feet, they'd only have five feet to move around in there. We've
3010 designed this to be a minimal encroachment to make it fit but still be practical to be
3011 used.
3012

3013 Ms. Dwyer - Is that a flat roof, or does it have a slight angle?
3014

3015 Mr. Britt - That particular room has a minimum pitch on it. The one
3016 that we will be building in this particular case has more pitch on it than that. It's actually
3017 nine feet at the back, and seven and a half to eight feet on the front. If you'd rather see
3018 another picture with a sharper pitch, I'd be glad to show you one of those.
3019

3020 Mr. Wright - It looks like this addition will back up to the side of the house

3021 that's to the south, next to it. Is that correct?

3022

3023 Mr. Britt - 10461 is kind of a reverse corner lot, and the addition is to
3024 the actual, what you would consider to be the rear of the home.

3025

3026 Mr. Wright - Anything further? Any further questions of members of the
3027 Board? Anyone here in opposition to this request?

3028

3029 After an advertised public hearing and on a motion by Mr. Harris, seconded by Mr.
3030 Nunnally, the Board **granted** application **A-102-2004** for a variance to build a sunroom
3031 at 2625 Park Green Way (Mountain Glen) (Parcel 773-765-7991). The Board granted
3032 the variance subject to the following conditions:

3033

3034 1. Only the improvements shown on the plan filed with the application may be
3035 constructed pursuant to this approval. No substantial changes or additions to the layout
3036 may be made without the approval of the Board of Zoning Appeals. Any additional
3037 improvements shall comply with the applicable regulations of the County Code.

3038

3039 2. The new construction shall match the existing dwelling as nearly as practical.

3040

3041 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

3042 Negative: 0

3043 Absent: 0

3044

3045 The Board granted this request, as it found from the evidence presented that, due to the
3046 unique circumstances of the subject property, strict application of the County Code
3047 would produce undue hardship not generally shared by other properties in the area, and
3048 authorizing this variance will neither cause a substantial detriment to adjacent property
3049 nor materially impair the purpose of the zoning regulations.

3050

3051 **A-103-2004** **DAVID MCKENNEY** requests a variance from Section 24-94 to
3052 build an addition at 1809 Oakway Drive (Wellington) (Parcel 741-
3053 748-1235), zoned R-2, One-family Residence District (Tuckahoe).
3054 The front yard setback and minimum side yard setback are not met.
3055 The applicant proposes 31 feet front yard setback and 13 feet
3056 minimum side yard setback, where the Code requires 45 feet front
3057 yard setback and 15 feet minimum side yard setback. The
3058 applicant requests a variance of 14 feet front yard setback and 2
3059 feet minimum side yard setback.

3060

3061 Mr. Wright - Does anyone else desire to speak with reference to this
3062 case? Please stand and raise your right hand and be sworn at the same time, please?

3063

3064 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3065 truth, the whole truth, and nothing but the truth, so help you God?

3066

3067 Mr. McKenney - I do. My name is David McKenney, and we are planning to
3068 build a room addition onto our existing home structure, that will require a variance on
3069 the existing setback. If you look at the overhead, it shows that the lot is a very strange
3070 pie shape. We were told that our back yard is four feet wide, which I thought was kind
3071 of strange. We wrestled with this a great deal, to try to determine which was the best
3072 place to put the actual structure. We would not require any variance if we put it on the
3073 other side of the home; however, due to the way the home is designed, the existing
3074 three bedrooms, three baths, are on that side of the house, which faces Pump Road.
3075 There is no access in order for us to get to the additional room addition, unless we,
3076 besides doing a room, would try to somehow determine architecturally how to add a
3077 hallway to get to that structure. In talking to the architect and the landscaper, the
3078 additional cost to do that would be just tremendous. Also, if you will notice, it says
3079 gravel driveway in the front, which is circular; we've since paved it. If we tried to put the
3080 structure again on the front side of the house, we have the problem of how to get to the
3081 actual space; also, we'd have to change the driveway, we have two stone walls on
3082 either side of the front door, the walls would have to be taken down. Again, it would
3083 incur a great deal more cost. Because of the way the lot is shaped, as you see in the
3084 drawing there, the 20 by 25, I believe that we're encroaching two feet on the back
3085 corner of the space, to the neighbor who's on the right-hand side. We had looked at the
3086 puzzle, of taking the actual room, and pushing it out towards the front of the house,
3087 which would alleviate that situation as far as the back corner facing them; however,
3088 again, it would require the addition of a lot more trees, we also have that driveway there
3089 too, as you see, which is no longer gravel, it's paved, and that would have to be altered
3090 as well. Then architecturally, because the home is contemporary in design, doing it the
3091 way it's proposed here, the roof lines will all match. If we bump it out, quite honestly, it's
3092 going to look very strange as far as how it's going to come out from the front of the
3093 house, and I just feel architecturally, it will not be in keeping with the rest of the home. It
3094 will change the look of it. We'll be using the same materials as far as cedar siding on
3095 the exterior. The roof pitch will be in keeping with the existing pitch of the home as well.
3096 I've got a plan I can give Mr. Blankinship that he can put on the overhead, that shows
3097 the bedrooms now, that will give you a better understanding of what I was sharing about
3098 the problem with where to put this room.

3099
3100 Ms. Dwyer - Technically, the front of your house is Oakway Drive, even
3101 though the house appears to be oriented to Carisbrook, and that's due to the very
3102 unusual shape of this. It's not only a pie shape, a true pie, but it also has what appears
3103 to be two front yards, or the front of the house fronts two different streets.

3104
3105 Mr. McKenney - That's correct. If you see the plan of the house, the plan is
3106 reversed, so you have to basically flip it. Where you see now what says the great room;
3107 that is rare. We would have the access leaving the great room, going into the new room
3108 addition that we're requesting to have variance for.

3109
3110 Ms. Dwyer - And that room addition is what?

3111
3112 Mr. McKenney - 20 by 25.

3113
3114 Ms. Dwyer - What kind of room is it?
3115
3116 Mr. McKenney - It's going to be a home office/den. As you see on the other
3117 side of the house, where the bedrooms are, there's three full baths, and there's no way
3118 that we can figure out a way to be able to gain access to the space from that side of the
3119 house. If we build something over there, unless we can alter the bedrooms that are
3120 there, to try to squeeze in another hallway, to get to the structure.
3121
3122 Ms. Dwyer - There's a lot of plumbing in there too.
3123
3124 Mr. McKenney - Yes, because of the three full baths, exactly. As far as in the
3125 back of the house, we're kind of in the situation. We have the kitchen in the back on the
3126 one side; the master bedroom's on the back of the other side, and the middle of the
3127 house is a swimming pool, so we can't do anything directly behind the home because of
3128 that structure. That presents a real issue for us.
3129
3130 Mr. Kirkland - Mr. McKenney, are you going to relocate the, I assume that's
3131 a fireplace or a chimney?
3132
3133 Mr. McKenney - No, that's another thing too, that we really wrestled with,
3134 because at first again, as far as the side yard setback, I thought originally I would just
3135 shrink the size of the room, so we wouldn't have to worry about that. But honestly, we
3136 don't want to remove the fireplace, and by leaving it there, because of Code, we have
3137 to, you can't build but so close to the existing fireplace. We have to have the space
3138 around it and so forth. So that's going to encroach the new space anyway,
3139 approximately three and a half to four feet, so we're going to lose space as it is, in the
3140 structure, so instead of being twenty feet wide in that part of the room, we're actually
3141 talking about sixteen feet in width. Again, we want to try to squeeze as much room as
3142 we possibly can into the space.
3143
3144 Mr. Wright - Mr. McKenney, have you discussed this with your neighbor
3145 at 1807?
3146
3147 Mr. McKenney - I did not discuss it with her; I spoke to, I'm assuming he's her
3148 fiancé – he came over recently and talked to me about the structure. I did walk him
3149 around; I showed him what we planned to do, told him exactly where it was going to go,
3150 painted as far as the outline on the ground, showed him that, told him about the setback
3151 requirements and so forth, and that we are going to keep the existing trees. They are
3152 going to take one tree down on the side that faces her lot; other than that all the existing
3153 trees will remain intact, so we'll keep the screening from her property. If you notice on
3154 the plat, it's rather unusual in that, her house sits back from our home. Our house sits
3155 further out to the road, so the structure, I guess would be more to the front, versus the
3156 side of her house.
3157
3158 Mr. Wright - Anything further you wish to present. Any questions from

3159 the Board? I believe we have someone who wants to speak in opposition. You'll have
3160 a brief time, Mr. McKenney, to rebut.

3161
3162 Ms. Massie - Good afternoon, I'm Sally Massie, the next-door neighbor at
3163 1807 Oakway Drive, and I'm here today to just express my opinion. My fiancé and I are
3164 very much opposed to this, being that we feel that aesthetically, it will take away, being
3165 that Wellington has a 45-foot setback, which is very much a part of why we moved there
3166 eight years ago. The fourteen-foot variance request for the front is significant enough to
3167 be of concern to me, as well as the two-foot side, being that I do feel it will impair on my
3168 home value. It's just something that I feel very strongly about and wanted to be here
3169 today to express.

3170
3171 Mr. Wright - Have you seen the plans for this?

3172
3173 Ms. Massie - No, today was the first time.

3174
3175 Mr. Wright - Your fiancé hasn't?

3176
3177 Ms. Massie - No, he just spoke to Dave a couple of weeks ago.

3178
3179 Mr. Wright - Hadn't seen the plans?

3180
3181 Ms. Massie - No.

3182
3183 Mr. Wright - How long have you been living here?

3184
3185 Ms. Massie - Almost eight years. And the 45-foot variance is important to
3186 me because that neighborhood is beautiful, and I was in Goochland 18 years before I
3187 moved to the west end and I chose that area for that reason. The fourteen-foot
3188 variance on his front to me aesthetically is significant, as well as the side, being as how
3189 the two-foot variance on the side will impair my home value, and it comes in on the front
3190 of my property.

3191
3192 Mr. Wright - All right. Anything else you wish to say? Any questions of
3193 members of the Board. Anyone else here in opposition? Mr. McKenney, you have a
3194 brief period to rebut.

3195
3196 Mr. Mckenney - I honestly don't know what to say about her concerns, but
3197 we moved into the house four years ago. The previous owners had made absolutely no
3198 improvements to the home in 23 years. When we moved in, the house was literally
3199 falling apart; we've spent the last four years dedicating our time and efforts to improve
3200 the home, outside and inside, to increase the value. We've had the home reappraised
3201 twice since we've been there. The appraiser has given us glowing reviews for what
3202 we've done. We've had neighbor after neighbor come up to us when we were outside
3203 working to tell us they appreciate what we were doing, that we were definitely increasing
3204 the value of the home, and that they were all positive about it. As far as it encroaching

3205 the road, I guess my issue with that is, just the way the house is shaped on the lot, how
3206 it's laid out. I don't know of any other way that we can do a structure that isn't going to
3207 involve a great deal more financial difficulty and time for us. We've delayed this as it is,
3208 trying to wrestle with this decision. As far as the front road setback, if you look where
3209 the house is set on the lot, it's not really like it's going closer to the road, in the sense
3210 that it's on the side of her home, the way it's located. So it's not like we're going closer
3211 out to the street; we're just going further out on the side.
3212

3213 Ms. Dwyer - Well, you're closer to Oakway, but not closer to Carisbrook
3214 roughly, is that what you're saying?
3215

3216 Mr. McKenney - That's correct.
3217

3218 Ms. Dwyer - In spite of the fact that technically the front yard is Oakway,
3219 the house is really oriented to Carisbrook, that's your point.
3220

3221 Mr. McKenney - That's correct. And because of how our yard is done as far
3222 as what's the front yard, what's considered the side yard and the back yard, and so
3223 forth, according to the builder and the architect, if we did build the addition on the other
3224 side of the house and try to overcome the issue of how we get to that space, which
3225 again will incur a great deal more cost to us, that, in my opinion, would look worse,
3226 because as you see, it would be sticking out closer to the road as far as Carisbrook
3227 Drive, which by the definition of what the setback Code is, we can do legally. We do not
3228 require a variance for that, and that would put the structure even further out into the
3229 road, if we put it on the Carisbrook side.
3230

3231 Ms. Dwyer - I'm just looking at the structure, if the new addition were put
3232 on the rear of this house, Mr. Blankinship, is this the side yard all the way back to this
3233 tiny four-foot rear yard?
3234

3235 Mr. Blankinship - Yes.
3236

3237 Mr. McKenney - Yes, we have three sides, according to the County.
3238

3239 Ms. Dwyer - So any rear addition would have to be fifteen feet off of this
3240 side yard.
3241

3242 Mr. McKenney - Which you notice we cannot even come close to; if we did it
3243 on the rear of the house, we would be even closer to our neighbor's property, because if
3244 you see how it angles back, instead of requesting a two-foot variance, we would be
3245 requesting a huge variance.
3246

3247 Mr. Wright - The only practical place would be on the east side of the
3248 house; the other side

3249 Ms. Dwyer - Seems like you could put it on the rear.
3250

3251
3252 Mr. Blankinship - Yes, the south side on the east where the deck is now.
3253
3254 Mr. McKenney - Where the deck is now, that's the middle of the house where
3255 the pool is.
3256
3257 Mr. Wright - I'm saying if you put it on the east side of the house, which
3258 you say you could without a variance.
3259
3260 Mr. McKenney - As I said before, that the whole issue of concern of that is,
3261 that is the living space of the house, that's where the three bedrooms are located, and
3262 the three full baths, and there is no possible way to get to that space from that existing
3263 structure, unless we alter the bedrooms, or basically remove a bedroom, to try to put a
3264 hallway in there, and in turn in doing that, we took our home from a three-bedroom to a
3265 two-bedroom.
3266
3267 Mr. Wright - And your bedrooms extend all along the east side of the
3268 house?
3269
3270 Mr. McKenney - That is correct.
3271
3272 Mr. Wright - Thank you very much. Anything further?
3273
3274 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.
3275 Kirkland, the Board **granted** application **A-103-2004** for a variance to build an addition
3276 at 1809 Oakway Drive (Wellington) (Parcel 741-748-1235). The Board granted the
3277 request for a variance from the front yard setback, and denied the request for a variance
3278 from the side yard setback.
3279
3280 1. Only the improvements shown on the plan filed with the application may be
3281 constructed pursuant to this approval. No substantial changes or additions to the layout
3282 may be made without the approval of the Board of Zoning Appeals. Any additional
3283 improvements shall comply with the applicable regulations of the County Code.
3284
3285 2. The new construction shall match the existing dwelling as nearly as practical.
3286
3287 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
3288 Negative: 0
3289 Absent: 0
3290
3291 The Board granted this request, as it found from the evidence presented that, due to the
3292 unique circumstances of the subject property, strict application of the County Code
3293 would produce undue hardship not generally shared by other properties in the area, and
3294 authorizing this variance will neither cause a substantial detriment to adjacent property
3295 nor materially impair the purpose of the zoning regulations.
3296

3297 **A-104-2004** **JAMES AND MARY HEYWOOD** request a variance from Section
3298 24-94 to build an addition at 115 Santa Clara Drive (Sleepy Hollow
3299 Estates) (Parcel 748-735-2736), zoned R-1, One-family Residence
3300 District (Tuckahoe). The rear yard setback is not met. The
3301 applicants have 28 feet rear yard setback, where the Code requires
3302 50 feet rear yard setback. The applicants request a variance of 22
3303 feet rear yard setback.
3304

3305 Mr. Wright - Does anyone else desire to speak with reference to this
3306 case, please stand and be sworn at the same time? Would you raise your right hand
3307 and be sworn please?
3308

3309 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3310 truth, the whole truth, and nothing but the truth, so help you God?
3311

3312 Mr. Weaver - I do. My name's David Weaver, with Grace Street
3313 Residential Design Systems. We're here to represent Jim and Mimi Heywood. The
3314 Heywoods engaged us to help them put an addition on the rear of their existing house.
3315 What we're trying to do is get a bedroom addition. The situation for the Heywoods is
3316 that they love their house, they love their neighborhood; they actually want to retire
3317 there. In looking ahead towards their retirement, they recognize that there's certain
3318 limitations to their existing house. It's a typical ranch house built back in the late fifties.
3319 It's got the bedrooms at one end of the house, with a very narrow hallway going back to
3320 the bedrooms. The bathrooms are back there as well. What we've proposed for them
3321 is a modest bedroom addition, located back where the other bedrooms are, also in
3322 close proximity to the bathrooms. This bedroom addition would have easy access to
3323 the exterior, again looking forward to their retirement age, in case they would need
3324 assistance with their mobility. That's pretty much the program that we're looking at. We
3325 would like to clear up one thing. There was some confusion on our part in some of the
3326 paperwork that we have presented, similar to the situation that you've just described.
3327 We were a little bit mixed up on the rear yard versus side yard and on some of the
3328 documents that we may have presented. We were thinking that the fifty-foot setback
3329 applied to the rear of the house, when in actuality, for planning purposes, the house
3330 fronts on Rio Grande, so the rear yard is actually the side yard, so as the house exists,
3331 it is nonconforming.
3332

3333 Ms. Dwyer - So this addition is actually not as close to the property line
3334 as the existing house is.
3335

3336 Mr. Weaver - We thought that we were encroaching to the rear of the
3337 house, and actually we're encroaching on the side, which the existing house already
3338 encroaches, and has been encroaching for 40-some years. So we're actually not going
3339 any closer; we're actually proposing to start the addition a foot or so in the opposite
3340 direction, and we're not actually encroaching on the property to the east. We're not
3341 encroaching in that direction at all because we have a twenty-foot setback on that side.
3342

3343 Mr. Wright - Mr. Weaver, we have two letters I the file from neighbors.
3344 Have you seen these?

3345
3346 Mr. Weaver - Yes, I received those on Monday. I did talk to the neighbor
3347 on the east side, spoke to Mr. Chapman briefly. He requested some information from
3348 us and drawings, which I mailed out the following day. I notice his letter was dated the
3349 16th, and at that time, they had not received the drawings. I'm not sure if they have
3350 received them since then, but in speaking to Mr. Chapman, I did point out that where we
3351 proposed to put the new addition, he had concerns about yard drainage, and I explained
3352 that there is an existing yard drain, one of four that the Heywoods have put in their back
3353 yard to help with the drainage issues. There is one directly in the footprint of the
3354 addition that we propose, so I explained that we were well aware that there's drainage
3355 issues, and that would have to b a part of our program, because we've got to address it.

3356
3357 Mr. Wright - We have a letter from Mr. Clemo, who is out of town on
3358 vacation somewhere and can't be here, and they've requested that we deferred this to
3359 the next meeting in order that they could be present.

3360
3361 Ms. Dwyer - It might be a good idea to meet with the neighbors and
3362 resolve their issues before a decision is made by this Board.

3363
3364 Mr. Wright - You haven't met with Mr. Clemo?

3365
3366 Mr. Weaver - No sir. I sent him a letter to contact our office. They did not
3367 contact me; I'm not sure if they spoke with someone else in the office, but we had sent
3368 out a letter in advance of the County's letter. Our intention was to be good neighbors
3369 and let people know what was going on, so we sent out letters just to kind of give them
3370 the heads up that they would be seeing some paperwork from you, and if they had
3371 questions, to feel free to call us, and we'd be glad to pass along whatever information
3372 we could, so.....

3373
3374 Ms. Dwyer - Bottom line is, would you like to defer it to the next month to
3375 give you a chance to discuss this with the neighbors, or do you want to press forward
3376 for a decision today?

3377
3378 Mr. Weaver - To be honest, we'd like to go ahead, if possible. It's been an
3379 ongoing process for quite some time with the Heywoods. My understanding with the
3380 letter from the Clemos wasn't that they were opposed to the proposed addition, but that
3381 they had questions about it and just wanted some more information.

3382
3383 Mr. Wright - Which they can't get, because they didn't get it before they
3384 left, and they said that they wouldn't be back in time for this hearing.

3385
3386 Ms. Dwyer - We can make a decision, but my recommendation would be
3387 that you defer it and discuss it with the neighbors who submitted letters in opposition.
3388 But it's your decision.

3389
3390 Mr. Weaver - Let's hear from the opposition, and then can I choose to
3391 defer after we hear that?
3392

3393 Ms. Chapman - My name's Elizabeth Chapman; I reside at 8903 Rio Grande
3394 Road. Our west side property line is the Heywood's, I don't know what they're calling it,
3395 it appears to be the rear. Our east side line is their west side, or rear side line. The
3396 house fronts Santa Clara Drive, so I had always gone with that as the front, and the
3397 back is our side, if that makes any sense. Sleepy Hollow has a significant water
3398 problem, and there are serious drainage issues. We have just incredible concerns with
3399 the amount of drainage that we receive from the Heywood's property as it is. The
3400 reason their house is situated the way it is, when the Jacksons originally sold the land to
3401 the people who built the house that we're in, they sold it from the fence line, rather than
3402 the property line. So that has been the situation. We moved in in 1986; that's the way
3403 we bought it, and I think our house was originally built in 1974. The water issue has
3404 always been there; we knew it when we bought it, and have addressed it in our yard
3405 appropriately. I'm concerned that any structure that they put up is going to displace that
3406 much more water into my yard. We already have a serious drainage problem with
3407 standing water, and indeed a creek going through there if we have enough rain. I just
3408 want to point out that that's been an ongoing issue. I know when Collegiate builds,
3409 Collegiate actively has tried to address the drainage issues along Santa Clara, and has
3410 had a lot of difficulty resolving it. I have reservations about whatever proposals they
3411 may decide to include to address the drainage issue, if it doesn't address it, do I have a
3412 recourse? To me there are two parts to this. First, I don't want an addition coming out
3413 to displace the water, and if the variance is granted saying they're going to put in some
3414 drainage provisions, what if it doesn't work? Additionally, I don't understand why they
3415 can't go out the front of the house so that the water's displaced underneath the house
3416 as it exists. The current master bedroom faces Santa Clara, and by a cursory look at
3417 the plans that we were sent, they could build the same addition out the front without
3418 requiring a variance, and then the water issue would not be my issue. I just wanted to
3419 point out that we received the plans on the 18th of August; they put the wrong zip code
3420 on the envelope. So we didn't get it.
3421

3422 Mr. Wright - Anything else Ms. Chapman?

3423
3424 Ms. Chapman - No, thank you.

3425
3426 Ms. Dwyer - If you would like to have some affirmative drainage plan
3427 presented to you

3428
3429 Ms. Chapman - I'm not even sure that I would agree to an addition under
3430 those conditions, simply because of what the people along Santa Clara experienced
3431 with Collegiate, which actively put in drainage plans that ultimately failed, and Collegiate
3432 pretty actively was addressing those issues and kept going back to the neighbors when
3433 the neighbors would say the neighborhood association worked pretty continuously with
3434 them to get an ongoing drainage issue solved, and my concern is, I'm not an engineer,

3435 and I'm kind of loath to hire one to say that this will or will not work, because I'm worried
3436 if it doesn't work, Sleepy Hollow is just an impossible area to drain. If it doesn't work, I
3437 don't have anything to do other than keep getting washed out.
3438

3439 Ms. Dwyer - So what is it you would ask the Heywoods to do?

3440
3441 Ms. Chapman - Put the addition out the front. It doesn't require a variance
3442 that would displace the water back under their house, not into my yard.
3443

3444 Ms. Dwyer - So the water, in your view, flows from Santa Clara toward
3445 your property?
3446

3447 Ms. Chapman - It flows primarily from behind our house, but there are two
3448 spots from the Heywoods yard where streams form, one of which is quite near where
3449 the addition is going, and the other is north of that, but both flow to my side yard, in the
3450 back of the side yard.
3451

3452 Ms. Dwyer - When you say streams, you mean

3453
3454 Ms. Chapman - It's running water, you can see it running through. We tried
3455 to take pictures; we just don't have a camera that's capable of showing, you couldn't
3456 really see what was shown.
3457

3458 Ms. Harris - So your property is lower, less elevated than their property?

3459
3460 Ms. Chapman - Yes ma'am. I say that only because the water flows into our
3461 yard; I don't really know.
3462

3463 Mr. Wright - Mr. Blankinship, if this were put on the front, could it be put
3464 on there without a variance?
3465

3466 Mr. Blankinship - I'm sure there's somewhere on here where they could build
3467 the addition without a variance, but again, the drawing that we have here has the side
3468 and rear.
3469

3470 Mr. Wright - I'm looking at the plat which shows the County setbacks.

3471
3472 Mr. Blankinship - Those are in error.
3473

3474 Ms. Dwyer - Those are wrong. To get a variance, the addition would
3475 have to be 50 feet from what appears to be the side line, which is technically the rear lot
3476 line.
3477

3478 Mr. Wright - Have to be 50 feet from Santa Clara?

3479
3480 Ms. Dwyer - No, 50 feet from what appears to be the side of the house,

3481 so it would still be in violation if they put it on the front.
3482
3483 Mr. Wright - So they cannot put it there without a variance.
3484
3485 Mr. Blankinship - They can move it closer to Rio Grande on either the front or
3486 the rear.
3487
3488 Mr. Wright - But the bedrooms are on that side of the house, where they
3489 put the addition.
3490
3491 Ms. Chapman - I'd also like to say that one of the appeals of Sleepy Hollow
3492 is the large size of the lots, and the houses have not been built up to encroach so that it
3493 appears to be disproportionate, and the Heywoods bought the house as is; it's a single-
3494 story unit. It's a ranch style house; I don't know what future access they may need
3495 addressed, but it's already on one level. I just don't see the need; I don't see the
3496 hardship required to accept this variance, particularly when I think it's going to cause
3497 some detriment to my property.
3498
3499 Mr. Wright - Thank you very much. Anyone else here in opposition?
3500 Hearing none, you have a brief time to rebut.
3501
3502 Mr. Weaver - I apologize for the zip code error; it wasn't intentional to
3503 waylay your package, but as far as the drainage issues, the Heywoods since they
3504 moved in, have installed four yard drains. From my visit to the site property, and I did
3505 not have a surveyor out there, but the Chapman property certainly is not lower than the
3506 Heywoods. It may be at the same level and possibly higher. There's no benefit to the
3507 Heywoods to not address the drainage issues; they're going to go to the expense and
3508 trouble to put on this addition; they certainly don't want a pond developing back there,
3509 any more than anyone else would. The yard drains that they have installed are to carry
3510 some of the water that comes from the adjacent property, so it's something that they've
3511 been dealing with, and we certainly propose to deal with it with the addition. The other
3512 thing I would point out, relative to the Chapman property, as you're pointing out, the 50-
3513 foot setback would be coming off the side property. The 20-foot setback would apply
3514 towards the Chapman property, so theoretically, we could slide the addition 20-some
3515 feet north towards Rio Grande, and we could actually make the addition 40 feet long out
3516 from the existing house and still be within the setback and not have to get a variance.
3517 We've tried to locate the addition in a spot that doesn't impose on the landscape,
3518 doesn't impose on the neighbors. We're proposing an addition that matches the style of
3519 the house, will enhance the house and neighborhood, and that's our goal. As far as
3520 your recommendation to defer, as I said, in looking over the letter again from the
3521 Clemos, I don't know, and I can't speak for them, in speaking to Mrs. Heywood, her
3522 understanding from the Clemos, they did not express opposition to her, and the letter
3523 does not really express opposition; I think it was more that they were interested in
3524 getting more information, so I think, in speaking for the Heywoods, that we would
3525 choose not to defer and would ask you just to consider the fact that we want to be good
3526 neighbors; we intend to be good neighbors. At the same time, we don't feel that the

3527 Heywoods should be, even though they did buy an existing home, and it's an older
3528 ranch style house, they shouldn't be unduly limited with what they can do with their
3529 property. We've tried to work within the guidelines and do a modest, simple addition, so
3530 I hope that you'll consider that.

3531
3532 Mr. Wright - Thank you very much. That concludes the case.

3533
3534 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.
3535 Harris, the Board **denied** application **A-104-2004** for a variance an addition at 115
3536 Santa Clara Drive (Sleepy Hollow Estates) (Parcel 748-735-2736).

3537
3538 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
3539 Negative: 0
3540 Absent: 0

3541
3542 The Board denied the request as it found from the evidence presented that authorizing
3543 this variance would be of substantial detriment to adjacent property or would materially
3544 impair the purpose of the zoning regulations.

3545
3546 **A-105-2004** **CRAIG A. KELLY** requests a variance from Section 24-9 to build a
3547 one-family dwelling at 7984 Turner Road (Parcel 829-688-6831
3548 (part)), zoned A-1, Agricultural District (Varina). The public street
3549 frontage requirement is not met. The applicant has 0 feet public
3550 street frontage, where the Code requires 50 feet public street
3551 frontage. The applicant requests a variance of 50 feet public street
3552 frontage.

3553
3554 Mr. Wright - Does anyone else desire to speak with reference to this
3555 case? Would you raise your right hand and be sworn please?

3556
3557 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3558 truth, the whole truth, and nothing but the truth, so help you God?

3559
3560 Mr. Kelly - I do. It's Craig A. Kelly. I'm here to request a variance to
3561 build a single-family dwelling at 7984 Turner Road. There was a family division done
3562 several years ago, and I don't have any road frontage.

3563
3564 Mr. Wright - How will you access the property?

3565
3566 Mr. Kelly - Through Turner Road. There's an existing 50-foot gravel
3567 drive, right-of-way, easement.

3568
3569 Mr. Wright - Already there?

3570
3571 Mr. Kelly - Yes.

3572

3573 Mr. Wright - Will you have legal access by deed?
3574
3575 Mr. Kelly - Yes.
3576
3577 Mr. Nunnally - Is this a 20-acre tract you've got down there?
3578
3579 Mr. Kelly - Yes, it's 23 acres, and it's been divided into five different
3580 lots.
3581
3582 Mr. Nunnally - Are all of them family members?
3583
3584 Mr. Kelly - Yes, and the only access is through the dedicated 50-foot
3585 gravel right-of-way.
3586
3587 Mr. Nunnally - And you've read the conditions, and they're agreeable with
3588 you?
3589
3590 Mr. Kelly - Yes.
3591
3592 Mr. Wright - Anything further you wish to state?
3593
3594 Mr. Kelly - No sir.
3595
3596 Mr. Wright - Any further questions of members of the Board? Anyone
3597 here in opposition to this request.
3598
3599 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
3600 Harris, the Board **granted** application **A-105-2004** for a variance to build a one-family
3601 dwelling at 7984 Turner Road (Parcel 829-688-6831 (part)). The Board granted the
3602 variance subject to the following conditions:
3603
3604 1. This variance applies only to the public street frontage requirement. All other
3605 applicable regulations of the County Code shall remain in force.
3606
3607 2. Approval of this request does not imply that a building permit will be issued.
3608 Building permit approval is contingent on Health Department requirements, including,
3609 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
3610 of a well location.
3611
3612 3. At the time of building permit application, the applicant shall submit the
3613 necessary information to the Department of Public Works to ensure compliance with the
3614 requirements of the Chesapeake Bay Preservation Act and the code requirements for
3615 water quality standards.
3616

3617 4. At the time of building permit application the owner shall demonstrate that the
3618 parcel created by this division has been conveyed to members of the immediate family,
3619 and the subdivision ordinance has not been circumvented.
3620

3621 5. The applicant shall present proof with the building permit application that a legal
3622 access to the property has been obtained.
3623

3624 6. The owners of the property, and their heirs or assigns, shall accept responsibility
3625 for maintaining access to the property until such a time as the access is improved to
3626 County standards and accepted into the County road system for maintenance.
3627

3628 Affirmative:	Dwyer, Harris, Kirkland, Nunnally, Wright	5
3629 Negative:		0
3630 Absent:		0

3631
3632 The Board granted this request, as it found from the evidence presented that, due to the
3633 unique circumstances of the subject property, strict application of the County Code
3634 would produce undue hardship not generally shared by other properties in the area, and
3635 authorizing this variance will neither cause a substantial detriment to adjacent property
3636 nor materially impair the purpose of the zoning regulations.
3637

3638 **A-106-2004** **JUDY C. CHAVIS** requests a variance from Sections 24-95(c)(4)
3639 and (1) to allow the existing dwelling to remain at 6708 Delwood
3640 Street (Greendale Forest) (Parcel 771-747-7501), zoned R-4, One-
3641 family Residence District (Brookland). The front yard setback and
3642 minimum side yard setback are not met. The applicant has 16 feet
3643 front yard setback and 3 feet minimum side yard setback, where
3644 the Code requires 35 feet front yard setback and 7 feet minimum
3645 side yard setback. The applicant requests a variance of 19 feet
3646 front yard setback and 4 feet minimum side yard setback.
3647

3648 Mr. Wright - Does anyone else desire to speak with reference to this
3649 case? Would you raise your right hand and be sworn please?
3650

3651 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3652 truth, the whole truth, and nothing but the truth, so help you God?
3653

3654 Ms. Chavis - I do. Judy C. Chavis. Just to clarify, my father is Richard F.
3655 and my mom is Eva M. Charlton. They're both deceased, and their house was left to
3656 me, at 6708 Delwood Street. It's zoned R-4 for one family; it's Brookland District. I'm
3657 requesting sixteen feet front yard setback and three feet minimum side yard setback.
3658 The Code is requiring 35 front yard setback and seven feet side, so I'm requesting a
3659 variance of 19 feet front and four feet side. There are many other houses on this street
3660 that also do not have the front setback. The house was built in 1936, and I think at that
3661 time, it didn't meet Code.
3662

3663 Mr. Wright - Tell us what you want to do if you get this setback.
3664
3665 Ms. Chavis - I have a neighbor who would like to buy the house, and we'd
3666 like to have the title clear, with no problems. I also want to build a house on the lots
3667 next to the house.
3668
3669 Mr. Kirkland - Who's going to live in the house you build on the lot?
3670
3671 Ms. Chavis - It will be sold.
3672
3673 Mr. Kirkland - You're building it to sell it?
3674
3675 Ms. Chavis - Yes.
3676
3677 Mr. Kirkland - You have a contract or something you're working on.
3678
3679 Mr. Foster - Yes, I'm the contractor that would build on the two adjacent
3680 lots. My name is George Foster, and what we're trying to do, we have a lady who wants
3681 to buy the existing house that was build back in 1936. Actually, it's a lady across the
3682 street, her mother who needs more attention there, she wants to have her mother live
3683 closer to her, and her mother would be buying this house. The two other lots conform
3684 for building lots. Basically, that's it. What's she's trying to do is not have any cloud on
3685 the situation when she sells the house with the lot in the center.
3686
3687 Mr. Wright - The existing house?
3688
3689 Mr. Foster - The existing house.
3690
3691 Mr. Wright - So it's already there.
3692
3693 Mr. Foster - It's already there, been there for years. All we're trying to do
3694 is get it to, like Ms. Chavis says, if you look at the aerial photo here, you'll see that it
3695 must have been back in the '30's they didn't require these setbacks, or they didn't
3696 enforce them, because a lot of these houses were built like this. If I were going to buy
3697 the house and live in it, I would want the County to say that I'm conforming to what the
3698 County requires.
3699
3700 Mr. Wright - What you're saying is other houses along the same street
3701 have the same distance to the front

3702
3703 Mr. Foster - Even closer. Yes sir.
3704
3705 Mr. Wright - Anything further? Any questions by members of the Board?
3706 Anyone here in opposition to this request?
3707

3708 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
3709 Nunnally, the Board **granted** application **A-106-2004** for a variance to allow the existing
3710 dwelling to remain at 6708 Delwood Street (Greendale Forest) (Parcel 771-747-7501).
3711 The Board granted the variance subject to the following condition:

3712
3713 1. This variance applies only to the front and side yard setback requirements. All
3714 other applicable regulations of the County Code shall remain in force.

3715
3716 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
3717 Negative: 0
3718 Absent: 0

3719
3720 The Board granted this request, as it found from the evidence presented that, due to the
3721 unique circumstances of the subject property, strict application of the County Code
3722 would produce undue hardship not generally shared by other properties in the area, and
3723 authorizing this variance will neither cause a substantial detriment to adjacent property
3724 nor materially impair the purpose of the zoning regulations.

3725
3726 **A-107-2004** **BOB AND JANE CATHER** request a variance from Section 24-94
3727 to build a front porch at 10220 Acworth Drive (Bretton Woods)
3728 (Parcel 769-765-3474), zoned R-2, One-family Residence District
3729 (Brookland). The front yard setback is not met. The applicants
3730 propose 37 feet front yard setback, where the Code requires 45
3731 feet front yard setback for the proposed front porch. The applicants
3732 request a variance of 8 feet front yard setback.

3733
3734 The Board of Zoning Appeals, at its meeting on August 26, 2004, allowed withdrawal of
3735 this application for the above-referenced variance.

3736
3737 **UP-21-2004** **LAKESIDE RECREATION ASSOCIATION** requests a conditional
3738 use permit pursuant to Section 24-12(b) to enclose an existing
3739 swimming pool at 2434 Swartwout Avenue (Parcel 776-753-8025),
3740 zoned R-3 and R-4, One-family Residence District (Brookland).

3741
3742 The Board of Zoning Appeals, at its meeting on August 26, 2004, allowed withdrawal of
3743 this application, at the request of the applicant, for the above-referenced conditional use
3744 permit.

3745
3746 On a motion by Mr. Kirkland, seconded by Mr. Nunnally, the Board **approved** the
3747 Minutes of the **February 26, 2004**, Henrico County Board of Zoning Appeals
3748 meeting.

3749
3750 Affirmative: Kirkland, Nunnally, 2
3751 Negative: 0
3752 Abstain: Dwyer, Harris, Wright 3

3753

3754 On a motion by Mr. Nunnally, seconded by Mr. Kirkland, the Board **approved** the
3755 Minutes of the **March 25, 2004**, Henrico County Board of Zoning Appeals
3756 meeting.

3757
3758 Affirmative: Kirkland, Nunnally, Wright 3
3759 Negative: 0
3760 Abstain: Dwyer, Harris 2

3761
3762 On a motion by Ms. Dwyer, seconded by Mr. Nunnally, the Board **approved** the
3763 Minutes of the **April 22, 2004**, Henrico County Board of Zoning Appeals meeting.

3764
3765 Affirmative: Dwyer, Kirkland, Nunnally, Wright 4
3766 Negative: 0
3767 Abstain: Harris 1

3768
3769 On a motion by Ms. Dwyer, seconded by Mr. Nunnally, the Board **approved** the
3770 Minutes of the **May 27, 2004**, Henrico County Board of Zoning Appeals meeting.

3771
3772 Affirmative: Dwyer, Kirkland, Nunnally, Wright 4
3773 Negative: 0
3774 Abstain: Harris 1

3775
3776 Mr. Wright - We need to elect officers for the coming year. We
3777 always do it at the August meeting, so at this time Mr. Blankinship will assume
3778 the Chair.

3779
3780 Mr. Blankinship - At this time the floor is open for nominations for the
3781 office of Chairman.

3782
3783 On a motion by Mr. Kirkland, seconded by Ms. Dwyer, Mr. Wright was nominated
3784 for the office of Chairman of the Henrico County Board of Zoning Appeals for the
3785 term 2004-05.

3786
3787 Upon hearing no further nominations for the office of Chairman, Mr. Wright was
3788 elected by acclamation.

3789
3790 Mr. Blankinship - At this time the floor is open for nominations for the
3791 office of Vice Chairman.

3792
3793 On a motion by Mr. Wright, seconded by Ms. Dwyer, Mr. Nunnally was
3794 nominated for the office of Vice Chairman of the Henrico County Board of
3795 Zoning Appeals for the term 2004-05.

3796
3797 Upon hearing no further nominations for the office of Vice Chairman, Mr.
3798 Nunnally was elected by acclamation.

3799

3800 There being no further business, and on a motion by Ms. Dwyer, seconded by
3801 Mr. Kirkland, the Board adjourned until **September 23, 2004**, at 9:00 am.

3802

3803

3804

Russell A. Wright, Esq.

3805

Chairman

3806

3807

Benjamin Blankinship, AICP

3808

Secretary