

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**  
2 **HENRICO COUNTY HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE HENRICO**  
3 **COUNTY GOVERNMENT COMPLEX ON THURSDAY, AUGUST 26, 1999 AT 9:00 A.M.**  
4 **NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES DISPATCH ON AUGUST 5,**  
5 **1999, AND AUGUST 12, 1999.**  
6

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

Also Present: John Marlles, Secretary  
Susan W. Blackburn, County Planner II  
Florence Ellis, Recording Secretary

7 Mr. Marlles - Thank you, Mr. Chairman. Good morning, ladies and gentlemen,  
8 members of the Board. The BZA does have a set of rules that they'd like to have followed when  
9 conducting business. They are as follows: The Secretary, myself, will call the case. The applicant  
10 will come forward to present their case. All those speaking in favor or in opposition of the request  
11 will be sworn in at that time. The applicant will present his notices to indicate that adjacent property  
12 owners have been notified. The applicant will be given an opportunity to present testimony. Any  
13 one in opposition will be given an opportunity to speak. The applicant is given an opportunity to  
14 rebut any testimony given. Only the applicant will be given that opportunity to rebut. After all  
15 questioning is finished, the Board will take the information under advisement. They will render a  
16 decision at the end of the meeting. Any one wishing to stay until the end of the meeting may do so,  
17 or if they wish, they may call the Planning Office at the end of the day to find out the decision of the  
18 Board.

19  
20 Mr. McKinney - Are there any requests for deferrals or withdrawals on the 9:00 a.m.  
21 agenda?  
22

23 **UP- 8-1999** **Media One of Virginia, Inc.** requests a use permit pursuant to Section 24-  
24 12(c) of Chapter 24 of the County Code to construct a communications  
25 equipment shelter at 8511 Jesse Senior Drive (Tax Parcel 90-A-87), zoned  
26 R-3, One-family Residence District (Three Chopt).  
27

28 Mr. Marlles - We have one request for a deferral, Mr. Chairman, UP-28-99.  
29

30 Mr. McKinney - That is for a deferral?  
31

32 Mr. Marlles - Yes. Excuse me, withdrawal.  
33

34 Mr. McKinney - Is there a motion?  
35

36 Mr. Nunnally I so move.  
37

38 Mr. Kirkland Second.  
39

40 Mr. McKinney - Moved and seconded. All those in favor say aye—all those  
41 opposed by saying nay. The motion carries.

42  
43 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Kirkland, the  
44 Board **granted the withdrawal of the case without prejudice.**

45  
46 Affirmative: Kirkland, McKinney, Nunnally, Wright 5  
47 Negative: 0  
48 Absent: 0

49  
50 Mr. Marlles - Not on the 9:00 a.m. agenda.

51  
52 Mr. McKinney - Any requests from the audience? All right, if you'd call the first case,  
53 sir.

54  
55 **A-93-1999** **T. E. Palmer, Jr.** requests a variance from Section 24-94 of Chapter 24 of  
56 the County Code to build a dwelling at 5315 Lucas Road (Tax Parcel 60-A-  
57 70B), zoned R-3, One-family Residence District (Brookland). The front yard  
58 setback is not met. The applicant has 39.0 front yard setback where the  
59 Code requires 40.0 feet front yard setback. The applicant requests a  
60 variance of 1.0 foot front yard setback.

61  
62 Mr. Marlles - The first case is A-93-99.

63  
64 Mr. McKinney - Is the applicant here for A-93-99? We'll pass that by right now.

65  
66 At this time, Case A-93-99 was passed by.

67  
68 Mr. Marlles - The next case is A-99-99.

69

69 **A-99-1999** **Marsha S. Shuler** requests a variance from Section 24-95(c)(2) of Chapter  
70 24 of the County Code to build an addition at 1113 Santa Anna Road  
71 (Beverly Hills) (Tax Parcel 101-11-12-1), zoned R-3, One-family Residence  
72 District (Three Chopt). The rear yard setback is not met. The applicant has  
73 29.0 feet rear yard setback where the Code requires 40.0 feet rear yard  
74 setback. The applicant requests a variance of 11.0 feet rear yard setback.  
75

76 Mr. McKinney - Is any one in the audience, other than the applicant, going to testify  
77 on this case? If they would, would they please stand and be sworn in at the same time. Ma'am,  
78 would you raise your hand and be sworn in by our Secretary?  
79

80 Mr. Marles - Do you swear that the testimony that you are about to give is the  
81 truth, the whole truth, and nothing but the truth, so help you God?  
82

83 Ms. Marsha Shuler - Yes. I do.  
84

85 Mr. McKinney - Will you state your name for the record?  
86

87 Ms. Shuler - My name is Marsha Shuler.  
88

89 Mr. McKinney - Ms. Shuler, have all the adjoining and adjacent property owners  
90 been notified of this request, according to County Code?  
91

92 Ms. Shuler - Yes, they have. I have the documentation of the notification here.  
93

94 Mr. McKinney - Turn those in to the Secretary. All right, Ms. Shuler, if you'll present  
95 your case.  
96

97 Ms. Shuler - I'd like to request approval for a variance from the rear yard setback  
98 so that I can build an addition onto my home. The current house does sit back quite close to the  
99 property line on one corner. Is it the northwest corner? I'm not sure which side. The northeast  
100 corner. The reason the house is set that way on the property is because of the drainage that goes  
101 across the property, which is coming from Beverly Road, which the County is funneling down  
102 across the property from Beverly Road.  
103

104 Part of the property was a thoroughfare for Rolando Drive at one time, which was vacated, and the  
105 drainage from Beverly Road comes down through that part of the property. So, when we built the  
106 house, we sat it very far back.  
107

108 The addition that I'm requesting to build is approximately the same width as a deck, which is  
109 currently there on the property. It is a little longer than the deck. I believe the deck is fourteen or  
110 sixteen feet long right now. The addition would be 25. But the width is no more than the current  
111 deck.  
112

113 Mr. McKinney - What do you intend to build this out of, Ms. Shuler?  
114

115 Ms. Shuler - The construction would be the same as the current house is.  
116

117 Mr. Wright - What size would the proposed structure be?  
118

119 Ms. Shuler - It's approximately 25 feet long and 12 feet wide. I have the plans if  
120 you'd like to review them.  
121  
122 Mr. Wright- How deep is it?  
123  
124 Ms. Shuler – You're asking me that question, I'm not; when you say, "deep," what  
125 do you mean?  
126  
127 Mr. Wright- From the back of your house to the back of the...  
128  
129 Ms. Shuler - It's approximately 12 feet.  
130  
131 Mr. Wright - Twelve feet? It's just 12 feet.  
132  
133 Ms. Shuler - It's approximately 12 feet from the back of the house, which is  
134 approximately what the depth of the deck is right now.  
135  
136 Mr. Wright - Will this be the same size as the deck or bigger than the deck?  
137  
138 Ms. Shuler - It's larger than the deck, but it will replace the deck. The deck will  
139 not be there.  
140  
141 Mr. Wright - Take the deck down?  
142  
143 Ms Shuler - Right.  
144  
145 Mr. Wright - What do you have to the rear of your property in the way of  
146 screening so forth?  
147  
148 Ms. Shuler – There is nothing right now. The neighbor to the immediate rear had  
149 a fence and took it down, because they don't like to have fences, so I haven't done anything to  
150 screen my property, thinking that's a very nice way to have things. You can see here on the  
151 picture, immediately to the right there is a totally screened fence that screens the neighbor in the  
152 back corner.  
153  
154 Mr. Wright - So the neighbor that would be most affected by this, you have some  
155 screening there, some trees, etc., is that it?  
156  
157 Ms. Shuler – The one immediately behind me is the one that can really see this  
158 addition. And we do have trees there, but nothing that's been planted specifically to screen.  
159  
160 Mr. McKinney - Can you go to Photo 1? The siding on your home, were you having  
161 problems with it?  
162  
163 Ms. Shuler - No. I haven't had any.  
164  
165 Mr. McKinney - I was looking at the beads on the bottom.  
166  
167 Ms. Shuler - The photograph doesn't really show it the way it looks, I don't  
168 believe.  
169

170 Mr. McKinney - Because I know they have a lot of problems.  
171  
172 Ms Shuler - Yes. I've had some work done right around the deck, because I  
173 don't have any gutters. But, once we remove the deck and put the addition on, we plan to put  
174 gutters on.  
175  
176 Mr. Wright - What will this addition be used for?  
177  
178 Ms. Shuler - It will be a dining room, a storage room, and a porch.  
179  
180 Mr. Wright - What's the size of your present house?  
181  
182 Ms. Shuler - I'm sorry.  
183  
184 Mr. Wright - How many rooms do you have?  
185  
186 Ms. Shuler - There are, I believe, seven rooms, I believe. There's no dining room  
187 right now; four bedrooms, living room...  
188  
189 Mr. Wright - You have four bedrooms?  
190  
191 Ms. Shuler - Four bedrooms.  
192  
193 Mr. Wright - It's a two-story house, is it?  
194  
195 Ms. Shuler - It's a cape cod, a story and a half.  
196  
197 Mr. Wright - You have four bedrooms?  
198  
199 Ms Shuler - Four bedrooms, living room, kitchen, den.  
200  
201 Mr. Wright - Den?  
202  
203 Ms Shuler - Yes.  
204  
205 Mr. Wright - How large is the den?  
206  
207 Ms. Shuler - The den is very small. It's about 10 by 12, I think.  
208  
209 Mr. McKinney - Any other questions of Ms. Shuler by Board members? Does the  
210 staff have any comments?  
211  
212 Mr. Marlles - No, sir.  
213  
214 Mr. McKinney - I'll ask one more time. Anyone else in the audience like to speak in  
215 reference to A-99-99? That concludes your case, Ms. Shuler. You'll get your answer this afternoon  
216 by calling the Planning Office, or you're welcome to stay until the end of the meeting.  
217  
218 Ms. Shuler - Thank you.  
219

220 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Balfour, the  
221 Board **granted the case.**

222  
223 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
224 Negative: 0  
225 Absent: 0  
226

227 The Board granted this request as it found from the evidence presented that authorizing this  
228 variance will not be of substantial detriment to adjacent property and will not materially impair the  
229 purpose of the zoning regulations.

230  
231 1. This approval is only for the rear yard setback for the addition requested in this case. Any future  
232 improvements to the property shall comply with the applicable regulations of the County Code.

233  
234 Mr. McKinney - I will say it wasn't brought up at the beginning of the meeting. The  
235 agenda is in the back on the wall with the suggested conditions by the staff on each one of these  
236 cases. If you don't have one, you might want to look at it. All right, Mr. Secretary, will you call the  
237 next case?  
238

239 **A-100-99 Joseph V. and Teresa Thomas** requests a variance from Section 24-95(t)  
240 of Chapter 24 of the County Code to build a dwelling at 4023 Oakley's Lane  
241 (Tax Parcel 147-A-84), zoned A-1, Agricultural District (Fairfield). The lot  
242 area outside the floodplain is not met. The applicant has 28,000 square feet  
243 lot area outside the floodplain where the Code requires 43,560 square feet  
244 (1 acre) lot area outside the floodplain. The applicant requests a variance of  
245 15,560 square feet lot area outside the floodplain.  
246

247 Mr. Marlles - Before we go any further, we've got a note on this that the Executor  
248 needed to sign this. It has been signed, I see. The Executor of the estate of W. Kendall Lipscomb  
249 needs to sign the variance application by Jim Lehmann.

250  
251 Ms. Blackburn - It was signed.

252  
253 Mr. McKinney - And it looks like it is signed.

254  
255 Mr. Marlles - Yes, sir.

256  
257 Mr. McKinney - OK. All right, does anyone in the audience expect to testify on  
258 behalf of this case, other than the applicants on A-100-99? Any one else? All right, if you would  
259 you raise your hand and be sworn in by our Secretary, please?  
260

261 Mr. Marlles - Do you swear that the testimony that you are about to give is the  
262 truth, the whole truth, and nothing but the truth, so help you God?  
263

264 People in unison - I do.

265  
266 Mr. Marlles - Thank you.

267  
268 Mr. McKinney - All right, whoever is going to speak, would you state your name for  
269 the record?

270  
271 Ms. Thomas - My name is Theresa Thomas.  
272  
273 Mr. McKinney - All right, Ms. Thomas, has all the adjoining and adjacent property  
274 owners been notified of this request, according to County Code?  
275  
276 Ms. Thomas - Yes, they have.  
277  
278 Mr. McKinney - Will you turn those in to the Secretary? All right, Ms. Thomas, if  
279 you'll present your case, please.  
280  
281 Ms. Thomas - Yes. My husband and I are interested in purchasing some property  
282 on Oakley's Lane. And we were told that property was within the flood plain and that we had to get  
283 a variance, because currently there is one acre of land, and we needed to have one acre outside of  
284 the flood plain. Theirs is a total of one acre. So, we were told we needed to get a variance. We  
285 had a surveyor come in and look at the land, and, according to his survey, he stated it wasn't in the  
286 floodplain at all. But, the County of Henrico stated that, according to some older records that they  
287 had, that it was in the flood plain. So, the surveyor went back, according to what Henrico had, and  
288 stated that 0.65 acres was outside of the floodplain. And we were trying to get a variance to get  
289 permission to be able to build on that land.  
290  
291 Currently, there are several houses right now that are on the floodplain, including one, which is  
292 ours. Right now, we are trying to get further away from the flood line. That 0.65 acre will be  
293 enough for us to build on, if we were given permission to do so. That's the ditch or the flood plain  
294 or the drainage ditch or whatever, that you can see right there to the very right of that, those trees  
295 on the right hand side, is a house – currently another house. To the left of that drainage ditch is the  
296 property that we're trying to purchase.  
297  
298 Mr. Wright- This is a zoning problem, it appears, Mr. Chairman. If this property  
299 were zoned R-3, there would be no problem, is that correct?  
300  
301 Mr. McKinney - Or R-4.  
302  
303 Mr. Wright- R-4?  
304  
305 Ms. Thomas - We were told that the best thing to do by the Planning Office was  
306 would be to get a variance, that's according to what the Planning Office said.  
307  
308 Mr. Wright - You do have public water and sewer there for this property, so the  
309 need for the well and septic as required by A-1 is currently not there.  
310  
311 Mr. McKinney - Right.  
312  
313 Mr. Stoches- You can get water and sewer from both ends.  
314  
315 Ms. Thomas - Yes.  
316  
317 Mr. McKinney - Sir, would you state your name for the record?  
318  
319 Mr. Joe Stoches - Sir?  
320

321 Mr. McKinney - Would you state your name for the record?  
322  
323 Mr. Stoches - I'm Joe Stoches.  
324  
325 Mr. McKinney - Sir?  
326  
327 Mr. Stoches - Joseph Stoches.  
328  
329 Ms. Thomas - He's the current owner of the property.  
330  
331 Mr. Stoches - I own half of that acre, and my foster brother owns the other half.  
332  
333 Mr. McKinney - OK.  
334  
335 Mr. Stoches - I've been living there for 78 years, and I've never had no flood yet.  
336  
337 Mr. Wright - Almost would like to have one, right now, wouldn't you?  
338  
339 Mr. McKinney - Is it not true that you can build in a flood plain, provided you're one  
340 foot above it? Is that correct, Mr. Secretary?  
341  
342 Mr. Marlles - That is correct, as long as you meet the County's floodplain  
343 requirements.  
344  
345 Mr. McKinney - So, in the interpretation of the Director of Planning that the floodplain  
346 is not taken into consideration as lot size?  
347  
348 Mr. Marlles - Mr. Blankinship, would you mind responding to that?  
349  
350 Mr. Blankinship - The Code does state that in order to build on the property they have  
351 to have one acre exclusive of the flood plain.  
352  
353 Mr. Wright - If it's in A-1?  
354  
355 Mr. Blankinship - Yes, sir.  
356  
357 Mr. McKinney - If it's in A-1. OK.  
358  
359 Ms. Thomas - That's why we were told to get a variance.  
360  
361 Mr. McKinney - All right, any other questions by Board members? What type home  
362 do you plan on building, Ms. Thomas?  
363  
364 Ms. Thomas - The size or...It's a rancher.  
365  
366 Mr. McKinney - It's a rancher? All right, does staff have any comments?  
367  
368 Mr. Marlles - No, sir.  
369  
370 Mr. McKinney - I'll ask. Any one else in the audience like to speak on A-100-99?  
371 That concludes your case. You'll get your answer this afternoon. We appreciate you coming.



372  
373 Ms. Thomas - OK. Thank you.  
374  
375 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the  
376 Board **granted** the case.  
377  
378 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
379 Negative: 0  
380 Absent: 0  
381  
382 The Board **granted** this request as it found from the evidence presented that authorizing this  
383 variance will not be of substantial detriment to adjacent property and will not materially impair the  
384 purpose of the zoning regulations.  
385  
386 1. This approval is only for the lot area requirement exclusive of the floodplain. The property will be  
387 subject to all other applicable requirements of the County Code.  
388  
389 Mr. McKinney - Next case.  
390  
391

391 **A-105-1999** **Keith D. and Kathleen Motley** requests a variance from Section 24-9 of  
392 Chapter 24 of the County Code to build a dwelling at 1550 Cardinal Woods  
393 Lane (Tax Parcel 257-A-3), zoned A-1, Agricultural District (Varina). The  
394 public street frontage is not met. The applicant has 0 feet public street  
395 frontage where the Code requires 50 feet public street frontage. The  
396 applicant requests a variance of 50 feet public street frontage.  
397

398 Mr. McKinney - Is there any one in the audience who expects to speak on A-105-99,  
399 other than the applicant? All right, ma'am, if you will be sworn in by our Secretary.  
400

401 Mr. Marlles - Do you swear that the testimony that you are about to give is the  
402 truth, the whole truth, and nothing but the truth, so help you God?  
403

404 Mrs. Kathleen Motley - I do.  
405

406 Mr. McKinney - Would you state your name for the record?  
407

408 Mrs. Motley - My name is Kathleen Motley.  
409

410 Mr. McKinney - Ms. Motley, has all the adjoining and adjacent property owners been  
411 notified of this request, according to County Code?  
412

413 Mrs. Motley - Yes, they have.  
414

415 Mr. McKinney - Will you turn those in to the Secretary? All right, if you'll present  
416 your case, please.  
417

418 Mrs. Motley - Yes. We would like to build a house and there is no road frontage.  
419 Previously, about three or four years ago, a variance had been approved. We're requesting that a  
420 variance be approved so we may build our house.  
421

422 Mr. McKinney - You say, three or four years, what was that?  
423

424 Mrs. Motley - A variance was approved. It was applied for and approved.  
425

426 Mr. Nunnally In 1995.  
427

428 Mrs. Motley - Is that when it was?  
429

430 Mr. Wright- You didn't build it within one year which is...  
431

432 Mrs. Motley - We did not apply for the variance. We brought the property after the  
433 variance was approved.  
434

435 Mr. Nunnally Are you planning on building now, soon?  
436

437 Mrs. Motley - Yes.  
438

439 Mr. McKinney - Have you read the conditions?  
440

441 Mrs. Motley - Yes, sir.  
442  
443 Mr. McKinney - All right, any questions of Mrs. Motley by Board members?  
444  
445 Mrs. Motley - No.  
446  
447 Mr. McKinney - I don't know if it is or not. I ask if there were any questions of you by  
448 the Board members?  
449  
450 Mr. Wright- I'd just like to ask about this right of way into the property.  
451  
452 Mrs. Motley - Yes. We have the easement.  
453  
454 Mr. Wright- Is that granted by a deed?  
455  
456 Mrs. Motley - Yes. I have it here.  
457  
458 Mr. Wright- That's OK. One of the conditions require that you satisfy the  
459 Planning Office when you obtain your building permit that you do have legal right of way. I just  
460 wanted to make sure.  
461  
462 Ms. Motley Yes. Correct. We have that.  
463  
464 Mr. McKinney - Any other questions by Board members? Does the staff have any  
465 comments?  
466  
467 Mr. Marlles - No, sir.  
468  
469 Mr. McKinney - I'll ask. Any one else in the audience like to speak in reference to A-  
470 105-99? All right, Mrs. Motley, thank you for coming. You'll get your answer this afternoon.  
471  
472 Mrs. Motley - OK. Thank you.  
473  
474 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Kirkland, the  
475 Board **granted** the case.  
476  
477 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
478 Negative: 0  
479 Absent: 0  
480  
481 The Board **granted** this request as it found from the evidence presented that authorizing this  
482 variance will not be of substantial detriment to adjacent property and will not materially impair the  
483 purpose of the zoning regulations.  
484  
485 1. This approval is only for the proposed dwelling that is the subject of this case. Any future  
486 improvements to the property shall comply with the applicable regulations of the County Code  
487  
488 2. The applicant shall present proof with the building permit application that they have legal access  
489 to the property via Cardinal Woods Lane.  
490  
491 3. The applicant shall obtain Health Department approval of a well and a septic system.

492

493 **A-107-1999**                    **The Meadows Group LLC** requests a variance from Sections 24-94 of  
494 Chapter 24 of the County Code to build a dwelling at 5013 Arapaho Trail  
495 (The Meadows) (Tax Parcel 38-13-B-13), zoned R-3AC, One-family  
496 Residence District (Conditional) (Three Chopt). The front yard setback and  
497 rear yard setback are not met. The applicant has 15.21 feet front yard  
498 setback and 10.0 feet rear yard setback where the Code requires 35.0 feet  
499 front yard setback and 35.0 feet rear yard setback. The applicant requests a  
500 variance of 19.79 feet front yard setback and 25.0 feet rear yard setback.  
501

502 Mr. McKinney -                    Is any one in the audience other than the applicant testifying on  
503 behalf of A-107-99? Any one else think they might like to speak? All right, gentlemen, if you'll  
504 raise your hand and be sworn in by the Secretary.  
505

506 Mr. Marlles -                    Do you swear that the testimony that you are about to give is the  
507 truth, the whole truth, and nothing but the truth, so help you God?  
508

509 Mr. Spud Mistr -                    I do.  
510

511 Mr. McKinney -                    All right, Mr. Mistr, would you identify yourself for the record?  
512

513 Mr. Spud Mistr -                    Spud Mistr, Foster & Miller, representing the applicant.  
514

515 Mr. McKinney -                    Mr. Mistr, has all the adjoining and adjacent property owners been  
516 notified of this request, according to County Code?  
517

518 Ms. Shuler -                    Yes, sir.  
519

520 Mr. McKinney -                    Turn them in. Okay. You may present your case.  
521

522 Mr. Mistr -                    This is a reverse corner lot. Therefore, by the Ordinance the front  
523 yard setback faces what we really prefer to build is the side yard. The front yard setback faces  
524 Pepperbridge Court and the side is Arapaho Trail. We would like Arapaho Trail to be the front  
525 yard, and Pepperbush to be the side, so the rear yards of all lots in the subdivision would line up.  
526

527 The language that the staff had recommended in the report was something that had been done  
528 some time ago. I faxed in earlier this week some revised language, because the property owner  
529 immediately behind us, Mr. Powell, whose is Lot 12 wanted to be assured that the current side yard  
530 setback could not be used to build, and the applicant is willing to make the existing side yards 35  
531 feet, a front of 35 and a rear of 35, if we are granted the variance from the existing sides to make  
532 them front and rear, or to make the existing front and rear side yards, so that we could build within  
533 10 feet of the side property line; 15 foot total side yard.  
534

535 Mr. Wright-                    You're going to face this house on Arapaho Trail, is that it? Is that  
536 what you call that, "Arapaho Trail?"  
537

538 Mr. Mistr -                    Arapaho Trail, we would like to face the house so that the houses on  
539 Lots 13, 14, 15 will all be facing Arapaho Trail. And the houses facing Snowmass Terrace, which  
540 is 10, 11, and 12 are all facing Snowmass. So, what we want to do is make the rear of Lot 13 back  
541 up to the rear of Lot 12 and the side of 13 be adjacent to the side of 14.

542  
543 The way we have it now, according to the Ordinance, 14 faces Arapaho Trail, 13 faces  
544 Pepperbush, and 12 faces Snowmass Terrace. So, everybody has got one side yard in somebody  
545 else's rear yard.  
546  
547 Mr. Wright- Are you saying that house at the corner of Pepperbush and  
548 Snowmass faces Snowmass?  
549  
550 Mr. Mistr - Yes, sir. That's correct.  
551  
552 Mr. Wright- If this were granted, the rear of this house would face the rear of that  
553 house?  
554  
555 Mr. Mistr - Right.  
556  
557 Mr. Wright- Is that what you're saying?  
558  
559 Mr. Mistr - Right.  
560  
561 Mr. McKinney - Anything else?  
562  
563 Mr. Wright- Can a house be built on there that would conform to the zoning  
564 requirements facing Arapaho Trail?  
565  
566 Mr. Mistr - The way it is right now...  
567  
568 Mr. Wright- I was wondering, could you configure a house so that it would satisfy  
569 the zoning requirements?  
570  
571 Mr. Mistr - I understand there have been some houses where you make them  
572 real narrow and real deep, you know like row houses are, so, the answer is yes, but I don't think  
573 that's what we would want to do in this neighborhood.  
574  
575 Mr. Wright- It would not be in keeping with the other houses?  
576  
577 Mr. Mistr - That's correct.  
578  
579 Mr. McKinney - Any other questions by Board members? Does the staff have any  
580 comments?  
581  
582 Mr. Marles - No, sir.  
583  
584 Mr. Blankinship - Let me just say, Mr. Chairman, we have reviewed the information  
585 they submitted, and we don't see any problems with it.  
586  
587 Mr. McKinney - Thank you, Ben. Did you want to speak, sir?  
588  
589 Mr. Brian White - Yes, please.  
590  
591 Mr. McKinney - Would you state your name for the record?  
592

593 Mr. White - Brian White.  
594  
595 Mr. McKinney - All right, Mr. White.  
596  
597 Mr. White - I'm the homeowner on Lot 14 next to that. And, we're actually in  
598 favor of making the house turn. But the house is going to be substantially closer to our home. It  
599 would be a 10 foot lot line instead of the 15 with the rest of the neighborhood. Our only concern is  
600 we would like to have the garage placed on the Pepperbush side. That would allow for a side entry  
601 garage, which is in keeping with two of the other three homes on the street, and also in keeping  
602 with Bill Howell's house, who also has a side entry garage off of Pepperbush, facing Snowmass  
603 Terrace on the other side.  
604  
605 Mr. McKinney - Mr. White, have you talked to Mr. Mistr about this?  
606  
607 Mr. Mistr - I've talked to Chas Davidson about it. He expressed some concerns  
608 with the grading of the lot. I feel that the grading of the lot is such that it can be addressed. It's not  
609 that severe. It's the same kind of lot that Bill Howell has. Bill Howell has a relatively steep  
610 driveway, but it's not really an issue.  
611  
612 Mr. Wright- And you're on Lot 14?  
613  
614 Mr. White - I'm on Lot 14, the brick home. And we have a side entry garage.  
615  
616 Mr. Wright- You face Arapaho and this house would face the same way. Your  
617 side would be to the side, but your concern is with the garage on that side of the house?  
618  
619 Mr. White - That the garage would be very close to our house, and our master  
620 bedroom is on the side of the house that would be next to that garage.  
621  
622 Mr. McKinney - Well, you're in opposition to what he's proposing, the way he's  
623 proposing it only because of the garage?  
624  
625 Mr. White - I actually want the house turned. I think the whole neighborhood  
626 wants the house facing, what my impression is...  
627  
628 Mr. McKinney - But, that's what he's asking, to turn the house.  
629  
630 Mr. White - Right.  
631  
632 Mr. Mistr - I think we're in agreement. I think the question is, can the garage be  
633 put over adjacent to Lot 14? If we use the 10-foot side yard setback, it's not enough room to put a  
634 driveway to get into the garage on that side of the house. So, if they did put the garage over there,  
635 there'd have to set the house further off of the property line. I haven't discussed this with Chas,  
636 because he's out of town, but I had always thought that if the house was turned that the garage  
637 and driveway would come off of Pepperbush and the garage would be on that side of the house. It  
638 doesn't make any sense to have your driveway cut on Pepperbush and the garage, itself, on the far  
639 side of the house. I mean, nobody does that. And, I believe, on behalf of the developer, I will  
640 agree, to a condition that if the garage was built that it would be on the Pepperbush Drive side of  
641 the house.  
642

643 Mr. McKinney - Sir, you weren't sworn in when I asked if anybody was going to  
644 speak. You need to be sworn in by our Secretary.  
645  
646 Mr. Marles - Do you swear that the testimony that you are about to give is the  
647 truth, the whole truth, and nothing but the truth, so help you God?  
648  
649 Mr. Leonard Yates - Yes. I do.  
650  
651 Mr. McKinney - Would you state your name for the record?  
652  
653 Mr. Yates - Leonard Yates.  
654  
655 Mr. McKinney - All right, Mr. Yates. Go ahead, and state your opposition or in favor  
656 or whatever.  
657  
658 Mr. Yates - I'd like to say I'm in favor of him turning the house he's proposing.  
659 The question I had, and the reason I didn't come up first, I was curious where they were going to  
660 put the garage. I live on Pepperbush right across from where this house is going to be built. And  
661 the concern I had was how they were going to orient the garage to the house.  
662  
663 Mr. McKinney - Have you, gentlemen, seen a set of plans to this house?  
664  
665 People in unison - No.  
666  
667 Mr. Yates - My understanding is, they have not yet defined what the house is  
668 going to be because they're waiting for the variance.  
669  
670 Mr. McKinney - All right, do you have anything else to add? I'll ask if there is anyone  
671 else who would like to speak in opposition to A-107-99? All right, Mr. Mistr.  
672  
673 Mr. Mistr - I haven't seen a set of house plans either. I don't think they have a  
674 specific plan, you know, for this. But we would be agreeable that the garage would be on the  
675 Pepperbush side of the house, and that those areas; the current side yards, that we would set back  
676 any dwelling 35 feet off of Lot 12 and 35 feet off of Arapaho Trail driveway. I don't know how you'd  
677 do that by variance, but I think the conditions would read that if this is granted, that we would  
678 maintain the setbacks of 35 feet off of Lot 12 and off of Arapaho Trail.  
679  
680 Mr. McKinney - So you want that as a condition to satisfy your opposition?  
681  
682 Mr. Mistr - That would satisfy Mr. Howell who lives on Lot 12. He and I  
683 discussed this yesterday, and he's in agreement with what we want to do. He just wants to ensure  
684 that sometime down the road somebody didn't come back and send in a permit to put an addition  
685 within 10 feet of his property line, because that has effectively become the rear, which needs a 35-  
686 foot setback.  
687  
688 Mr. McKinney - How about the concerns of these two gentlemen?  
689  
690 Mr. Mistr - We'll agree to a condition that if a detached garage, or any garage is  
691 built, it will be on the Pepperbush Drive side of the house.  
692

693 Mr. McKinney - You've had your say. Would you make a notation of that, Mr.  
694 Secretary?  
695  
696 Mr. Marlles - Yes, sir.  
697  
698 Mr. Wright- They couldn't put a detached garage over on that side, could they?  
699  
700 Mr. Mistr - I don't think they have any in this subdivision.  
701  
702 Mr. Wright- That would not even be permitted. I don't think the Ordinance would  
703 permit a detached garage over there.  
704  
705 Mr. Marlles - It certainly would be difficult from a setback standpoint.  
706  
707 Mr. Mistr - Right.  
708  
709 Mr. Wright- It would have to be a garage attached to the house.  
710  
711 Mr. Mistr - Right. As part of the house.  
712  
713 Mr. McKinney - All right, any other questions by Board members?  
714  
715 Mr. Balfour - Mr. Chairman, I need the record to reflect, I can't vote on this one.  
716  
717 Mr. McKinney - You're abstaining from voting on this?  
718  
719 Mr. Balfour Yes, sir.  
720  
721 Mr. McKinney - The rules are, gentlemen, that the opposition gets their say and they  
722 have no rebuttal. However, a gentleman raised his hand and wanted to say something. Now, if  
723 one of the Board members wants to ask him back up and find out what he says, I think you can do  
724 that.  
725  
726 Mr. Wright- Does this gentleman want to say something?  
727  
728 Mr. McKinney - In the yellow shirt.  
729  
730 Mr. Wright- This gentleman back here wants to say something?  
731  
732 Mr. McKinney - Well, he already spoke in opposition. That's what I'm saying. But if  
733 you want to call him back, and find out what he wants to say, you can do that.  
734  
735 Mr. Wright- Or a question. Either ask me, or I could ask him.  
736  
737 Mr. Yates- Yes, sir. It was actually more of a question. I'm on the Pepperbush  
738 side of it. And the point I was trying to make earlier, I agree the house should be turned, as this  
739 man is suggesting, however, the concern I have was, where was the garage door going to be  
740 placed? Is it going to be on the back of the house or is it going to be on the side of the house?  
741  
742 Mr. Wright- We don't know the answer to that right now. We don't have a plan.  
743 I can't see how it would be on the front, if they have the house turned toward Arapaho.



744  
745 Mr. McKinney - All right, does staff have any other comments?  
746  
747 Mr. Marles - No, sir.  
748  
749 Mr. McKinney - That concludes your case, gentlemen. You'll get your answer this  
750 afternoon. Thank you for coming.

751  
752 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the  
753 Board **granted** the case.

754  
755 Affirmative: Kirkland, McKinney, Nunnally, Wright 4  
756 Negative: 0  
757 Abstained: Balfour 1

758  
759 The Board **granted** this request as it found from the evidence presented that authorizing this  
760 variance will not be of substantial detriment to adjacent property and will not materially impair the  
761 purpose of the zoning regulations.

- 762  
763 1. This approval is only for the front and rear yard setbacks. Future improvements to the property  
764 shall comply with the applicable regulations of the County Code.  
765  
766 2. The setback adjoining lot 12 shall be 35 feet. The hatched areas shown on Foster & Miller's  
767 plat 44249-13B, revised August 20, 1999, shall be excluded from the buildable area.  
768  
769 3. If a garage is built on this lot, it shall face Pepperbush Court, and shall not adjoin lot 14.

770  
771  
772 **UP- 28-1999** Media One of Virginia, Inc. requests a use permit pursuant to Section 24-  
773 12(c) of Chapter 24 of the County Code to construct a communications  
774 equipment shelter at 8511 Jesse Senior Drive (Tax Parcel 90-A-87), zoned  
775 R-3, One-family Residence District (Three Chopt).

776  
777 Mr. McKinney- All right, UP-28-99 was withdrawn. Will you call the next case, Mr.  
778 Secretary?

779  
780 Mr. Marles- The applicant requested that this application be **withdrawn without**  
781 **prejudice** from consideration by the Board.

782  
783 After an advertised public hearing and on a motion by The Board, the Board **granted the request**  
784 **by the applicant to withdraw the case without prejudice.**

785 **A -110-1999** **Steven Middleton** requests a variance from Section 24-9 of Chapter 24 of  
786 the County Code to build a dwelling at 9740 Old Dell Trace (Tax Parcel 110-  
787 A-4), zoned R-0, One-family Residence District (Tuckahoe). The public  
788 street frontage is not met. The applicant has 0 feet public street frontage  
789 where the Code requires 50 feet public street frontage. The applicant  
790 requests a variance of 50 feet public street frontage.  
791

792 Mr. McKinney - Does any one in the audience, other than the applicant, intend to  
793 speak in reference to A-110-99? Seeing none, gentlemen, if you'll raise your hands and be sworn  
794 in by the Secretary.  
795

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

799 People in Unison - Yes. We do.  
800

801 Mr. McKinney - Would you state your name, whoever is going to speak first, for the  
802 record?  
803

804 Mr. Steve Middleton - My name is Steve Middleton.  
805

806 Mr. McKinney - All right, Mr. Middleton, has all the adjoining and adjacent property  
807 owners been notified of this request, according to County Code?  
808

809 Mr. Middleton - Yes. They have.  
810

811 Mr. McKinney - Turn those in to the Secretary, please. You may present your case.  
812

813 Mr. Middleton - My wife and I are seeking a variance to build a home for our family  
814 on a 10.3 acre lot that's located off of South Gaskins Road. The variance is required because the  
815 lot has no public road frontage. The lot, however, does have access to a public road, Old Belle  
816 Trace by way of a recorded access easement that is 30 feet wide and 131 feet long. And that  
817 access easement is shown on the recorded subdivision plat for Country Club Colony.  
818

819 I think, in order for you to understand how this lot got in this particular situation, it's helpful to have a  
820 little history of what happened here. All this property, meaning most of the property in this area,  
821 was owned by a gentleman named Littleton Wickham. He owned the Country Club Colony tract  
822 land as well as the adjacent 50-acre tract of land.  
823

824 In 1970, he recorded a preservation of a historic easement on 50 acres of his property. That 50  
825 acres included a 20-acre tract of land on which the Woodside, which is a historic home, is located,  
826 and also created three additional 10-acre tracts of land.  
827

828 The historic easement provided that none of the 10-acre tracts of land could be further subdivided,  
829 and that each one could only have one single-family home located on it. So, this lot, by that deed  
830 restriction, is restricted from further subdivision, or from having more than one single-family home  
831 on it.  
832

833 Mr. Wickham sold the Country Club Colony tract of land to a developer in 1985. And, when he sold  
834 that land to the developer in 1985, he required that developer provide an access easement to this  
835 particular tract of land. You see that access easement on the plat at the end of Old Belle Trace.  
836 However, Mr. Wickham did not provide that this lot had access to a public road frontage. And  
837 that's why we're here today seeking the variance from that requirement.  
838

839 We've read the staff conditions and recommendations and we are in concurrence with all of them,  
840 except for one. One of the requirements is that we tie into public sewer. I've since had a  
841 conversation with Jim Lehmann, in the Planning Office, who stated that if we are more than 300  
842 feet from public sewer, we're not required to tap into it. Our house would be located some 600 feet

843 from the nearest public sewer line. In addition, it's lower than the public sewer, so we would have  
844 to put in a pump station and put it back up the hill. The land has been tested and does percolate.  
845 In fact, at one time, one of the previous landowners had acquired a septic tank permit for the lot.

846  
847 Mr. McKinney - Would you delete that, Mr. Secretary.

848  
849 Mr. Marlles - That would be fine with Staff, Mr. Chairman.

850  
851 Mr. Wright- You have public water?

852  
853 Mr. Middleton - We will tie into public water which is located in Old Belle Trace, yes,  
854 sir.

855  
856 Mr. Balfour- Is the motion then to delete the requirement to connect to the  
857 sewer?

858  
859 Mr. McKinney - I think the condition is mute, because the condition doesn't meet  
860 what the Code says. The Code says, if you're over 300 feet, you don't have to tie into it. So, I just  
861 told him to delete it off of there. All right, do you have anything else to add?

862  
863 Mr. Middleton - Not at this time.

864  
865 Mr. McKinney - Any questions of the applicant by Board members? Does the staff  
866 have any comments?

867  
868 Mr. Marlles - No additional comments, Mr. Chairman.

869  
870 Mr. McKinney - I'll ask again. Any one else in the audience to speak in reference to  
871 A-110-99? That concludes your case. Thank you for coming. You'll get your answer this  
872 afternoon.

873  
874 Mr. Middleton - Thank you.

875  
876 Mr. McKinney - Next.

877  
878 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr. Balfour the  
879 Board **granted** the case.

880  
881 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

882 Negative: 0

883 Absent: 0

884  
885 The Board **granted** this request as it found from the evidence presented that authorizing this  
886 variance will not be of substantial detriment to adjacent property and will not materially impair the  
887 purpose of the zoning regulations.

888  
889 1. This approval only grants relief from the public street frontage requirement of the County code  
890 and does not imply that a building permit or any other required permit or approval will be  
891 granted. The applicant shall be responsible for obtaining all necessary permits and approvals  
892 prior to the start of construction on the property.

893

- 894 2. Any additional improvements shall comply with the applicable regulations of the County Code.  
895  
896 3. The applicant must present proof with the building permit application that a legal access to the  
897 property has been obtained.  
898  
899 4. At the time of building permit application, the applicant shall submit an environmental site  
900 assessment to determine if the site is located in a Chesapeake Bay Preservation Area.  
901

902 **A -112-1999** **Lisa & Michael Manthorpe** requests a variance from Sections 24-95(i)(2)(f)  
903 of Chapter 24 of the County Code to allow an existing swimming pool to  
904 remain at 5609 Darrel Lake Court (Lindsey Lakes) (Tax Parcel 29-10-D-2),  
905 zoned R-3C, One-family Residence District (Conditional) (Three Chopt).  
906 The rear yard setback and setback from the dwelling are not met. The  
907 applicant has 5.5 feet rear yard setback and 8.75 feet setback from the  
908 dwelling where the Code requires 6.0 feet rear yard setback and 10.00 feet  
909 setback from the dwelling. The applicant requests a variance of 0.5 feet rear  
910 yard setback and 1.25 feet setback from the dwelling.  
911

912 Mr. McKinney - Does any one in the audience expect to speak in reference to A-  
913 112-99, other than the applicant? All right, sir, if you'd raise your hand and be sworn in by the  
914 Secretary.

915  
916 Mr. Marles - Do you swear that the testimony that you are about to give is the  
917 truth, the whole truth, and nothing but the truth, so help you God?

918  
919 Mr. Mike Frye - Yes. I do.

920  
921 Mr. McKinney - Will you state your name for the record, sir?

922  
923 Mr. Frye - My name is Mike Frye. I am representing the Manthorps on this.  
924 I'm the one who built the pool—Luxury Pools and Hot Tubs to Go.

925  
926 Mr. Wright- Mr. Frye it is.

927  
928 Mr. Frye - Frye.

929  
930 Mr. McKinney - Mr. Frye, has all the adjoining and adjacent property owners been  
931 notified of this request, according to County Code?

932  
933 Mr. Frye - Yes, sir. I didn't receive my paper until late, so I went around myself  
934 and got them all signed.

935  
936 Mr. McKinney - Now, you're with who, sir?

937  
938 Mr. Frye - With Hot Tubs to Go. We're the ones who built the pool.

939  
940 Mr. McKinney - Did you get a permit to build the pool?

941  
942 Mr. Frye - Yes, sir.  
943

944 Mr. McKinney - From Henrico County?  
945  
946 Mr. Frye - Yes, sir.  
947  
948 Mr. McKinney - And it went through Planning?  
949  
950 Mr. Frye - Yes, sir.  
951  
952 Mr. McKinney - Mr. Marlles, do you know who signed off on it?  
953  
954 Mr. Frye - I believe...  
955  
956 Mr. McKinney - I'm asking the Secretary.  
957  
958 Mr. Marlles - Mr. Chairman, normally, these are reviewed by our front counter. I  
959 don't have the application to know exactly which staff member signed off on it, so, I just can't tell  
960 you that at this point. Mr. Blankinship, do we know?  
961  
962 Mr. Blankinship - No, sir. I don't know who reviewed it, but my understanding is the  
963 application as was presented met the terms of the Code, but what was built, did not meet the terms  
964 of what was applied for.  
965  
966 Mr. Frye - First off, I'm going to go on record, that this is our fault.  
967  
968 Mr. McKinney - OK.  
969  
970 Mr. Frye - No. I'm not trying to deny that. I had an employee who was in  
971 charge of our pool construction at the time. He's no longer with us. We didn't find out about this  
972 until the Manthorps went to sell their home. That's when we were informed by the survey that we  
973 were too close to that. OK. Now, in the meantime, first off, I want to say we try to run a good  
974 business. We've been in business 12 years. As soon as I found out, I put money into an escrow  
975 account for them so they could close on their house, so we're not trying to cheat anybody. We just  
976 want to try to get this straight for the new homeowners.  
977  
978 The problem, being, of course, a pool already being built is much more expensive to take down  
979 and rebuild than to actually, hopefully, be able to leave it there and get the variance. We have  
980 applied for vacation of easement which we looked at. I couldn't believe that my employee actually  
981 put that over on that easement. Thank God, there was no electrical on that easement, or some  
982 type of water that could have caused problems for someone else. But we have applied for the  
983 vacation of the easement. We have been informed; I do have a letter here that states, I might have  
984 already given it to you, actually, with that other thing that states that everything has been approved.  
985 As of right now, the Utilities, Public Works, everybody says there's no problem. If we do receive  
986 the variance, then they will pursue it with the County Manager, I guess, and it should go through  
987 that there's no reason that they need that easement at this point.  
988  
989 Mr. Kirkland- Mr. Frye, you applied for the vacation. Did you apply for the total?  
990 You only get half, correct, 8 feet?  
991  
992 Mr. Frye - That's correct. Yes sir. So, it would be another 8 foot.  
993  
994 Mr. Kirkland- There's no utilities, phone lines, anything buried now?

995  
996 Mr. Frye - No, sir. I believe it might be with that sheet. I've got another one, if  
997 not.  
998  
999 Mr. McKinney - We have a copy of it.  
1000  
1001 Mr. Frye - OK. But Keith Adams sent me a letter yesterday that stated that  
1002 everything has been approved as of this point. Also, on the pool, itself, all the NSPI standards are  
1003 met. For example, safety-wise, you must have a three-foot walkway around the pool. So, safety-  
1004 wise or anything like that, the pool does meet all the standards of NSPI which is the National Spa  
1005 and Pool Institute. It's just a matter of, I believe what happened, on the back side, which this is the  
1006 pool to the front of the house, which we're about a foot and a quarter too close to that. Now on the  
1007 back side, we have subcontractors who put the pools in for us, if he tried to keep it straight with the  
1008 fence, or, actually, excuse me, straight with the house, it looked nicer. What happened, with that  
1009 done, you can see how the lot line kind of cuts back in. The actually, pool, itself, does meet the 6-  
1010 foot requirements two-thirds of the way across the pool. It's just that one little corner at the edge  
1011 where the lot kicked back in where it came in 6 inches too close.  
1012  
1013 Mr. McKinney - All right, do you have anything else to add, Mr. Frye?  
1014  
1015 Mr. Frye - No. Just the fact, you know, this could be very costly to my  
1016 business, if we have to, that's no excuse, but, you know, we try to do business right. I have been in  
1017 Henrico County my whole life. I'm a little nervous because I've never been up here before, and I  
1018 don't plan on being here again.  
1019  
1020 Mr. McKinney - Don't be nervous. Any questions of Mr. Frye by Board members?  
1021 Does the staff have any comments?  
1022  
1023 Mr. Marlles - No, sir.  
1024  
1025 Mr. McKinney - I'll ask one more time. Any one else in the audience would like to  
1026 speak in reference to A-112-99? That concludes the case, Mr. Frye. Thank you for coming. You  
1027 can get your answer this afternoon.  
1028  
1029 Mr. Frye - Thank you.  
1030  
1031 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the  
1032 Board **granted** the case.  
1033  
1034 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1035 Negative: 0  
1036 Absent: 0  
1037  
1038 The Board **granted** this request as it found from the evidence presented that authorizing this  
1039 variance will not be of substantial detriment to adjacent property and will not materially impair the  
1040 purpose of the zoning regulations.  
1041  
1042 1. This approval only grants relief from the public street frontage requirement of the County code  
1043 and does not imply that a building permit or any other required permit or approval will be  
1044 granted. The applicant shall be responsible for obtaining all necessary permits and approvals  
1045 prior to the start of construction on the property.

- 1046  
1047 2. Any additional improvements shall comply with the applicable regulations of the County Code.  
1048  
1049 3. The applicant must present proof with the building permit application that a legal access to the  
1050 property has been obtained.  
1051  
1052 4. At the time of building permit application, the applicant shall submit an environmental site  
1053 assessment to determine if the site is located in a Chesapeake Bay Preservation Area.  
1054

1055 Mr. Wright- Mr. Chairman, we don't have another case to come...

1056  
1057 Mr. McKinney - We have another case that we passed by on the first page. We'll  
1058 call that again, Mr. Secretary, and find out if the applicant is here.  
1059

1060 **A-93-99**

1061  
1062 Mr. McKinney - Is the applicant here for A-93-99? Well, we're just let it ride until the  
1063 end of the agenda.  
1064

1065 Mr. Balfour- Mr. Chairman, since we've got the time, I wonder if we could vote on  
1066 these now, and...

1067  
1068 Mr. McKinney - We'll ask the Board if that's what they'd like to do. It's fine with me.  
1069

1070 Mr. Wright- Do you want to start at the beginning?

1071  
1072 Mr. McKinney - Start at the beginning.  
1073

1074 Mr. McKinney - Ladies and gentlemen, that concludes the 9:00 o'clock agenda. The  
1075 Board will reconvene at 10:00 o'clock.  
1076

1077 **AT THIS TIME THE BOARD CONVENED UNTIL 10:00 A.M.**

1078  
1079 **10:00 A.M.**

1080  
1081 The Board of Zoning Appeals will reconvene the 10:00 o'clock agenda.  
1082

1083 Welcome, ladies and gentlemen, to the Henrico County Board of Zoning Appeals. I'll let the  
1084 Secretary explain the rules and regulations for those of you that just came in and didn't hear them  
1085 at 9:00 a.m.  
1086

1087 Mr. Marles - Following the reading of the cases by the Secretary, the applicant  
1088 will come forward to present their case. All those speaking in favor or in opposition to the request  
1089 will be sworn in at that time. The applicant will present his notices to me to indicate that adjacent  
1090 property owners have been notified. The applicant will be given an opportunity to present  
1091 testimony. Any one in opposition will be given an opportunity to speak. The applicant is given an  
1092 opportunity to rebut any testimony given. Only the applicant will be given the opportunity to rebut.  
1093

1094 After all questioning is finished, the Board will take the information under advisement. They will  
1095 render a decision at the end of the meeting. Anyone wishing to stay until the end of the meeting

1096 can do so, or if they wish, they may call the Planning Office at the end of the day to find out the  
1097 decision of the Board.

1098  
1099 Mr. McKinney - Also, for the information of the audience, in the rear of the Board  
1100 Room, there are suggested conditions by the staff and the agenda that we're working off of today.  
1101 And anyone that are interested in conditions suggested by them are free to go and get one of those  
1102 if you are in opposition. Most of the applicants have those. All right, do we have any withdrawals  
1103 or deferrals on the 10:00 a.m. agenda, Mr. Secretary?

1104  
1105 Mr. Marlles - Mr. Chairman, we have one. A-119-99. We have received an  
1106 indication that the applicant is not coming to the meeting. We have spoken with the applicant's  
1107 representative who has indicated that they will possibly withdraw the application. However, we  
1108 have not received anything in writing requesting a withdrawal of a deferral, and have not been able  
1109 to confirm that by talking with the applicant. We talked to the applicant's representative.

1110  
1111 Mr. McKinney - We'll wait until we get to it. If he's not here, then we'll take care of it  
1112 then. Is there any one in the audience would like a deferral or withdrawal? All right, Mr. Secretary,  
1113 would you call the first case on the 10:00 a.m. agenda?

1114

1115 **A -113-1999** **Little Sisters of the Poor in Richmond** requests a variance from Section  
1116 24-94 of Chapter 24 of the County Code to build a four-story structure at  
1117 1503 Michael Road (Tax Parcel 91-A-47A), zoned A-1, Agricultural District  
1118 (Three Chopt). The in height is not met. The applicant has 4 stories in height  
1119 where the Code permits 3 stories in height. The applicant requests a  
1120 variance of 1 story in height.

1121  
1122 Mr. McKinney - Is the applicant here?

1123  
1124 Mr. Spinella - Yes. I will be speaking, also, Mr. Wayne Mayton.

1125  
1126 Mr. McKinney - Excuse me, sir. We've got to do this according to our procedure.  
1127 You first need to come up to the mike.

1128  
1129 Mr. Spinella - Okay.

1130  
1131 Mr. McKinney - Second, off, anyone in the audience that intends or thinks they may  
1132 speak on behalf of A-113-99, please stand and be sworn in at the same time that the applicant is  
1133 sworn in. If any one expects to speak for or against. All right, gentlemen, sister, if you'd raise your  
1134 hands to be sworn in by the Secretary.

1135  
1136 Mr. Marlles - Do you swear that the testimony that you are about to give is the  
1137 truth, the whole truth, and nothing but the truth, so help you God?

1138  
1139 People in Unison - I do.

1140  
1141 Mr. McKinney - All right, Mr. Spinella, would you state your name for the record, sir?

1142  
1143 Mr. Nicholas A. Spinella - All right, sir. Mr. Chairman and members of the Board, my name is  
1144 Nicholas A. Spinella.

1145



1146 Mr. McKinney - All right, Mr. Spinella, has all the adjoining and adjacent property  
1147 owners been notified of this request according to the County Code.  
1148  
1149 Mr. Spinella - Yes, they have by Wayne Mayton, who is the civil engineer in this  
1150 matter, and he will present those at this time.  
1151  
1152 Mr. McKinney - Mr. Mayton, if you'll turn those into the Secretary, please, sir.  
1153  
1154 Mr. McKinney - Do we have a problem?  
1155  
1156 Mr. Marlles - Mr. Chairman, I've just been informed that four of the notices were  
1157 not picked up at the post office, even though the property owners had been notified that they were  
1158 available.  
1159  
1160 Mr. McKinney - Are they required to be picked up, by law?  
1161  
1162 Mr. Marlles - No. I was just pointing that out to the Board.  
1163  
1164 Mr. Wright- Do we have the receipt that they mailed them?  
1165  
1166 Mr. Spinella - We have the receipts.  
1167  
1168 Mr. Wright- We can't make people go pick them up.  
1169  
1170 Mr. McKinney - All right, Mr. Spinella, would you present your case, sir?  
1171  
1172 Mr. Spinella - All right, sir. I'm an attorney, and have represented the Little Sisters  
1173 of the Poor for many years. Also present, is Mother Regina, the President of the Little Sisters, and  
1174 Sister Regis, her assistant. We also have present for this hearing, Angela L. Newsome, Architect,  
1175 with Rawlins, Wilson & Associates, and Wayne Mayton, Civil Engineer.  
1176  
1177 The Little Sisters of the Poor first came to the Richmond area in 1874, having the General  
1178 Assembly pass an act to incorporate them on April 17, 1874, prior to the existence of the State  
1179 Corporation Commission. On September 11, 1999, they will celebrate their 125<sup>th</sup> anniversary in  
1180 serving the poor and aged first in the City of Richmond, and now, in Henrico County at their home  
1181 on Michael Road for the past 23 years.  
1182  
1183 They admit and treat individuals without regard to race, sex, or national origin or religion belief.  
1184 They depend on the generosity of many Catholic and non-Catholic friends who admire their work  
1185 among the poor, and give generously.  
1186  
1187 I would like to explain first the variance, since that is on the agenda. The application is for a  
1188 variance from Section 24-94 of Chapter 24 of your County Code in order to build four stories,  
1189 instead of permitted three stories.  
1190  
1191 The Little Sisters require a variance of one-story in height. The new building will have the same  
1192 roof line as the existing chapel, and the ground slopes down toward both ends. Accordingly,  
1193 because of the slope, there is room for an additional floor. The second floor of the proposed  
1194 building will be level with the first floor of the existing home.  
1195

1196 The Little Sisters need to make the most efficient use of the property. We feel that a hardship exists  
1197 because of the nature of the site, and, although, they could build the same number of units with  
1198 three stories, it would prevent buffering from the other properties, and would be an inefficient use of  
1199 the property, and cause impervious surfaces to be present.

1200  
1201 Because of the existing use of the property as a home for the aged and poor, it would be a  
1202 hardship on the Little Sisters of the Poor not to have a variance granted by this Board for the  
1203 construction of four stories, instead of three stories, due to the slope downward of the site where  
1204 the new building is constructed. There is no other site on their property, and, therefore, this  
1205 constitutes a hardship.

1206  
1207 I don't know what your procedure is. Do you want us to argue on the conditional use at this time or  
1208 not?

1209  
1210 Mr. McKinney - You're presenting your case, Mr. Spinella.

1211  
1212 Mr. Blankinship- They're two different cases.

1213  
1214 Mr. Wright- It's the next case.

1215  
1216 Mr. Spinella - It's the next case.

1217  
1218 Mr. McKinney - Gentlemen, would you like to handle them as companion cases?

1219  
1220 Mr. Marlles - It certainly is a companion case to this case. It would be really up to  
1221 the discretion of the Board if you'd like to do so.

1222  
1223 Mr. Wright- I have no problem with it...

1224  
1225 Mr. McKinney - If you'd go ahead and call the case.

1226  
1227 Mr. Marlles - OK.

1228  
1229 Mr. McKinney - I think you can stay right there.

1230  
1231 Mr. Spinella - I will.

1232

1233 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Kirkland, the  
1234 Board **granted** the case.

1235

1236 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

1237 Negative: 0

1238 Absent: 0

1239

1240 The Board **granted** this request as it found from the evidence presented that authorizing this  
1241 variance will not be of substantial detriment to adjacent property and will not materially impair the  
1242 purpose of the zoning regulations.

1243

1244 1. Only the improvements shown on the plan filed with the application may be constructed  
1245 pursuant to this approval. Any additional improvements shall comply with the applicable  
1246 regulations of the County Code.

1247  
1248 **UP-30-1999** **Little Sisters of the Poor** in Richmond requests a use permit pursuant to  
1249 Section 24-52(e) of Chapter 24 of the County Code to expand their facilities  
1250 at 1503 Michael Road (Tax Parcel 91-A-47A), zoned A-1, Agricultural  
1251 District (Three Chopt).  
1252  
1253 Mr. McKinney - Is there any one in the audience that didn't get sworn in on A-113-99  
1254 that wishes to speak on UP-30-99, which is a companion case? OK. Hearing none, we'll proceed,  
1255 Mr. Spinella.  
1256  
1257 Mr. Spinella - As noted, we have two companion matters before you, today. One  
1258 is the extension of the conditional use permit to construct a four-story brick building to house  
1259 residents in 21-units of independent living arrangements for the poor and needy. The conditional  
1260 use permit pursuant to Section 24-52(e) of Chapter 24 of the County Code was originally presented  
1261 23 years ago. I presented it at that time, due to the fact that Mr. Dunston had given this land to the  
1262 Little Sisters of the Poor, and the land was there and Mr. George Jenkins was on the Board of  
1263 Supervisors at that time, and did not want the property rezoned to permit the opening of this home.  
1264 But, however, he did agree to a conditional use permit. And they have been good neighbors since  
1265 that time. And, accordingly, at the time the use permit was originally granted, they had a total of  
1266 138 residents when the home opened several years later in the home. They have now  
1267 consolidated some double rooms to private rooms, and now have 72 residents in the St. Joseph's  
1268 Home for the Aged, which is the Home that they operate.  
1269  
1270 The new building consists of 21 independent living units of residents of 60 years or older, of limited  
1271 means, and at such time as these residents can no longer live independently, they will be eligible to  
1272 enter St. Joseph's Home for the assisted living arrangements. And they are, indeed, lucky people,  
1273 because only the poor and needy gain entrance to the Little Sisters of the Poor.  
1274  
1275 The single home located on the property, owned by the Little Sisters, and used only for visitors will  
1276 remain. This will not require demolition of that property, and the project will go around beside it.  
1277  
1278 The suggested conditions are acceptable to the Little Sisters and Mother Regina has authorized  
1279 me to state, on her behalf, that all of the conditions in both cases are acceptable.  
1280  
1281 I would like, at this time, to present Mother Regina, who will tell you a little bit more about the  
1282 project.  
1283  
1284 Mr. McKinney - For the record, Mr. Spinella, let me just stop you for just a second.  
1285 When you sent your notices out for all the adjoining and adjacent property owners, did you do it for  
1286 both of these cases?  
1287  
1288 Mr. Spinella - I did. However, I did not send them out. I was travelling in Europe  
1289 at the time.  
1290  
1291 Mr. McKinney - Whoever you were representing.  
1292  
1293 Mr. Spinella - Wayne tells me that he did send them on both cases.  
1294  
1295 Mr. McKinney - I just wanted to make sure that the Secretary had the notices, also  
1296 for this case. Thank you.  
1297

1298 Mr. Spinella - All right, sir. Mother.  
1299  
1300 Sister Regina- Good morning and thank you. Thank you, Mr. Spinella, for your  
1301 beautiful presentation. As a matter of fact, Mr. Spinella has stated quite a few of the facts about  
1302 the Little Sisters of the Poor.  
1303  
1304 Mr. McKinney - Excuse me, Sister. Just for the record, would you state your name  
1305 for the record?  
1306  
1307 Sister Regina Loftis - My name is Sister Regina Loftis and I'm the Administrator of the St.  
1308 Joseph's Home for the Aged and also of Little Sisters of the Poor. As Mr. Spinella stated, we came  
1309 to Richmond in 1874, and we're celebrating this year our 125<sup>th</sup> anniversary. And, as a Little Sister  
1310 of the Poor, I can assure you that we have tried in both instances, in all of our homes, we're located  
1311 in 30 countries all over the world. And this is our specific work to care for the aged. And it's a very  
1312 needed work today, because of the fact, we know our people are "cased aside" if you will, and  
1313 there's so many things in our legislature today that really do not protect the elderly.  
1314  
1315 Of course, Little Sisters of the Poor advocates for them, whereas, we care for them. We give them  
1316 the love, and the dignity, and the respect that is accorded to their age and for what they have done  
1317 for our society. So, it is a very beautiful work, and it's a very hands-on work. For 12 Little Sisters  
1318 all over the world, we represent close to 4,000 Little Sisters of the Poor. And this is our specific  
1319 work where we care for them with "hands-on" care.  
1320  
1321 We have a staff of 85 lay employees, but the Little Sisters are there guiding, giving our spirit. The  
1322 Mothers founders gave our spirit to us when we became Little Sisters of the Poor, and that is the  
1323 humble service. Of course, we try to carry that out in a very dignified way and we pass that onto  
1324 our staff as well. Like Mr. Spinella mentioned, we do have very good friends and benefactors who  
1325 supplement the care. We receive Social Security and Medicaid for the residents that are in our  
1326 home, and our friends and benefactors help us by the support of the home. And we have always  
1327 tried to be very good neighbors. And I know we had a neighborhood meeting with our neighbors  
1328 before we sent the official notices so as to assure them that we will take care of anything; any  
1329 needs that they have expressed and we have looked into some of them. And at the time of  
1330 construction, we will also do that as well.  
1331  
1332 I can assure you, the variance, I believe the size of the building is just even with the building, itself,  
1333 our other home. So, I don't think that would create a whole lot of problems. Thank you very much.  
1334 If there's any other questions, I do have some brochures here. I'd just like to pass them out to the  
1335 members of the Board that maybe you'd like to see the spirit of the Little Sisters and our work.  
1336  
1337 Mr. McKinney - Sister Regina, I think you've got the wrong name. I think it should be  
1338 Big Sisters of the Poor.  
1339  
1340 Sister Regina - We're not all this big. Thank you.  
1341  
1342 Mr. McKinney - I think you are. Are there any questions by Board members?  
1343  
1344 Mr. Spinella - Mr. Chairman, and members of the Board, I have the architect and  
1345 the civil engineer here if there are any questions. I'm not competent to answer regarding the plans.  
1346  
1347 Mr. Wright- I have one question of Mr. Spinella. Where would the parking be for  
1348 this? I don't see it on this plan.

1349  
1350 Mr. Spinella - There would be some parking. Would you come...There would be  
1351 some parking around the building, itself. Then there would be additional parking.  
1352  
1353 Mr. Wright- I see 12 spaces over there.  
1354  
1355 Mr. Spinella - Twelve spaces. But there is also additional parking at the other end  
1356 of the property.  
1357  
1358 Mr. Wright- At the rear. I see that.  
1359  
1360 Mr. Spinella - Right at the rear. So, they comply with...  
1361  
1362 Mr. Wright- With the requirements of the County?  
1363  
1364 Mr. Spinella - They do.  
1365  
1366 Mr. McKinney - Mr. Spinella, the height, being the property slopes down, how high  
1367 will this new addition be than what's there now?  
1368  
1369 Mr. Spinella - The front of it would be on a level line with the property across from  
1370 it, which is the chapel property, where their church is. And it would not be, it's 39 or 40 feet in the  
1371 rear.  
1372  
1373 Mr. McKinney - In the rear?  
1374  
1375 Mr. Spinella - But the land slopes down.  
1376  
1377 Mr. McKinney - Right. That's what I'm talking about.  
1378  
1379 Mr. Spinella - Really, the basement is counted is a story in the County, but, it really  
1380 is a first floor level building.  
1381  
1382 Mr. McKinney - Any questions by Board members? All right, any one else like to  
1383 speak in reference to A-113-99 or UP-30-99? Any one else like to speak? Does the staff have  
1384 any comments?  
1385  
1386 Mr. Spinella - Mr. Chairman, I would point out to you that there's one piece of  
1387 property on the site plan that shows the Little Sisters. That's really owned by Mrs. Jenkins –  
1388 George Jenkins. When we straightened out Myradare, that piece right there (referring to slide),  
1389 that was conveyed to Mr. and Mrs. Jenkins, at that time, to straighten out Michael Road so that it  
1390 came across from Myradare.  
1391  
1392 Mr. Wright- I was interested in that, because I thought that Mr. Jenkins owned  
1393 that, and...  
1394  
1395 Mr. Spinella - He does own it.  
1396  
1397 Mr. Wright- He does own it.  
1398

1399 Mr. Spinella - Yes. But the County is still showing it. The deed is on record. So, I  
1400 think the Planning Office shows it as Little Sisters, but it is not Little Sisters.

1401  
1402 Mr. McKinney - Does the staff have any comments?

1403  
1404 Mr. Marlles - No additional comments, Mr. Chairman.

1405  
1406 Mr. Spinella - All right, Mr. Spinella, that concludes your case. Thank all of you for  
1407 coming. You'll get your answer this afternoon.

1408  
1409 Mr. Spinella - Thank you, Mr. Chairman.

1410  
1411 Mr. McKinney - Yes sir. Next.

1412  
1413 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the  
1414 Board **granted** the case.

1415  
1416 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1417 Negative: 0  
1418 Absent: 0

1419  
1420 1. The property shall be developed in substantial conformance with the plan filed with the  
1421 application. No changes or additions to the layout may be made without the approval of the  
1422 Board of Zoning Appeals.

1423  
1424 2. A detailed site lighting plan shall be included with the landscaping plans for Planning Office  
1425 review and approval.

1426  
1427 3. A buffer shall be maintained between the proposed building and the house at 8108 Three  
1428 Chopt Road. The location, width and landscaping of the buffer shall be included with the  
1429 landscaping plans for Planning Office review and approval.

1430  
1431 The Board **granted** this request as it found from the evidence presented that authorizing this use  
1432 permit will not be of substantial detriment to adjacent property and will not materially impair the  
1433 purpose of the zoning regulations.  
1434

1435 **A -115-1999** **Bremner Boulevard CVS, Inc.** requests a variance from Section 24-94(s)  
1436 of Chapter 24 of the County Code to permit an existing building to remain at  
1437 7600 Staples Mill Road (Tax Parcel 71-A-72), zoned B-2C, Business District  
1438 (Conditional) (Brookland). The rear yard setback is not met. The applicant  
1439 has 32.9 feet rear yard setback where the Code requires 40.0 feet rear yard  
1440 setback. The applicant requests a variance of 7.1 feet rear yard setback.

1441  
1442 Mr. McKinney - Is the applicant here for A-115-99?

1443  
1444 Mr. Theobald- Yes, sir.

1445  
1446 Mr. McKinney - Is any one else in the audience who intends to speak on A-115-99?

1447  
1448 Mr. Theobald- Possibly.

1449  
1450 Mr. McKinney - Any one like to speak, would they please stand and be sworn in by  
1451 our Secretary at this time.  
1452  
1453 Mr. Marles - Raise your right hand, please. Do you swear that the testimony that  
1454 you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?  
1455  
1456 People in Unison - I do.  
1457  
1458 Mr. McKinney - Mr. Theobald, if you'd introduce yourself for the record, please.  
1459  
1460 Mr. Jim Theobald - Mr. Chairman, my name is Jim Theobald, here on behalf of CVS -  
1461 Bremner Boulevard CVS, Inc.  
1462  
1463 Mr. McKinney - Has all the adjoining and adjacent property owners been notified of  
1464 this request, according to County Code?  
1465  
1466 Mr. Theobald - Yes sir, they have.  
1467  
1468 Mr. McKinney - Turn those in to the Secretary. Would you present your case, sir?  
1469  
1470 Mr. Theobald - Mr. Chairman, gentlemen, again, for the record, my name is Jim  
1471 Theobald. I'm here on behalf of Bremner Boulevard CVS, Inc. This request is to seek a 7.1 foot  
1472 variance from a 40-foot required rear yard setback. This is a case where, frankly, the logic of what  
1473 is the side yard was so compelling that it, frankly, tricked the house of professionals and the staff,  
1474 as well.  
1475  
1476 What you see is the existing drug store oriented to Staples Mill Road, which, of course, is the main  
1477 thoroughfare, and the largest dimension on the site, versus Bremner Boulevard, which is the  
1478 shorter dimension which goes back into a residential area. And, obviously, you could, if you could  
1479 go back to that last visual, please, (referring to slide), I'd appreciate it. Your Code requires the  
1480 shorter side on a public street to be consider your front yard, or as probably 100 out of 100 people  
1481 who were looking at the drug store, and travelling up and down Staples Mill, would have  
1482 considered this to be the front yard.  
1483  
1484 And, unfortunately, through the zoning process, whereas site plan was proffered, continuing on  
1485 through the POD process, and continuing even through the "as built" survey, this was shown and  
1486 labeled as, "the rear yard," when, in fact, under your Ordinance, this, is, technically, the rear yard  
1487 and this is the side yard (referring to slide).  
1488  
1489 I think there may have also been some confusion as these were being processed, setbacks versus  
1490 transitional buffer requirements, and the application of Section 24-94(s) which would allow you in a  
1491 B-2 District to have the rear yard also made up somewhat in the side yard, the caveat being not  
1492 being adjacent to residential property.  
1493  
1494 So, 40 feet, do you mind if we go back to that other one again, (referring to slide), this just shows it  
1495 a little better. So, we have, in fact, provided the rear-yard distance in the back. In fact, have a six-  
1496 foot brick wall in between the only residential property that's been constructed back in here with  
1497 mature plantings on our side of this wall. And then what is technically, and correctly, the rear yard,  
1498 which requires a 40-foot setback, in fact, approved, if you will, being the side yard. And so, while a

1499 15-foot yard setback would have been required had that interpretation been correct, we provided  
1500 32.9 feet nonetheless, but, technically, we're now 7.1 feet short.

1501  
1502 This zoning case with its proffered conceptual plan was supported by the Staff, the Planning  
1503 Commission and the Board of Supervisors. We had many neighborhood meetings. It was  
1504 approved without opposition, as was our Plan of Development approved. Obviously, building  
1505 permits were issued, and we are sitting there with a Certificate of Occupancy. It wasn't until a  
1506 Zoning Conformance Letter was requested, relating to some financing, that someone on staff  
1507 recognized that this had gotten through the entire process, built, and approved, with a mislabeling  
1508 of what exactly was the front and the side.

1509  
1510 I think there is a number of reasons why this case deserves your consideration for approval. The  
1511 site, in question, where we're seven feet short, while this property is zoned R-4, it is immediately  
1512 adjacent to a 22-foot strip private right of way that provides access to what is a burned-out house in  
1513 the back that is not occupied, other than occasionally by transients. And so you have, basically, a  
1514 flag-lot type scenario back here. So, in effect, this is the only access back to that property. You  
1515 have an additional 22 feet of space to provide additional separation.

1516  
1517 Secondly, there's no current development on that side going up Staples Mill Road until you get to  
1518 the little shopping center. And, perhaps, more importantly, the Land Use Plan, for this area  
1519 suggests not residential development, but suggests Office development, which was part, I believe,  
1520 of the consideration by the Board of Supervisors and staff in recommending approval of a  
1521 commercial use on this corner in the first place.

1522  
1523 I believe that this is in an area where the County has pegged for revitalization of this corridor on  
1524 Staples Mill Road, and the CVS development was thought to be consistent with it, as would office  
1525 development, next door.

1526  
1527 Frankly, I think the orientation that was built, albeit, erroneously, serves the County and the  
1528 neighbors better than what would have been required, had it been correct. We are further away  
1529 from our only neighbor than we would have been. And, if anything, we have crowded this site on a  
1530 very technical basis, while it is likely to never be developed for residential property across from the  
1531 McDonalds and the other commercial properties on Staples Mill.

1532  
1533 There is one additional condition of the POD that I'd like to bring to your attention, because I think it  
1534 should provide you with further comfort. We obtained from the Planning Commission, at the time  
1535 of our POD, a waiver of some of the transitional buffer requirements over here. And that is, given  
1536 the Land Use Plan and the likelihood for development, we were not required to build a wall or a  
1537 fence. So, the transitional buffer requirements might have been suggested. But to protect any  
1538 future residential development, there is a condition No. 35 of approved POD-112-97 which says, "If  
1539 residential development occurs on the parcel abutting the south property line, the property owner  
1540 shall construct a six-foot high wall of brick or architectural block, with the design and materials  
1541 approved by the Planning Commission."

1542  
1543 So, in the worse case scenario, if somebody were to build a house over here, they're obligated to  
1544 come back and build that six-foot wall. But, there would still be a 22-foot access strip in there.

1545  
1546 In terms of jurisdictional requirements, I do suggest to do that a literal enforcement of this  
1547 requirement would result in an unnecessary hardship, particularly, given the fact that we have  
1548 found our way all the way through the approval process with the building open and operating. It is  
1549 a very nice facility, if you've been by. It's totally wooded on the side in question.



1550  
1551 It was acquired and developed in good faith, consistent with all required approvals. We are unable  
1552 to acquire any additional land, frankly, to alleviate that, as that 22-foot strip does serve as the only  
1553 access to the site in back. I think that, alone, would constitute a demonstrable hardship.  
1554  
1555 This situation, obviously, does not apply to this type of property in any general sense. And this  
1556 request is necessary for the preservation and enjoyment of substantial property rights of CVS.  
1557 And, I believe, based on the explanation given, it does not have any detrimental impact on adjacent  
1558 property. This is, obviously, not of such a general recurring in nature as to make practical  
1559 formulation of a general regulation addressing this particular situation.  
1560  
1561 So, based on the foregoing, I would respectfully request that you grant the variance, and I'd be  
1562 happy to answer any questions.  
1563  
1564 Mr. McKinney - Mr. Secretary, how do you change an address to a piece of  
1565 property?  
1566  
1567 Mr. Marlles - How do you change the address?  
1568  
1569 Mr. McKinney - What I'm asking, the way the lot is laid out, are you telling me that  
1570 this particular case, CVS is located on Bremner Boulevard?  
1571  
1572 Mr. Marlles - The reason why, first of all...  
1573  
1574 Mr. McKinney - I'm not asking that question.  
1575  
1576 Mr. Marlles - OK.  
1577  
1578 Mr. McKinney - Is it located on Bremner Boulevard?  
1579  
1580 Mr. Marlles - According to the Ordinance, the front yard...  
1581  
1582 Mr. McKinney - You're not answering my question, Mr. Secretary. Is it located on  
1583 Bremner Boulevard?  
1584  
1585 Mr. Marlles - It's located on the corner of Bremner Boulevard and Staples Mill  
1586 Road.  
1587  
1588 Mr. McKinney - Is the address on Bremner Boulevard?  
1589  
1590 Mr. Marlles - 7600 Staples Mill.  
1591  
1592 Mr. McKinney - Well, that's another question I have. The application says, "7600  
1593 Staples Mill." The County record say, "7590." I would think it would be 7590, because 7600 would  
1594 be on the other corner. If the County is saying its on Staples Mill Road, according to the  
1595 documents that came out of the County that I see here on the file, I question why he's even here  
1596 trying to get a variance.  
1597  
1598 Mr. Blankinship - Mr. Chairman, although the address is shown as being on Staples  
1599 Mill, the Zoning Ordinance defines the front of the property, as the shorter of the two sides that  
1600 front on the street.

1601  
1602 Mr. McKinney - That's why I ask the question. How do you change the address?  
1603  
1604 Mr. Blankinship - Well, changing the address wouldn't change the zoning ordinance  
1605 statement, if you will. The front yard would still be on Staples Mill no matter where the address  
1606 was. It's not the front of the building, it's the front of the lot.  
1607  
1608 Mr. McKinney - I wasn't talking about the front of the building. I was just talking  
1609 about the address.  
1610  
1611 Mr. Marlles - Mr. Chairman, the answer to the original question, on a corner lot,  
1612 such as this, the property owner actually has the opportunity to take his address on either one.  
1613  
1614 Mr. McKinney - OK. All right, any other questions by Board members? Would  
1615 anyone else like to speak on A-115-99? All right, Mr. Theobald, that concludes your case. You  
1616 know what the procedure is.  
1617  
1618 Mr. Theobald - Thank you, gentlemen.  
1619  
1620 Mr. McKinney - Thank you, sir. Next.  
1621  
1622 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr. Wright, the  
1623 Board **granted** the case.  
1624  
1625 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1626 Negative: 0  
1627 Absent: 0  
1628  
1629 The Board **granted** this request as it found from the evidence presented that authorizing this  
1630 variance will not be of substantial detriment to adjacent property and will not materially impair the  
1631 purpose of the zoning regulations.  
1632  
1633 1. This approval is only for the improvements currently existing on the site. Any additional  
1634 improvements shall comply with the applicable regulations of the County Code.

1635 **A -116-1999** **Four Mile Creek Baptist Church** requests a variance from Section 24-  
1636 96(c) of Chapter 24 of the County Code to construct a parking lot at 2950  
1637 New Market Road (Tax Parcels 249-A-43A and -44), zoned A-1, Agricultural  
1638 District (Varina). The side yard setback is not met. The applicant has 13.56  
1639 feet side yard setback where the Code requires 40.00 feet side yard  
1640 setback. The applicant requests a variance of 26.44 feet side yard setback.  
1641  
1642 Mr. McKinney - Is there any one in the audience, other than the applicant, going to  
1643 speak in reference to A-116-99? Any one else? Ms. Isaac, would you be sworn in by the  
1644 Secretary, please?  
1645  
1646 Mr. Marlles - Do you swear that the testimony that you are about to give is the  
1647 truth, the whole truth, and nothing but the truth, so help you God?  
1648  
1649 Ms. Laraine Isaac - I do.  
1650

1651 Mr. McKinney - Would you state your name for the record?  
1652  
1653 Ms. Isaac - Laraine Isaac.  
1654  
1655 Mr. McKinney - All right, Ms. Isaac. Has all the adjoining and adjacent property  
1656 owners been notified of this request, according to County Code?  
1657  
1658 Ms. Isaac - Yes, sir.  
1659  
1660 Mr. McKinney - Turn those in. Present your case, please.  
1661  
1662 Ms. Isaac - Four Mile Creek Baptist Church has received approval for a new  
1663 addition to its existing Church. Prior to the construction of this parking lot that is before you today,  
1664 the Church had hoped to have the land lying between the Church property and the travel lanes of  
1665 New Market Road declared excess right of way by VDOT. That would allow them to take title to  
1666 the property, build the proposed parking lot, and not require a variance.  
1667  
1668 The request was made to VDOT earlier this year. And on June 28<sup>th</sup>, I received a letter from VDOT  
1669 informing me that the State wanted to keep this right of way for future improvements to Route 5.  
1670 Therefore, the Church will not have the opportunity, at least, this year, to take title to the property.  
1671  
1672 The Church is requesting this variance in order to provide immediate parking, especially  
1673 handicapped parking, in an area that will not be adversely affected by the construction of the new  
1674 addition, the future parking lots, and the future drainage improvements required with them. If this  
1675 variance is approved, the closest point of the parking lot will be almost 90 feet from the edge of  
1676 pavement of Route 5.  
1677  
1678 The pictures that were included in the staff report showed a location of the power poles. The  
1679 parking area would not extend beyond those power poles. The Church wants you to know they are  
1680 still going to pursue the right-of-way issue with VDOT, as they do not want to set a negative  
1681 precedent along New Market Road. However, I believe that the circumstances of so much right of  
1682 way retained by the State are probably not duplicated anywhere else along Route 5.  
1683  
1684 That concludes my remarks and I'd be happy to answer any questions.  
1685  
1686 Mr. McKinney - All right, any questions of Ms. Isaac by Board members? Does the  
1687 staff have any comments?  
1688  
1689 Mr. Marles - Other than the fact, Mr. Chairman, as pointed out in the Staff Report,  
1690 that the Board cannot change the condition of the approval of the POD. That will require a different  
1691 action.  
1692  
1693 Mr. McKinney - Do you understand that, Ms. Isaac?  
1694  
1695 Ms. Isaac - Yes. My last conversations with anyone on the staff were that, "We  
1696 don't know how we're going to handle it. It will be dealt with." We needed to request the variance  
1697 before we could address the conditions with the Plan of Development. And, with about a .6 of an  
1698 acre, we were all very confident we could get this land back from the State. But, the State, I guess,  
1699 is planning to put seven more lanes of right of way at that location.  
1700  
1701 Mr. McKinney - Are you speaking of Condition No. 2?

1702  
1703 Mr.Blankinship- Condition 2 on the POD?  
1704  
1705 Mr. McKinney - No. Condition 2 on our suggested conditions. Is that what you're  
1706 speaking of, Ms. Isaac?  
1707  
1708 Ms. Isaac - Yes. We added a note to the Plan of Development saying that this  
1709 parking lot would not be built until the right of way had been gotten from VDOT. But now we can't  
1710 get it from VDOT. So, we are here requesting a variance. I don't think, in our lifetime, we're going  
1711 to see this land developed by VDOT for any more than one, say maximum, two lanes. So, looking  
1712 at this parking lot on the ground, it's a matter of who owns this land and how it's used. It's too small  
1713 to develop.  
1714  
1715 Mr. Wright- It appears to me that what's happening here is that this would permit  
1716 them to build it, because they need a variance to do so, but that still would not give them  
1717 prerogative to do so unless they get that condition modified that was put on, so that's another step  
1718 in the process.  
1719  
1720 Ms. Isaac - We need to get a variance in place in order to go back to the  
1721 Planning Commission, or however it's to be handled, to allow them to do it. So, this is the first step  
1722 in, hopefully, a two-step process. I hope it doesn't go on to a three or four step.  
1723  
1724 Mr. McKinney - OK.  
1725  
1726 Ms. Isaac - This is, technically, their side yard. The narrowest dimension is on  
1727 Four Mile Run Parkway. And that is the front. So, this is a side yard variance.  
1728  
1729 Mr. Wright- We've had other cases that have been similar to this, except that it  
1730 was done without that condition by the Planning Commission.  
1731  
1732 Mr. McKinney - All right, any other questions? I'll ask one more time. Anyone else  
1733 in the audience like to speak in reference to A-116-99? All right, that concludes your case, Ms.  
1734 Isaac. You had a good chance.  
1735  
1736 Ms. Isaac - Thank you.  
1737  
1738 Mr. McKinney - Thank you. Next.  
1739  
1740 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the  
1741 Board **granted** the case.  
1742  
1743 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1744 Negative: 0  
1745 Absent: 0  
1746  
1747 The Board **granted** this request as it found from the evidence presented that authorizing this  
1748 variance will not be of substantial detriment to adjacent property and will not materially impair the  
1749 purpose of the zoning regulations.  
1750

- 1751 1. Only the improvements shown on the plan filed with the application may be constructed  
1752 pursuant to this approval. Any additional improvements shall comply with the applicable  
1753 regulations of the County Code.  
1754  
1755 2. This approval is subject to all conditions that may be placed on the proposed Plan of  
1756 Development by the Planning Commission.

1757 **A -117-1999** **Faye Throckmorton Jones** requests a variance from Section 24-94 of  
1758 Chapter 24 of the County Code to build a dwelling at 6203 Hines Road (Tax  
1759 Parcel 231-A-37), zoned A-1, Agricultural District (Varina). The total lot area  
1760 is not met. The applicant has 0.74 acre total lot area where the Code  
1761 requires 1.00 acre total lot area. The applicant requests a variance of 0.26  
1762 acre total lot area.  
1763

1764 Mr. McKinney - Is the applicant here for A-117-99? You need to come down. Is  
1765 there any one else in the audience who intends to speak in reference to A-117-99? If you could  
1766 stand in place where you are, and be sworn in by the Secretary.  
1767

1768 Mr. Marlles - Do you swear that the testimony that you are about to give is the  
1769 truth, the whole truth, and nothing but the truth, so help you God?  
1770

1771 People in Unison - I do.  
1772

1773 Mr. McKinney - All right, ma'am, if you'll identify yourself for the record.  
1774

1775 Ms. Faye  
1776 Throckmorton Jones - I'm Faye Throckmorton Jones.  
1777

1778 Mr. McKinney - All right, Ms. Jones, have all the adjoining and adjacent property  
1779 owners been notified of this request, according to County Code?  
1780

1781 Ms. Jones - Yes.  
1782

1783 Mr. McKinney - Will you turn those notices in? All right, Ms. Jones, if you'd present  
1784 your case, please?  
1785

1786 Ms. Jones - OK. My mother is back in the back. She has given me the property  
1787 that adjoins her property. And this has already come before you before. My bother was going to  
1788 build a house there. I'm currently living in Charleston, West Virginia. And mama wanted me to  
1789 move back home. I've been in Charleston 20 some years now, and I think I'm going to move back  
1790 to the Richmond area. And I have had this resurveyed – Henry Wickham. I have a new survey  
1791 that was done where we rearranged the property lines. Where it originally had 100 foot of frontage  
1792 on it, he rearranged it and changed it to 150, and changes mama's frontage to 265 foot frontage.  
1793

1794 I have a copy of that where its signed and everything. Do you need that? I want to build a home.  
1795 That's what I want to do. I've never done this before. I don't know what I'm supposed to say.  
1796

1797 Mr. Nunnally - This is the same variance your brother applied for in 1993, except  
1798 that you've got a 150-foot frontage?  
1799

1800 Ms. Jones - Yes. We resurveyed it. Henry Wickham resurveyed it about a  
1801 month ago, and we changed the frontage to 150, instead of 100. And it's the same thing. It was  
1802 .74 and we need the variance of .26. I tried to buy a quarter of an acre from Ms. Acres who lives  
1803 on the other side of the property. And she said she was trying to buy the whole road, so she  
1804 wouldn't sell the property.  
1805  
1806 Mr. McKinney - Mr. Marlles, do you have a copy of that survey. If you'll turn that in.  
1807 we need to retain that for 30 days.  
1808  
1809 Mr. Marlles - It's in the application. Yes.  
1810  
1811 Mr. McKinney - I didn't know if it was one that was certified or not.  
1812  
1813 Mr. Marlles - Yes. It's on the bottom.  
1814  
1815 Mr. McKinney - All right.  
1816  
1817 Ms. Jones - And I've talked to Dan McGee. The home I want to build is a log  
1818 home. I've talked to him. I have a meeting with him tonight. I just got in from Charleston last night,  
1819 so I haven't had time to meet with him. I also have a meeting today with the lawyer about having  
1820 the property changed into my name, to separate the two pieces of property.  
1821  
1822 Mr. Wright- Ms. Jones, you've read these conditions that have been proposed  
1823 for the case?  
1824  
1825 Ms. Jones - I think the schematic drawing with the sewage and all that, it pretty  
1826 much puts the house in the same place where I would have to put the house that I would be  
1827 building, because back in the back, they have to allow for the french drain and the drainage swale  
1828 and the filter and everything back there. The house has to be pretty much in the same area where  
1829 my brother was going to originally build. My brother would have built there, but my father died a  
1830 couple years ago. That's another reason why I want to move back, because mama's by herself.  
1831 He died a couple years ago, and I think he was kind of concerned about my brother building on the  
1832 land, because at the time, my brother and his wife were not really getting along, and he didn't want  
1833 to give up the property, and give it away. There was a problem there.  
1834  
1835 Mr. McKinney - All right, do you have anything else to add, Ms. Jones?  
1836  
1837 Ms. Jones - I don't think so. That's what I want to do. I just want to build a  
1838 house there.  
1839  
1840 Mr. McKinney - Any questions of Ms. Jones by Board members? This gentleman  
1841 would like to speak?  
1842  
1843 Mr. Robert W. Lane - Gentlemen, members of the Board, I'm Robert W. Lane. I'm a  
1844 resident across the street from this property. I will come to speak in opposition to this thing  
1845 because everybody else was required to build on an acre of land. And all these little slivers of land,  
1846 and the children coming in, is going to create problems in that area. We don't have water. We  
1847 don't have sewerage. And even the County requires us to pump our cesspools or septic tanks  
1848 every five years. And I think this is going to be a bad precedent, and I hope you will consider it  
1849 thoroughly. Thank you.  
1850

1851 Mr. McKinney - Any questions of Mr. Lane by Board members? Thank you, Mr.  
1852 Lane. Any one else like to speak in reference to A-117-99?  
1853  
1854 Ms. Dorothy  
1855 Throckmorton - My name is Dorothy Throckmorton. Since all this land will be left to  
1856 my children, I feel that I want them to have some of it now. I am giving my son the same amount  
1857 now, that I'm giving my daughter. And, Mr. Lane, I never thought you would oppose us as long as  
1858 we've been there.  
1859  
1860 Mr. McKinney - Ma'am, you're going to have to direct your questions towards us and  
1861 not from the audience.  
1862  
1863 Ms. Throckmorton - I'm sorry. Everybody else came in and we signed. And I need my  
1864 daughter here with me. I'm by myself. My husband has been dead since 1996. And she has been  
1865 made Power of Attorney over me. And since everything in the will, will go to my children, you  
1866 know, if they don't get this variance, I will turn my whole property over to her.  
1867  
1868 Mr. McKinney - Mrs. Throckmorton, that's not the issue. We're only concerned with  
1869 the variance on this.  
1870  
1871 Ms. Throckmorton - We're going to my attorney this afternoon.  
1872  
1873 Mr. McKinney - Any questions of Mrs. Throckmorton by Board members? Thank  
1874 you, Mrs. Throckmorton. Any one else to speak in reference to A-117-99? Ms. Jones, you had  
1875 some opposition from Mr. Lane. Would you like to address it, or you just want to let it lay? You  
1876 need to come forward to speak, because we're recording this. What I'm telling you, you have an  
1877 opportunity to rebut your opposition.  
1878  
1879 Ms. Jones - I really don't know enough about doing this, to really argue with  
1880 anybody about anything. All I know is mama gave me the property and said she'd like to have me  
1881 there. It's houses all along the road. I lived there. That's where I grew up. My grandmother raised  
1882 me. I went to Varina and I moved up on Yarnell Road until I was about 15 years old and I lived  
1883 there. Mr. Lane and my dad worked together. They were both mechanics. And he's been a very  
1884 good friend of the family and has always been there to help mama out when she needed help. I  
1885 really can't say anything. I can move to Richmond regardless of whether this variance is passed or  
1886 not. There's plenty of land around where I can build a home. So, you know, if there's a problem...I  
1887 do know that one of the neighbors, Barry, is his last name, Or, we talked to him this morning. He  
1888 and his wife both came over. And he had not signed that little slip, because they never got it from  
1889 the post office. And they were supposed to pick it up and they had never gotten it back. They sent  
1890 the paper when they weren't home. And they sent the thing in for it to be redelivered, and it was  
1891 never redelivered. But, they came over this morning and didn't have any problem. No one  
1892 seemed to have a problem. I don't know anything else about it. Mama has lived there, shoot,  
1893 since 1960 some, the property's been there. I can't really say anything about it. I went to school  
1894 with Mr. Lane's son, and everybody's gotten along. I don't know what the problem is. So, I can't  
1895 say anything.  
1896  
1897 Mr. McKinney - Thank you, Ms. Jones. Any other comment by the Board,  
1898 comments by staff?  
1899  
1900 Mr. Marles - No, sir.  
1901

1902 Mr. McKinney - Any one else to speak to A-117-99? That concludes your case.  
1903 Thank you for coming. You can call this afternoon and you'll know your answer. Next.

1904  
1905 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the  
1906 Board **granted** the case.

1907  
1908 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1909 Negative: 0  
1910 Absent: 0

1911  
1912 The Board **granted** this request as it found from the evidence presented that authorizing this  
1913 variance will not be of substantial detriment to adjacent property and will not materially impair the  
1914 purpose of the zoning regulations.

- 1915  
1916 1. Only the improvements shown on the plan filed with the application may be constructed  
1917 pursuant to this approval. Any additional improvements shall comply with the applicable  
1918 regulations of the County Code.  
1919  
1920 2. Approval of this request does not imply that a building permit will be issued. Building permit  
1921 approval is contingent on Health Department requirements, including, but not limited to, soil  
1922 evaluation for a septic drainfield and reserve area, and approval of a well location.  
1923

1924 **UP- 31-1999** Tarmac America, Inc. requests a use permit pursuant to Sections 24-103  
1925 and 24-52(d) of Chapter 24 of the County Code to extract materials from the  
1926 earth at 5090 New Market Road (Tax Parcel 270-A-1), zoned A-1,  
1927 Agricultural District (Varina).

1928  
1929 Mr. Balfour - Mr. Chairman, I've got to not participate in this one.

1930  
1931 Mr. McKinney - Mr. Balfour abstains. Any one in the audience going to speak in  
1932 reference to UP-31-99 other than the applicants? Any one else think they may speak? All right if  
1933 you would raise your hands and be sworn in by the Secretary, please?

1934  
1935 Mr. Marlles - Do you swear that the testimony that you are about to give is the  
1936 truth, the whole truth, and nothing but the truth, so help you God?

1937  
1938 Mr. Monte Lewis - I do.

1939  
1940 Mr. McKinney - All right, would you state your name for the record, Mr. Lewis?

1941  
1942 Mr. Lewis - My name is Monte Lewis of E. D. Lewis and Associates,  
1943 representing Tarmac America, on this project.

1944  
1945 Mr. McKinney - Mr. Lewis, have all the adjoining and adjacent property owners been  
1946 notified of this request, according to County Code?

1947  
1948 Mr. Lewis - Yes, sir.

1949  
1950 Mr. McKinney - Will you turn those notices into the Secretary? You may present  
1951 your case, sir.



1952  
1953 Mr. Lewis - This is re-application of a current mining area. Tarmac is operating  
1954 three mining areas on Curles Neck Farm. The applicant shows a total of 154 acres total. Of that,  
1955 we're probably only totally actively mining half of that. If I could get the projector on the photo put  
1956 down (referring to slide). Yes. That's straight up north. Now, move over this way. There you go.  
1957 Right there.  
1958  
1959 The mining area, if I could try to outline it, can you pick me up on the mike?  
1960  
1961 Mr. McKinney - She's not picking you up. Do we have a portable mike?  
1962  
1963 Mr. Lewis - If I can show you the areas that have already been reclaimed. The  
1964 two ponds up to the northeast on this site, if you could point to those. (referring to slide) Thank  
1965 you. Right in there. Then there's also an area to the north, which is wetlands, which is in the  
1966 mining area, but we're not allowed to mine it because our permit doesn't allow us to, so we're  
1967 staying out of the area. The area that you see that's disturbed, that's the mining area. There's one  
1968 last little pocket we'll have left to mine, if you could point it out. Right in there. That's the last of it.  
1969  
1970 The lighter area south of that is an existing pond, which is approximately 40 feet below surface. As  
1971 these areas are mined, it's left with a depression which leaves these ponds. These are existing  
1972 ponds there and here (referring to slide).  
1973  
1974 Mr. McKinney - Mr. Lewis, that's not doing us any good at all, because you're only  
1975 showing it up there.  
1976  
1977 Mr. Lewis - OK. The existing ponds, three of them, right there, there, and then  
1978 that one. This one that she's pointing to now is off of our mining site. It's an old mining site, but it  
1979 does catch all this drainage. None of this drainage goes offsite. It always goes down into a hole.  
1980  
1981 As I stated, this is just a renewal of a previous application. I think they've had two on this site  
1982 already. This should be last one that should finish this area up so that we can reclaim it and get  
1983 out of this mining area. That concludes my presentation, sir.  
1984  
1985 Mr. McKinney - All right, any questions of Mr. Lewis by Board members?  
1986  
1987 Mr. Nunnally - Mr. Lewis, you've read all these suggested conditions?  
1988  
1989 Mr. Lewis - Yes, sir.  
1990  
1991 Mr. Nunnally - They meet with your approval?  
1992  
1993 Mr. Lewis - Yes, sir.  
1994  
1995 Mr. Nunnally - Mr. Secretary, we haven't had any problems with the operation  
1996 down there?  
1997  
1998 Mr. Marlles - No, we haven't sir. In fact, our inspection of the site indicated that all  
1999 conditions on the previous use permit are in conformance.  
2000  
2001 Mr. Nunnally - Thank you.  
2002

2003 Mr. McKinney - All right, any other questions? I'll ask one more time. Any one in the  
2004 audience like to speak in reference to UP-31-99? That concludes the case. Thank you for coming,  
2005 Mr. Lewis.

2006  
2007 Mr. Lewis - Thank you, sir.

2008  
2009 Mr. McKinney - You'll get your answer this afternoon. Next.

2010  
2011 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the  
2012 Board **granted** the case.

2013  
2014 Affirmative: Kirkland, McKinney, Nunnally, Wright 4

2015 Negative: 0

2016 Abstained: Balfour 1

2017  
2018 Mr. Balfour abstained from the voting on this case.

2019  
2020 The Board **granted** this request as it found from the evidence presented that authorizing this use  
2021 permit will not be of substantial detriment to adjacent property and will not materially impair the  
2022 purpose of the zoning regulations.

2023  
2024 1. This permit is subject to all requirements of Section 24-103 of Chapter 24 of the County Code.

2025  
2026 2. Hours of operation shall be from 7:00 a.m. to 5:00 p.m. from December 1 to March 31, and  
2027 from 6:00 a.m. to 6:00 p.m. from April 1 to November 30, EST or EDT, whichever is in effect in  
2028 the County of Henrico.

2029  
2030 3. No operations of any kind are to be conducted at the site on Sundays, nor on national holidays.

2031  
2032 4. All roads used in connection with this use permit shall be effectively treated by sprinkling or  
2033 otherwise treated with water, calcium chloride, or other wetting agents to eliminate any dust  
2034 nuisance.

2035  
2036 5. Open and vertical excavations having a depth of 10 feet or more, for a period of more than 30  
2037 days, shall be effectively sloped to a 2 to 1 slope or flatter to protect the public safety.

2038  
2039 6. Routes of ingress and egress shall be over the applicant's rights of way to the loading area at  
2040 the James River as outlined on the map filed with the application.

2041  
2042 7. A superintendent who shall be personally familiar with all the terms and conditions of Section  
2043 24-103 of Chapter 24 of the County Code as well as the terms and conditions of UP-31-1999,  
2044 shall be present at the beginning and conclusion of operations each work day to see that all the  
2045 conditions of said Code and said Use Permit are carefully observed.

2046  
2047 8. Topsoil shall not be removed from any part of the property outside of the area in which  
2048 extraction is authorized. Sufficient topsoil shall be stockpiled on the property for re-spreading in  
2049 a layer with five (5) inches of minimum depth. If the site does not yield sufficient topsoil,  
2050 additional topsoil shall be brought to the site to provide the required five-inch layer of cover. All  
2051 topsoil shall be treated with a mixture of seed, fertilizer, and lime as recommended by the  
2052 County of Henrico after the results of soil tests have been submitted to the County of Henrico.

- 2053 All topsoil shall be stockpiled within the authorized borrow area and provided with adequate  
2054 erosion control protection.  
2055
- 2056 9. The rehabilitation of the property shall take place simultaneously with the mining process.  
2057 Rehabilitation shall not be considered completed until the mined area is covered completely  
2058 with permanent vegetation.  
2059
- 2060 10. Responsibility for maintaining the property, fences, and roads in a safe and secure condition  
2061 indefinitely, or of converting the property to some other safe use, shall rest with the applicant.  
2062
- 2063 11. Erosion Control Plans shall be submitted to the Department of Public Works for review and  
2064 approval at time of application for the Use Permit. Throughout the life of this extraction  
2065 operation, the applicant shall continuously satisfy the Department of Public Works that erosion  
2066 control procedures are properly handled and furnish plans and bonds that the department  
2067 deems necessary. The applicant shall provide certification from a licensed professional  
2068 engineer that dams, embankments and sediment control structures meet standard and  
2069 approved design criteria as set forth by the State.  
2070
- 2071 12. The areas approved for mining under this permit shall be delineated on the ground by the  
2072 erection of five (5) foot high metal posts at least five (5) inches in diameter and painted in  
2073 alternate one (1) foot stripes of red and white. These posts shall be so located as to clearly  
2074 define the area in which the mining is permitted. They shall be located, and the location  
2075 certified by a certified surveyor, within thirty (30) days of the date of approval of this use permit  
2076 by the Board of Zoning Appeals, or this use permit is void.  
2077
- 2078 13. Excavation operations shall be discontinued on said site by September 30, 2001, and  
2079 restoration accomplished by not later than September 30, 2002, unless a new permit is applied  
2080 for by not later than 60 days before the expiration of the permit, and is subsequently granted by  
2081 the Board of Zoning Appeals.  
2082
- 2083 14. A financial guaranty satisfactory to the County Attorney shall be posted with the Secretary of  
2084 the Board of Zoning Appeals for extracting materials from 154 acres, in an amount of  
2085 \$1,000.00 per acre for each acre of land included under development, for a total of  
2086 \$154,000.00 guaranteeing that the land will be restored to a reasonably level and drainable  
2087 condition with a minimum slope on the restored property being five to one or flatter. The  
2088 guaranty may provide for the termination of the obligations after 30 days notice in writing. Such  
2089 notice shall be served upon the principal and upon the obligee as provided by law for the  
2090 service of notices. At the termination of the aforesaid 30 day notice to the principal, all authority  
2091 of the principal under this use permit to extract materials, and work incident thereto, shall cease  
2092 provided the applicant has not furnished another guaranty suitable to the County within said 30  
2093 days. The principal shall then proceed within the next ensuing 30 days following the termination  
2094 of its authority under this use permit, to accomplish the complete restoration of the land as  
2095 provided for under the terms of this permit. A notice of termination by such surety shall in no  
2096 event relieve the surety from its obligation to indemnify the County of Henrico for a breach of  
2097 the conditions of this use permit.  
2098
- 2099 15. The applicant shall furnish a certification each year, verifying that the guaranty is in effect,  
2100 premiums have been paid, and the bonding company reaffirms its responsibility under the use  
2101 permit conditions. This certification shall be submitted to the Board on September 30 of each  
2102 year.  
2103

- 2104 16. This permit does not become valid until the guaranty, required in condition No. 14, has been  
2105 posted with the County, and necessary approval received. This must be accomplished within  
2106 30 days of the Board's action or the action becomes invalid.  
2107
- 2108 17. A progress report shall be submitted to the Board on September 30, 2000. This progress report  
2109 must contain information concerning how much property has been mined to date of the report,  
2110 the amount of land left to be mined, and how much rehabilitation has been performed, and  
2111 when and how the remaining amount of land will be rehabilitated, and any and all pertinent  
2112 information about the operation that would be helpful to the Board.  
2113
- 2114 18. If, in the course of its preliminary investigation or operations, applicant discovers evidence of  
2115 the existence of cultural or historical material or the presence on the site of significant habitat or  
2116 an endangered species, it will notify appropriate professional or governmental authorities and  
2117 provide them with an opportunity to investigate the site and applicant will report the results of  
2118 such investigation to the Planning Office.  
2119
- 2120 19. The applicant shall comply with the Chesapeake Bay Preservation Act and all state and local  
2121 regulations administered under such act applicable to the property and shall furnish to the  
2122 Planning Office copies of all reports required by such act or regulations.  
2123
- 2124 20. The applicant must obtain a mine license from the Division of Mineral Mining, Department of  
2125 Mines, Minerals and Energy, Commonwealth of Virginia within 90 days of the approval of this  
2126 use permit or the use permit is void.  
2127
- 2128 21. No off-site generated materials shall be deposited on the mining site unless the materials and  
2129 the plans for their placement have been approved by the Planning Office.  
2130
- 2131 22. A sign shall be posted at the entrance to the mining site stating the name of the operator, the  
2132 Henrico use permit number, the Division of Mineral Mining mine license number, and the phone  
2133 number of the operator. The sign shall be 12 square feet in area and shall be properly  
2134 maintained.  
2135
- 2136 23. All drainage and erosion and sediment control measures shall conform to the standards and  
2137 specifications of the Mineral Mining Manual Drainage Handbook. Any drainage structures in  
2138 place prior to October 14, 1992 and which do not conform to the Mineral Mining Manual  
2139 Drainage Handbook may remain in place until such time as any reconstruction is required at  
2140 which time said structures shall be brought into conformance with the Mineral Mining Manual  
2141 Drainage Handbook.  
2142

2142 **UP- 32-1999** **Michael & Victoria Kopec** requests a use permit pursuant to Section 24-  
2143 52© of Chapter 24 of the County Code to board and graze horses at 1444  
2144 N. Washington Street (Greendale Park) (Tax Parcel 149-4-A-43), zoned A-  
2145 1, Agricultural District (Varina).  
2146

2147 Mr. McKinney - Is there any one in the audience who expects to testify on behalf of  
2148 UP-32-99, or think they might say something? Please stand and be sworn in by the Secretary, if  
2149 you think you may speak. All right, if you'll raise your right hand and be sworn in by our Secretary.  
2150

2151 Mr. Marlles - Do you swear that the testimony that you are about to give is the  
2152 truth, the whole truth, and nothing but the truth, so help you God?  
2153

2154 Mr. Michael Kopec - I do.  
2155

2156 Mr. McKinney - All right, would you state your name for the record, sir?  
2157

2158 Mr. Kopec - Michael Kopec.  
2159

2160 Mr. McKinney - Mr. Kopec, has all the adjoining and adjacent property owners been  
2161 notified of this request, according to County Code?  
2162

2163 Mr. Kopec - Yes, sir.  
2164

2165 Mr. McKinney - Will you turn your notices in to the Secretary? All right, if you'll  
2166 present your case, sir.  
2167

2168 Mr. Kopec - We're just requesting approval of a conditional use permit to allow  
2169 the boarding of a maximum of 12 horses on the proposed property. As far as the conditions go, we  
2170 will definitely the property, groom the pastures on a regular basis, and put in the various controls to  
2171 control the rodents. As long as you keep the property clean, you shouldn't have that problem. All  
2172 the feed will be stored in air-tight containers.  
2173

2174 As far as the trees go, I don't think, as far as Condition No. 3, that would be on that property. I  
2175 think most of the trees are on the adjacent property owners that were notified.  
2176

2177 This is an existing property that had horses there previously, as well as cattle. That's all I have to  
2178 say.  
2179

2180 Mr. Nunnally- You say, you'll have 12 horses, Mr. Kopec?  
2181

2182 Mr. Kopec - Well, that would be a maximum. They would fluctuate back and  
2183 forth. That would be more than we would want to handle. I mean 12 is it.  
2184

2185 Mr. Nunnally- And you're just going to graze the field with them?  
2186

2187 Mr. Kopec - Yes, sir.  
2188

2189 Mr. Nunnally- You're not giving any riding lessons or anything on this property?  
2190

2191 Mr. Kopec - No, sir.

2192  
2193 Mr. Nunnally- And I believe where you plan on keeping those horses, you can't  
2194 see them from Washington Street, can you?  
2195  
2196 Mr. Kopec - No, sir. I don't think you can even see the barn.  
2197  
2198 Mr. Nunnally- Right. Thank you.  
2199  
2200 Mr. McKinney - Any other questions of Mr. Kopec by Board members?  
2201  
2202 Mr. Balfour- You said, you're not going to give riding lessons? I notice the  
2203 application says you give riding lessons to neighborhood children.  
2204  
2205 Mr. Kopec - Not on this piece of property.  
2206  
2207 Mr. Balfour- All right.  
2208  
2209 Mr. Blankinship - Mr. Chairman, I'd just like to add that we received two phone calls  
2210 from adjoining property owners, both in favor of this application. One of them stated they owned  
2211 property adjoining this, and they had a 100 head of cattle on it and that they don't see that adding  
2212 12 horses would increase the problem.  
2213  
2214 Mr. McKinney - How do you know it was an adjoining property owner?  
2215  
2216 Mr. Blankinship - That's what I was told on the telephone.  
2217  
2218 Mr. McKinney - But how do you know?  
2219  
2220 Mr. Blankinship - I don't know.  
2221  
2222 Mr. McKinney - OK. All right, thank you. We have a couple of other people who  
2223 may like to speak.  
2224  
2225 Mr. Nunnally- I think they are all in favor.  
2226  
2227 Mr. McKinney - Yes, sir. Did you want to speak?  
2228  
2229 Mr. John Tucker - Good morning, Mr. Chairman, and Board members. I'm John  
2230 Tucker. I own the property Mr. Kopec is talking about. I own 36 acres in there, and have been  
2231 there for 30 years. And I've raised some beef cattle, and enjoyed having them there. And my  
2232 neighbors, the only two the property adjoins the pasture, love to see the animals out there. One of  
2233 them is in the hospital and he would have been here this morning to express his opinion. And both  
2234 of them agree they would love to see the animals there. And I would surely love to see them there,  
2235 because I've been raised in the country and I've been in Highland Springs since 1927.  
2236  
2237 Due to two knee operations, I'm not able to keep up the pasture. And what Mr. Kopec is doing is  
2238 going to help me tremendously in keeping it clean and what I would like to see. Thank you, sir.  
2239  
2240 Mr. McKinney - Any questions by Board members? Wait a minute, Mr. Kopec, we  
2241 haven't finished. Mr. Gary, would you like to speak? We've finished with you, sir. I think Mr. Gary  
2242 wanted to speak.

2243  
2244 Mr. Bob Gary - I live at 1720 N. Washington Street, and I would welcome Mr.  
2245 Kopec's operation. His fences are immaculate and the land that he lives on is just wonderful. I'd  
2246 like to say that I'd welcome it. I live within .8 of a mile.  
2247  
2248 Mr. McKinney - When I first saw it, I thought it was your property where you keep  
2249 yours and stuff like that.  
2250  
2251 Mr. Gary - And the 100 head of cattle that you're speaking is approximately  
2252 about .8 of a mile down the street, but its all in the same area. So, any questions that you have for  
2253 me.  
2254  
2255 Mr. McKinney - And Mrs. Gary, she doesn't have any problem with it either?  
2256  
2257 Mr. Gary - No. She's been in the hospital this morning. She's a little bit  
2258 sedated.  
2259  
2260 Mr. McKinney - Did you do that on purpose?  
2261  
2262 Mr. Gary - No. Oh no. I do welcome Mike and Vicky's operation.  
2263  
2264 Mr. McKinney - We appreciate your input. Any questions of Mr. Gary by Board  
2265 members? Thank you, sir.  
2266  
2267 Mr. Gary - Thank you.  
2268  
2269 Mr. McKinney - Mr. Kopec, I don't think you need any rebuttal. You don't have  
2270 anybody against you.  
2271  
2272 Mr. Kopec - I just would like to thank my neighbors who are in support of me.  
2273 They're behind me. That concludes what I have to say.  
2274  
2275 Mr. McKinney - All right, any other questions by Board members? Does staff have  
2276 any comments?  
2277  
2278 Mr. Marles - No additional comments, Mr. Chairman?  
2279  
2280 Mr. McKinney - That concludes the case. Thank you for coming. Appreciate all of  
2281 you coming. You'll get your answer this afternoon.  
2282  
2283 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the  
2284 Board **granted** the case.  
2285  
2286 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
2287 Negative: 0  
2288 Absent: 0  
2289  
2290 The Board **granted** this request as it found from the evidence presented that authorizing this use  
2291 permit will not be of substantial detriment to adjacent property and will not materially impair the  
2292 purpose of the zoning regulations.  
2293

- 2294 1. The applicant must maintain the property so that odors or vermin are controlled and not pose a  
 2295 threat to adjacent property owners.  
 2296  
 2297 2. This approval allows for the boarding of a maximum of 12 horses on the premises and riding  
 2298 facilities for the boarded horses only. The property shall not be used for a riding stable or  
 2299 academy unless a separate Use Permit is obtained and the required setbacks are met.  
 2300  
 2301 3. Any trees greater than six inches in diameter and located within one hundred feet of adjoining  
 2302 residential property, shall be retained as a buffer. This condition shall not be construed to  
 2303 prevent the removal of any dead or diseased trees or those which have been severely  
 2304 damaged by lightening or weather conditions.

2305 **UP- 33-1999**                      **W.C. English, Inc.** requests a use permit pursuant to Sections 24-103 and  
 2306 24-52(d) of Chapter 24 of the County Code to extract materials from the  
 2307 earth at 3651 Britton Road (Tax Parcels 206-A-33 and 217-A-31), zoned A-  
 2308 1, Agricultural District (Varina).  
 2309

2310 Mr. McKinney -                      Is there any one in the audience think they're going to speak in  
 2311 reference to UP-33-99, if you'd please stand where you are and be sworn in by our Secretary.  
 2312

2313 Mr. Marlles -                      Do you swear that the testimony that you are about to give is the  
 2314 truth, the whole truth, and nothing but the truth, so help you God?  
 2315

2316 Mr. Paul Hinson -                      I do.  
 2317

2318 Mr. McKinney -                      If you'd state your name for the record, sir?  
 2319

2320 Mr. Hinson -                      My name is Paul Hinson. I'm with Koontz, Bryant representing W.  
 2321 C. English today.  
 2322

2323 Mr. McKinney -                      All right, Mr. Hinson, has all the adjoining and adjacent property  
 2324 owners been notified of this request, according to County Code?  
 2325

2326 Ms. Hinson -                      Yes sir, they have.  
 2327

2328 Mr. McKinney -                      Turn those in to the Secretary.  
 2329

2330 Mr. Hinson -                      Mr. Chairman, members of the Board, we're here today to request a  
 2331 conditional use permit for a property where the proposed I-895 corridor is going to go through. In  
 2332 accordance with County Code, this will be classified as a mining operation. We're really just going  
 2333 to use it for some borrow for the I-895 construction.  
 2334

2335 In accordance with the County Code, we have notified all the adjacent property owners. We have  
 2336 not received any phone calls in our office in reference to the project that have been negative. I  
 2337 have gotten some questions about I-895 construction, but none in opposition of the project itself.  
 2338

2339 We've discussed the case with the County staff. We have made some modifications to the  
 2340 boundaries on the map you have under your camera over there (referring to document camera), in  
 2341 accordance with some clarifications that the County personnel came me regarding setback  
 2342 requirements.  
 2343



2344 We had originally showed a setback from the I-895 corridor. They said that would not be  
2345 necessary since the road was under construction, and we've made some other minor modifications  
2346 to some setbacks in accordance with their clarification.

2347  
2348 We'll obtain an Erosion and Sedimentation Control plan, in accordance with the County Code, prior  
2349 to any operations on the site. We will also stake all the extraction limits with barber poles in  
2350 accordance with the County Code.

2351  
2352 All the soil materials from the project are going to be used for the construction of I-895. This  
2353 particular barrow site will allow us to transport all the materials on the I-895 corridor instead of  
2354 down public roads, so there won't be any truck traffic associated with this particular site. It does  
2355 make a very good site for this proposed use.

2356  
2357 We would like to make one request of a modification of the staff recommendations. We would like  
2358 to request that we be allowed to operate on Saturdays. Saturday operations should not be any  
2359 more of a disruption to the public in this area than the road construction, itself. The road  
2360 construction won't be subject to the Saturday and Sunday restrictions. My understanding is, they  
2361 will occasionally work on Saturdays, and we would like the opportunity to operate out of our barrow  
2362 site, as well. Thank you very much.

2363  
2364 We have the picture of the site over here with the barrow areas outlined for you and the I-895, I-  
2365 295. It's zoomed in a little close right now to see the whole site.

2366  
2367 Mr. McKinney - Mr. Hinson, have you read all the conditions?

2368  
2369 Mr. Hinson - Yes sir, I have.

2370  
2371 Mr. McKinney - Are you in agreement with them?

2372  
2373 Mr. Hinson - Yes sir, we are, with the exception of we would like to request  
2374 Saturday operation hours.

2375  
2376 Mr. McKinney - Well, let me ask you about Condition No. 6. Have you got someone  
2377 who is going to be there that's personally familiar with all the terms and conditions of Section 24-  
2378 103 of Chapter 24?

2379  
2380 Mr. Hinson - My understanding, sir, is Mr. English is already operating a couple  
2381 other borrow pits on that site.

2382  
2383 Mr. McKinney - That's not what I asked you. I said, according to this Condition No.  
2384 6, Mr. Secretary, are you're going to school one of their employees on getting as familiar as your  
2385 Planning Inspectors are with this section?

2386  
2387 Mr. Marles - Yes, sir. These conditions are made available to the inspectors on  
2388 their enforcement duties.

2389  
2390 Mr. McKinney - I said, "...personally familiar with the terms and conditions of them?"  
2391 I know they can be familiar with what's being filed. That's all I asked. Any other questions by  
2392 Board members?

2393  
2394 Mr. Nunnally- What hours did he want on Saturday?

2395  
2396 Mr. Hinson - We would operate within the standard hours of operation for  
2397 Saturday operations. We could reduce that if necessary, but we would like the opportunity to  
2398 operate the site on Saturdays when there is construction underway.  
2399  
2400 Mr. McKinney - You're saying, "standard." Are you talking about to 12:00 o'clock?  
2401  
2402 Mr. Hinson - Well, the hours as indicated to Condition 2. We would like to utilize  
2403 those hours on Saturdays as well on the site.  
2404  
2405 Mr. McKinney - Well, they're Monday through Friday hours. You're able to operate  
2406 on Saturdays if you get one or more days of inclement weather.  
2407  
2408 Mr. Hinson - Yes, sir. My understanding is the road construction, they will do a  
2409 good bit of construction on Saturdays, and we just were asking for the opportunity to utilize this  
2410 portion of the constructed project, if possible.  
2411  
2412 Mr. McKinney - I understand that. The quicker you get it over with, the  
2413 neighborhood will be happier. But, anyway, any other questions of Mr. Hinson by Board  
2414 members? All right, we had a gentleman back here who would like to speak.  
2415  
2416 Mr. Walter Kiwala - Good morning. I would like to thank the Board and members for this  
2417 opportunity to speak. My name is Walter Kiwala.  
2418  
2419 Mr. McKinney - How do you spell that?  
2420  
2421 Mr. Kiwala - Kiwala. I am a member of the East End Assembly of God Church,  
2422 whose property is very near the proposed excavation area. I've been asked to speak on their  
2423 behalf as well as on the behalf of some property owners who have land near or adjacent to the  
2424 proposed site.  
2425  
2426 Now, essentially, we are trying to express some concerns that we don't feel are adequately  
2427 addressed in the proposal. First of all, although the Virginia Department of Mines, Minerals, and  
2428 Energy have determined that this is not a mining operation, the exact depth of this excavation is not  
2429 specifically stated. And, therefore, there is some question about the effects of the water table on  
2430 this area. And, of course, more importantly, on the properties adjoining this, which are all privately  
2431 owned.  
2432  
2433 You might know, that in this Varina area, we do not have access to County water, so we are  
2434 entirely dependent upon individual wells. Now, the question, then, becomes, if there would be  
2435 some detrimental effect to the water table, would the company, then, be willing to assume the  
2436 liability for the wells of the privately owned land? And, if that's the case, would they also, then, be  
2437 assuming the liabilities for filling in the existing wells, which is a separate operation.  
2438  
2439 And, so, I would ask, that until these questions—these assurances are fully explained and made,  
2440 that this petition not be granted.  
2441  
2442 Mr. McKinney - Mr. Kiwala, where are you located in reference to the site that's  
2443 being reviewed?  
2444

2445 Mr. Kiwala - Do you have a map of the area? We are at Britton Road, just up  
2446 from the intersection of Darbytown Road. But, if you see the complex actually extends quite a  
2447 distance. We are just down here in the southwest area. Britton Road extends down this way  
2448 (referring to slide). And, Darbytown Road is just to the south of this proposed tract. We're  
2449 approximately, I'm off the map here, but just to the left of where the map stops.  
2450  
2451 You can see that the proposed excavation extends quite a ways south.  
2452  
2453 Mr. McKinney - So, you're west of this property?  
2454  
2455 Mr. Kiwala - Yes sir. But, again, I'm speaking for property owners whose land is  
2456 nearer to this proposed area.  
2457  
2458 Mr. McKinney - Do you have a petition with you of those property owners' signatures  
2459 on it?  
2460  
2461 Mr. Kiwala - No, sir. I do not. I'd also like to point out there are a number of  
2462 individually owned houses along Britton Road.  
2463  
2464 Mr. McKinney - Which is to the west of this property?  
2465  
2466 Mr. Kiwala - Yes, sir.  
2467  
2468 Mr. McKinney - OK. Any other questions by Board members? All right, thank you.  
2469  
2470 Mr. Kiwala - Thank you.  
2471  
2472 Mr. McKinney - Any one else to speak in reference to UP-33-99? Any one else to  
2473 speak? All right, gentleman, if you'd come on down. Sir, you didn't stand to get sworn in so, you  
2474 need to be sworn in by our Secretary.  
2475  
2476 Mr. Marles - Do you swear that the testimony that you are about to give is the  
2477 truth, the whole truth, and nothing but the truth, so help you God?  
2478  
2479 Mr. Harold Brown - Yes. I do. My name is Harold Brown. I'm one of those property  
2480 owners that's adjacent to that. The reason why I weren't sworn in before is because I didn't know  
2481 the question was going to come up, about, did he have documents of the people in the  
2482 neighborhood? Well, I'm one of those. Miss Shook, she is located in this area right in here  
2483 (referring to slide). Her well went dry when I-295 was being put in, because most of these wells are  
2484 shallow wells. And they had to make that good. I think the Highway Commission did that for her.  
2485  
2486 I just wanted to be able to say that the people in the neighborhood, as well as myself, even though  
2487 they didn't show up, and I wish they had, they did express concern for these wells. I can only  
2488 speak for one, because I am one. But I am just reiterating what he said that they were concerned  
2489 for those wells.  
2490  
2491 My primary thing is, I'm not in objection to all of this, if the water situation, the wells and digging of  
2492 new wells, or whatever, is taken care of. I don't think that it should be our expense to have to fill in  
2493 the old wells, or dig new ones or put in deep well pumps, or whatever. That's my main objection.  
2494  
2495 Mr. McKinney - All right, Mr. Brown. Any questions of Mr. Brown?

2496  
2497 Mr. Nunnally- Mr. Brown, how far is your property from where this mining area is?  
2498  
2499 Mr. Brown - Well, I live around on Charles City Road, which is around in this area  
2500 (referring to slide). But, the situation is, these veins run through the earth. I'm actually located  
2501 probably straight through the woods, probably a mile or so from this situation. But, these veins  
2502 they run through the earth for a long ways. Not knowing how deep they are going to go, if you cut  
2503 through these veins, many wells will go dry because the water will run through these veins into a  
2504 deep hole.  
2505  
2506 Mr. McKinney - Well, Mr. Brown, you're upstream.  
2507  
2508 Mr. Brown - Am I? OK. Then I won't have a problem.  
2509  
2510 Mr. McKinney - You hope.  
2511  
2512 Mr. Brown - I hope not. But, in the event, the only thing I'm requesting is, in the  
2513 event that we do, could we, at least, be compensated for the digging of a new well and what it  
2514 requires?  
2515  
2516 Mr. McKinney - Well, we'll let Mr. Hinson address that. He's the applicant. I can  
2517 understand your concerns. All right, do you have anything else?  
2518  
2519 Mr. Brown - That's it.  
2520  
2521 Mr. McKinney - Any questions from Board members? Any one else to speak in  
2522 reference to UP-33-99? All right, Mr. Hinson.  
2523  
2524 Mr. Hinson - We've heard citizen concerns concerning the wells in the area.  
2525 There are a couple things I would like to point out about the site. Geographically, this site is  
2526 located in an area where we have drainage on both sides of this currently. That should act as, if  
2527 you will, a cutoff from any impacts to these associated areas. The other thing is, W. C. English has  
2528 expressed they would post a well bond, if necessary, to obtain this permit to ensure if there was  
2529 any impacts to any adjacent wells that they would be remedied in an appropriate manner.  
2530  
2531 Mr. McKinney - Is that in any of the conditions?  
2532  
2533 Mr. Hinson - No, sir. It's not a current staff condition.  
2534  
2535 Mr. McKinney - OK. We need to add that. If it's determined that the mining  
2536 operation affected the well.  
2537  
2538 Mr. Wright- Is it necessary for him to have a bond, of just say that they would be  
2539 responsible to replace these wells?  
2540  
2541 Mr. Nunnally- Well, the last case a month or so, they put...  
2542  
2543 Mr. Wright- How much bond? Well, that's what I wanted to find out. How much  
2544 bond would they be willing to post?  
2545  
2546 Mr. Nunnally- What did we put on the last one; \$25,000?

2547  
2548 Mr. Balfour- Yes, sir.  
2549  
2550 Mr. McKinney - \$25,000?  
2551  
2552 Mr. Nunnally- \$25,000. Yes.  
2553  
2554 Mr. McKinney - How many wells would that take care of?  
2555  
2556 Mr. Nunnally- Right many I would think.  
2557  
2558 Mr. McKinney - It depends on who is building them. If they can't get shallow, and  
2559 they can't do a bored well, you have to do a drill well.  
2560  
2561 Mr. Nunnally- How much would one drill well cost?  
2562  
2563 Mr. McKinney- \$11 a foot-300 feet just to put one in.  
2564  
2565 Mr. Nunnally- \$3,300. \$3,300 and he's playing with \$25,000. I think that's  
2566 enough. \$25,000 sound all right?  
2567  
2568 Mr. Hinson - I would have to consult with Mr. Higginbotham, but I would assume  
2569 that's acceptable if they accepted that for the previous application.  
2570  
2571 Mr. Nunnally- OK.  
2572  
2573 Mr. McKinney - All right, any other questions of Mr. Hinson by Board members? All  
2574 right, Mr. Kiwala also mentioned something about the depths of this. Did you want to address that?  
2575  
2576 Mr. Hinson - We're not intending on making any very deep excavations. The  
2577 numbers I've heard is preliminary estimates, the depth of excavations is ten to fifteen feet. The  
2578 water table will be a limiting factor on this site. We're not anticipating having to go much below  
2579 that, so that will keep from us going any deeper than that.  
2580  
2581 Upon the conclusion of the site, there might even be some water features. There is a possibility  
2582 that this site would actually recharge the ground water more than it would discharge it because we  
2583 might eliminate some drainage patterns that might have been there previously. But, I'm not a  
2584 hydrogeologist, and I don't make that as a statement, but just as an observation.  
2585  
2586 Mr. McKinney - All right, any other questions? Does the staff have any comments?  
2587  
2588 Mr. Marlles - No, sir.  
2589  
2590 Mr. McKinney - All right. I asked before and we got all the opposition. That  
2591 concludes your case, Mr. Hinson. You'll get your answer this afternoon. Next.  
2592  
2593 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the  
2594 Board **granted** the case.  
2595  
2596 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
2597 Negative: 0

2598 Abstained:

0

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1. This permit is subject to all requirements of Section 24-103 of Chapter 24 of the County Code.
2. Monday through Friday hours of operation shall be from 7:00 a.m. to 5:00 p.m. from December 1 to March 31, and from 6:00 a.m. to 7:00 p.m. from April 1 to November 30, local time in effect in the County of Henrico. Saturday hours of operation shall be from 8:00 a.m. to 1:00 p.m.
3. No operations of any kind are to be conducted at the site on Sundays or on national holidays.
4. Open and vertical excavations having a depth of 10 feet or more for a period of more than 30 days, shall be effectively sloped to a 2 to 1 slope or flatter to protect the public safety.
5. All means of access to the property shall be from the public right of way of the proposed I-895.
6. A superintendent who shall be personally familiar with all the terms and conditions of Section 24-103 of Chapter 24 of the County Code as well as the terms and conditions of UP-33-99, shall be present at the beginning and conclusion of operations each work day to see that all conditions of said Code and said Use Permit are carefully observed.
7. Topsoil shall not be removed from any part of the property outside of the area in which extraction is authorized. Sufficient topsoil shall be stockpiled on the property for respreading in a layer with five (5) inches of minimum depth. If the site does not yield sufficient topsoil, additional topsoil shall be brought to the site to provide the required five-inch layer of cover. All topsoil shall be treated with a mixture of seed, fertilizer, and lime as recommended by the County of Henrico after the results of soil tests have been submitted to the County of Henrico. All topsoil shall be stockpiled within the authorized borrow area and provided with adequate erosion control protection.
8. The rehabilitation of the property shall take place simultaneously with the extraction process. Rehabilitation shall not be considered completed until the extraction area is covered completely with permanent vegetation.
9. Responsibility for maintaining the property, fences, and roads in a safe and secure condition indefinitely, or for converting the property to some other safe use, shall rest with the applicant.
10. Entrance gates shall be erected and maintained at all entrances to the property. These gates shall be locked at all times, except when authorized representatives of the applicant are on the property.
11. Erosion Control Plans shall be submitted to the Department of Public Works for review and approval at time of application for the Use Permit. Throughout the life of this extraction operation, the applicant shall continuously satisfy the Department of Public Works that erosion control procedures are properly handled and furnish plans and bonds that the department deems necessary. The applicant shall provide certification from a licensed professional engineer that dams, embankments and sediment control structures meet standard and approved design criteria as set forth by the State.
12. The areas approved for extraction under this permit shall be delineated on the ground by the erection of five (5) foot high metal posts at least five (5) inches in diameter and painted in

2649 alternate one (1) foot stripes of red and white. These posts shall be so located as to clearly  
2650 define the area in which the extraction is permitted. They shall be located, and the location  
2651 certified by a certified surveyor, within ninety (90) days of the date of approval of this use permit  
2652 by the Board of Zoning Appeals, or this use permit is void.  
2653

2654 13. "No Trespassing" signs shall be posted and maintained on the property to warn against use of  
2655 the property by unauthorized persons. The minimum letter height shall be three inches and  
2656 signs are to be posted every 250 feet along the perimeter of the property. The applicant shall  
2657 furnish the Chief of Police a letter authorizing enforcement by the County Police Officers of the  
2658 "No Trespassing" regulations, and agreeing to send a representative to court for purposes of  
2659 testimony whenever required or requested by the Division of Police.  
2660

2661 14. Excavation operations shall be discontinued on said site by June 30, 2001 and restoration  
2662 accomplished not later than June 30, 2002 unless a new permit is applied for by not later than  
2663 60 days before the expiration of the permit, and is subsequently granted by the Board of Zoning  
2664 Appeals.  
2665

2666 15. A financial guaranty satisfactory to the County Attorney shall be posted with the Secretary of  
2667 the Board of Zoning Appeals for extracting materials from 34 acres, in an amount of \$2,000.00  
2668 per acre for each disturbed acre of land included, for a total of \$68,000.00 guaranteeing that  
2669 the land will be restored to a reasonably level and drainable condition with a minimum slope on  
2670 the restored property being five to one or flatter. The guaranty may provide for the termination  
2671 of the obligations after 30 days notice in writing. Such notice shall be served upon the principal  
2672 and upon the obligee as provided by law for the service of notices. At the termination of the  
2673 aforesaid 30 day notice to the principal, all authority of the principal under this use permit to  
2674 extract materials, and work incident thereto, shall cease provided the applicant has not  
2675 furnished another guaranty suitable to the County within said 30 days. The principal shall then  
2676 proceed within the next ensuing 30 days following the termination of its authority under this use  
2677 permit, to accomplish the complete restoration of the land as provided for under the terms of  
2678 this permit. A notice of termination by such surety shall in no event relieve the surety from its  
2679 obligation to indemnify the County of Henrico for a breach of the conditions of this use permit.  
2680

2681 16. The applicant shall furnish a certification each year, verifying that the guaranty is in effect,  
2682 premiums have been paid, and the bonding company reaffirms its responsibility under the use  
2683 permit conditions. This certification shall be submitted to the Board on September 30 of each  
2684 year.  
2685

2686 17. This permit does not become valid until the guaranty, required in condition No. 15, has been  
2687 posted with the County, and necessary approval received. This must be accomplished within  
2688 30 days of the Board's action or the action becomes invalid.  
2689

2690 18. A progress report shall be submitted to the Board on June 30th of each year during the life of  
2691 this permit. This progress report must contain information concerning how much property has  
2692 been disturbed to date of the report, the amount of land left to be disturbed, and how much  
2693 rehabilitation has been performed, and when and how the remaining amount of land will be  
2694 rehabilitated, and any and all pertinent information about the operation that would be helpful to  
2695 the Board.  
2696

2697 19. If, in the course of its preliminary investigation or operations, applicant discovers evidence of  
2698 the existence of cultural or historical material or the presence on the site of significant habitat or  
2699 an endangered species, it will notify appropriate professional or governmental authorities and

2700 provide them with an opportunity to investigate the site and applicant will report the results of  
2701 such investigation to the Planning Office.

2702  
2703 20. The applicant shall comply with the Chesapeake Bay Preservation Act and all state and local  
2704 regulations administered under such act applicable to the property and shall furnish to the  
2705 Planning Office copies of all reports required by such act or regulations.

2706  
2707 21. In the event that an appeal of the Board's approval action is filed, all conditions requiring action  
2708 on the part of the applicant within 90 days are considered satisfied if the required actions take  
2709 place within 90 days of final action on the appeal process by the courts.

2710  
2711 22. If the Virginia Department of Mines, Minerals and Energy determines that the use of this  
2712 property constitutes a mine, the applicant shall obtain a mine license from the Division of  
2713 Mineral Mining, Virginia Department of Mines, Minerals and Energy, within 90 days of such  
2714 determination, or the use permit is void.

2715  
2716 23. No offsite-generated materials shall be deposited on the site unless the materials and the plans  
2717 for their placement have been approved by the Planning Office.

2718  
2719 24. If the Virginia Department of Mines, Minerals and Energy determines that the use of this  
2720 property constitutes a mine, a sign shall be posted at the entrance to the mining site stating the  
2721 name of the operator, the Henrico use permit number, the Division of Mineral Mining mine  
2722 license number, and the phone number of the operator. The sign shall be 12 square feet in  
2723 area and shall be properly maintained.

2724  
2725 25. If the Virginia Department of Mines, Minerals and Energy determines that the use of this  
2726 property constitutes a mine, all drainage and erosion and sediment control measures shall  
2727 conform to the standards and specifications of the Mineral Mining Manual Drainage Handbook.

2728  
2729 26. If water wells located on surrounding properties are adversely affected, and the extraction  
2730 operations on this site are suspected as the cause, the effected property owners may present  
2731 to the Board evidence that the extraction operation is a contributing factor. After a hearing by  
2732 the Board, this use permit may be revoked or suspended, and the operator may be required to  
2733 correct the problem. The applicant shall post a financial guarantee in the amount of \$25,000,  
2734 satisfactory to the County Attorney, guaranteeing compliance with this condition.

2735

2736 **A -118-1999** **Roy E. & Wendy S. Dowdy** requests a variance from Section 24-9 of Chapter  
2737 24 of the County Code to build a dwelling at 4190 Darbytown Road (Tax Parcel  
2738 229-A-57), zoned A-1, Agricultural District (Varina). The public street frontage is  
2739 not met. The applicant has 0.0 feet public street frontage where the Code  
2740 requires 50.0 feet public street frontage. The applicant requests a variance of  
2741 50.0 feet public street frontage.

2742  
2743 Mr. McKinney - All right, any one else in the audience going to speak in reference to  
2744 A-118-99? All right, if you're going to testify, if you'd raise your hands and be sworn in by our  
2745 Secretary.

2746  
2747 Mr. Marlles - Do you swear that the testimony that you are about to give is the  
2748 truth, the whole truth, and nothing but the truth, so help you God?

2749



2750 People in Unison - Yes. I do.  
2751  
2752 Mr. McKinney - Would you state your name for the record, ma'am?  
2753  
2754 Mrs. Wendy Dowdy - My name is Wendy Dowdy. I am the one who applied for the  
2755 variance.  
2756  
2757 Mr. McKinney - All right, Ms. Dowdy, has all the adjoining and adjacent property  
2758 owners been notified of this request, according to County Code?  
2759  
2760 Mrs. Dowdy - Yes, sir.  
2761  
2762 Mr. McKinney - Would you turn those in. The gentleman sitting beside you, I know  
2763 he can tell you all about wells. He's the best down there. All right, if you'd present your case,  
2764 ma'am.  
2765  
2766 Mrs. Dowdy - OK. My husband and I were deeded over the property, as a gift, on  
2767 July 14<sup>th</sup>. My father-in-law, Roy E. Dowdy, Sr. and his wife, Sandra Dowdy own the surrounding  
2768 property, as well as previously owned the property which we're asking the variance we have  
2769 requested for it. It's 1.333 acres. We didn't know that we fall short of the requirements for Henrico  
2770 County for the variance, and that's why we are requesting the 50-foot road frontage.  
2771  
2772 Mr. McKinney - All right.  
2773  
2774 Mrs. Dowdy - There is a subdivision that's being built behind us. I feel that the size  
2775 home that we are building will not affect any of the property values of the existing homes around us  
2776 or the homes that they are building behind us.  
2777  
2778 Mr. Nunnally - Mrs. Dowdy, have you read the conditions on the case? And you do  
2779 have legal access into the property?  
2780  
2781 Mrs. Dowdy - Yes.  
2782  
2783 Mr. McKinney - All right. Any other questions of Mrs. Dowdy by Board members?  
2784 I'll ask one more time. Any one else in the audience to speak in reference to A-118-99?  
2785  
2786 Mr. Roy Edward  
2787 Dowdy, Sr. - The reason we did not deed the property...  
2788  
2789 Mr. McKinney - Sir, you're going to have to identify yourself for the record.  
2790  
2791 Mr. Roy Edward  
2792 Dowdy, Sr. - I'm Roy Edward Dowdy.  
2793  
2794 Mr. McKinney - You're the Dowdy, Sr.? This is Dowdy, Jr.?  
2795  
2796 Mr. Dowdy - This is my daughter-in-law and, hopefully, granddaughter, soon to  
2797 be.  
2798  
2799 Mr. McKinney - Right.  
2800

2801 Mr. Dowdy - The property immediately in front of this lot is zoned B-3 business  
2802 property, and I did not want to run a piece of land through there; the 50-foot road frontage through  
2803 that business property. So, we already had the property on either side. And we had bargained to  
2804 buy Lot 12 in the subdivision, which would be behind this property. We have already bargained to  
2805 buy that Lot 12. We actually surround this property completely. We thought it would serve it better  
2806 just leaving the property with a 25-foot easement along the same drive that already serves the  
2807 property adjoining to the right on this land. We would like to have that approved.  
2808

2809 Mr. McKinney - Are there any questions of Mr. Dowdy by Board members? Thank  
2810 you, sir. Does the staff have any comments?  
2811

2812 Mr. Marlles - No additional comments, Mr. Chairman.  
2813

2814 Mr. McKinney - I'll ask one more time, any one in the audience like to speak in  
2815 reference to A-118-99? That concludes your case. Thank you for coming. Next.  
2816

2817 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the  
2818 Board **granted** the case.  
2819

2820 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

2821 Negative: 0

2822 Abstained: 0  
2823

2824 The Board **granted** this request as it found from the evidence presented that authorizing this  
2825 variance will not be of substantial detriment to adjacent property and will not materially impair the  
2826 purpose of the zoning regulations.  
2827

2828 1. Only a dwelling, as shown on the plan filed with the application, may be constructed pursuant  
2829 to this approval. Any additional improvements shall comply with the applicable regulations of  
2830 the County Code.  
2831

2832 2. Approval of this request does not imply that a building permit will be issued. Building permit  
2833 approval is contingent on Health Department requirements, including, but not limited to, soil  
2834 evaluation for a septic drainfield and reserve area, and approval of a well location.  
2835

2836 3. The applicant must present proof with the building permit application that a legal access to the  
2837 property has been obtained.  
2838

2839 The Board **granted** this request as it found from the evidence presented that authorizing this use  
2840 permit will not be of substantial detriment to adjacent property and will not materially impair the  
2841 purpose of the zoning regulations.  
2842

2843 **A-119-99**  
2844

2845 Mr. Marlles - Mr. Chairman, this is the case I had referred to earlier.  
2846

2847 Mr. McKinney - Is the applicant here for A-119-99 Robert M. Shapiro? Entertain a  
2848 motion.  
2849

2850 Mr. Wright- Move we defer it for 30 days.  
2851

2852 Mr. Balfour- Second.

2853

2854 Mr. McKinney - Motion to defer it for 30 days, and second. All those in favor say  
2855 aye—all those opposed by saying nay. Next.

2856

2857 This request was **deferred** from the August 26, 1999 meeting to the September 23, 1999 meeting as  
2858 the applicant wished to change the size of the proposed addition resulting in a different variance  
2859 request.

2860

2861

2861 **UP- 34-1999** **MCI Telecommunications, Inc** requests a use permit pursuant to Section 24-  
2862 52(a) of Chapter 24 of the County Code to expand the facilities at 5156  
2863 Francistown Road (Tax Parcels 29-A-50 and -51), zoned A-1, Agricultural  
2864 District (Three Chopt).

2865  
2866 Mr. McKinney - Any one in the audience, other than the applicant, going to speak in  
2867 reference to UP-34-99? You're going to speak? All right, gentlemen, if you'd raise your hands and  
2868 be sworn in by our Secretary.

2869  
2870 Mr. Marlles - Do you swear that the testimony that you are about to give is the  
2871 truth, the whole truth, and nothing but the truth, so help you God?

2872  
2873 People in Union - I do.

2874  
2875 Mr. McKinney - Will you state your name for the record?

2876  
2877 Mr. Dehoff - My name is Jeff Dehoff. I'm with Beers, Hayward, and Lee. We're  
2878 under contract with MCI to construct this facility.

2879  
2880 Mr. McKinney - Mr. Dehoff, has all the adjoining and adjacent property owners been  
2881 notified of this request, according to County Code?

2882  
2883 Mr. Dehoff - Yes sir, they have.

2884  
2885 Mr. McKinney - Turn those in to the Secretary. Will you present your case, sir?

2886  
2887 Mr. Dehoff - We believe the staff report adequately describes the amendment.  
2888 We would add, in addition to notifications sent out by mail, we did have a neighborhood meeting  
2889 last night at the facility.

2890  
2891 Mr. McKinney - Mr. Dehoff, let me interrupt you just for a second.

2892  
2893 Mr. Dehoff - Yes, sir.

2894  
2895 Mr. McKinney - The gentleman in the back may not be familiar with the staff report.  
2896 That's what I'm saying, he needs an opportunity to hear it.

2897  
2898 Mr. Dehoff - Very good. In essence, sir, we've been here before this to amend  
2899 the previous application. The bottom line here is, the application prior, the specific drawing  
2900 submitted with that application did not show cooling towers out in front of the proposed addition.  
2901 What we have done is resubmitted drawings that show the cooling towers required to provide  
2902 cooling to the facility. There they are on the drawing. The amendment just shows these two  
2903 cooling towers out in front of the proposed addition. And that's the essence of this application.

2904  
2905 Mr. Wright- These cooling towers are on the north side. Is that what that little  
2906 area there that extends out from the rectangular or the square shape of the building? Is that what  
2907 that is?

2908  
2909 Mr. Dehoff - Yes. They are noted with "C/SFCS." Those are the cooling towers  
2910 of the proposed addition.

2911  
2912 Mr. Wright- Okay. Now, these are going to be like 20 feet tall? How tall is the  
2913 building?  
2914  
2915 Mr. Dehoff - Twenty-four (24) feet to the top of the parapet from the drive area  
2916 out front.  
2917  
2918 Mr. Wright- It will not extend above the building?  
2919  
2920 Mr. Dehoff - No sir.  
2921  
2922 Mr. Wright- Now, how about the sound? I mean, that's the thing that's been a  
2923 bone of contention.  
2924  
2925 Mr. Dehoff - The conditions from the original application are still in place. They  
2926 are referred to in this amendment.  
2927  
2928 Mr. McKinney - What is the function of these cooling towers?  
2929  
2930 Mr. Dehoff - What they do, they're, essentially, a heat exchange-type cooling  
2931 tower. Water runs through them. The coolant comes from the building from the chillers that are  
2932 inside the building and it comes out to the tower, and the water running by provides the heat  
2933 exchange, thereby, providing the cooling for the building.  
2934  
2935 Mr. McKinney - Who manufactures these cooling towers?  
2936  
2937 Mr. Dehoff - We're talking to two different manufactures. We're taking bids on  
2938 them right now.  
2939  
2940 Mr. McKinney - Do you have any brochures on them?  
2941  
2942 Mr. Dehoff - I have one in my file. Yes, sir. One potential manufacturer.  
2943  
2944 Mr. McKinney - We would like to have some. If you only have one and you turn it in,  
2945 we're going to keep it for 30 days. You might not want to do that.  
2946  
2947 Mr. Dehoff - Well, what do you suggest I do? I mean I - This is not...  
2948  
2949 Mr. McKinney - Well, we'll find out what this gentleman in the back has to say.  
2950  
2951 Mr. Dehoff - Very good. I mean, this is not necessarily—This is one potential  
2952 provider of the equipment. I can't tell you this is - who we'll be purchasing from.  
2953  
2954 Mr. McKinney - Could you give the name and call our Secretary, give him the name  
2955 of the manufacturer of the two you're taking bids from, so he can have specs on them?  
2956  
2957 Mr. Dehoff - Yes, sir.  
2958  
2959 Mr. McKinney - Because they should have the decibels on the sound.  
2960

2961 Mr. Dehoff - The construction documents are on file with the County for the  
2962 building permit process.  
2963  
2964 Mr. McKinney - I understand that.  
2965  
2966 Mr. Dehoff - I understand what you're asking, sir.  
2967  
2968 Mr. McKinney - You get a building permit to put this in, but nobody really knows what  
2969 this is, other than the size of it and where it sets and so forth. Any other questions of Mr. Dehoff by  
2970 Board members?  
2971  
2972 Mr. Wright- I understand, Mr. Chairman, that we set the decibels requirement in  
2973 the conditions which should protect the neighbors. Is that correct?  
2974  
2975 Mr. McKinney - That was the intent on the conditions of the former case.  
2976  
2977 Mr. Wright- Right.  
2978  
2979 Mr. Kirkland- How close is the new elementary school to this site?  
2980  
2981 Mr. Dehoff - I do not know. Ben, do you know? It's kind of down the road under  
2982 construction.  
2983  
2984 Mr. Kirkland- They're opening in September.  
2985  
2986 Mr. McKinney - He's showing you right there on your map.  
2987  
2988 Mr. McKinney - Just down that street.  
2989  
2990 Mr. Kirkland- Down the street? I mean, I was thinking about a mile?  
2991  
2992 Mr. McKinney - No.  
2993  
2994 Mr. Kirkland- A 100 yards, a quarter mile?  
2995  
2996 Mr. Blankinship- A quarter mile.  
2997  
2998 Mr., Kirkland- A quarter mile?  
2999  
3000 Mr. Dehoff - A quarter mile is the vote.  
3001  
3002 Mr. McKinney - I don't think it's a quarter of a mile. That scale on the bottom there is  
3003 from zero to 1,000 feet. So.  
3004  
3005 Mr. Kirkland- What is the decibels that we put in the last case—50?  
3006  
3007 Mr. McKinney - I think it was 50 at the property line. All right, any other questions?  
3008  
3009 Mr. Dehoff - Thank you.  
3010

3011 Mr. McKinney - All right, sir. Okay. All right, any other questions by Board  
3012 members? Comments? Does the staff have any comments?

3013  
3014 Mr. Marlles - Mr. Chairman, staff does think this an improvement by moving the  
3015 source of the noise further away from the existing neighborhood.

3016  
3017 Mr. McKinney - OK.

3018  
3019 Mr. Marlles - Yes, sir.

3020  
3021 Mr. McKinney - Does that say that in this?

3022  
3023 Mr. Marlles- It does.

3024  
3025 Mr. McKinney - All conditions, OK.

3026  
3027 Mr. Wright- That's why I wanted to make sure.

3028  
3029 Mr. McKinney - They're in force. OK. Very good. That concludes your case.  
3030 Thank you for coming. You'll get your answer in a few minutes if you want to hang around. Next.

3031  
3032 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Kirkland, the  
3033 Board **granted** the case.

3034  
3035 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

3036 Negative: 0

3037 Abstained: 0

3038  
3039 The Board **granted** this request as it found from the evidence presented that authorizing this  
3040 variance will not be of substantial detriment to adjacent property and will not materially impair the  
3041 purpose of the zoning regulations.

3042  
3043 1. The property shall be developed in substantial conformance with the plan filed with the  
3044 application. No changes or additions to the layout may be made without the approval of the  
3045 Board of Zoning Appeals.

3046  
3047 2. All conditions of UP-15-99 shall continue in force.

3048  
3049 **A -120-1999 Robert D. Wokaty** requests a variance from Section 24-94 of Chapter 24 of the  
3050 County Code to build a dwelling at 3827 Creighton Road (Tax Parcel 130-A-  
3051 15B), zoned A-1, Agricultural District (Fairfield). The lot width is not met. The  
3052 applicant has 45.0 feet lot width where the Code requires 150.0 feet lot width.  
3053 The applicant requests a variance of 105.0 feet lot width.

3054  
3055 Mr. McKinney - All right, is there any one in the audience to speak in reference to A-  
3056 120-99 other than the applicant? All right, sir, if you'd raise your hand and be sworn in by the  
3057 Secretary.

3058  
3059 Mr. Marlles - Do you swear that the testimony that you are about to give is the  
3060 truth, the whole truth, and nothing but the truth, so help you God?

3061  
3062 Mr. Robert D. Wokaty - Yes. I do.  
3063  
3064 Mr. McKinney - Will you state your name for the record?  
3065  
3066 Mr. Wokaty - Robert Wokaty.  
3067  
3068 Mr. McKinney - Mr. Wokaty, has all the adjoining and adjacent property owners  
3069 been notified of this request, according to County Code?  
3070  
3071 Mr. Wokaty - Yes, sir. My wife and I acquired both parcels; one adjacent to this  
3072 one here, and so, I consequently did not send one to us, but we have both parcels there.  
3073  
3074 Mr. McKinney - Will you turn the notices into the Secretary? All right, if you'll present  
3075 your case, sir.  
3076  
3077 Mr. Wokaty - All right, Mr. Chairman and the Board, we acquired this property  
3078 approximately nine years ago. It is approximately five acres there. At the time we acquired it, it  
3079 was subdivided into two parcels by the owner that we purchased from. And we lived in this  
3080 dwelling here (referring to slide) for approximately three years. And then we acquired the two-acre  
3081 parcel that's next door. I'm looking at this from a different perspective (referring to slide). This is  
3082 Creighton Road up here. And we have lived in this house on this parcel for approximately six  
3083 years.  
3084  
3085 We work across the road over here, adjacent or at an angle, at Landmark Baptist Church. We  
3086 have been employed for 16 years. And a staff member who is a graduate of our school has  
3087 indicated an interest to live in this area as well and has requested to be able to purchase a building  
3088 site. This is the site we are separating off of this 2.5-acre parcel here. The dwelling remaining  
3089 would be one acre. That is a story and a half brick building with a garage. And the proposed  
3090 house would be a rancher brick/frame house.  
3091  
3092 Looking at the lot here, the request was to be able to have a size of a lot so as to have a house  
3093 positioned away from easements here, and then to be able to have ingress and egress off public  
3094 roadway rather than coming across an existing parcel, that being an encroachment on that parcel.  
3095  
3096 Beginning at 50 feet, the reason for narrowing to 30 feet back here is so that we can maintain a  
3097 parallel line, parallel with the driveway of the existing dwelling and with the garage so as not to  
3098 have passage on a driveway being too close to those that are living in the house here as well.  
3099  
3100 Mr. McKinney - All right, anything else?  
3101  
3102 Mr. Wright- Mr. Wokaty, have you read these conditions that are proposed?  
3103  
3104 Mr. Wokaty - Yes, sir.  
3105  
3106 Mr. Wright- And you're in accord with those?  
3107  
3108 Mr. Wokaty - I'd like to address No. 3, No. 4, and No. 5, if I may, please. Number  
3109 3, assuming that this is addressing this particular proposed construction, but for clarification from  
3110 the Board, it says, "The applicant shall present a complete grading, drainage and erosion control  
3111 plan prepared by an engineer in the State of Virginia." I'm assuming that that would be attached to



3112 the building permit for this house, because the house may move so many feet one way or the  
3113 other, depending upon the survey of the actual site there.

3114  
3115 As far as Conditions 4 and 5, I have already secured a well permit and a septic permit by the  
3116 Health Department so that the property can be easily transferable at the time that this parcel is  
3117 being granted separation from the existing parcel in the boundaries.

3118  
3119 I have no difficulty with No. 3, just asking the Board for clarification. In granting the approval of the  
3120 application that I'm presenting today, if this condition goes with this application, or if it is subject to  
3121 the application that would be submitted for a building permit? I'm just asking for clarification.

3122  
3123 Mr. Marlles - Mr. Chairman, Condition No. 3 referring to the grading, drainage,  
3124 and erosion control plan, that would be approved by the Department of Public Works, not by this  
3125 Board. So, it would be contingent upon that Plan being approved. It can be done at the time you  
3126 do apply for a building permit.

3127  
3128 Mr. Wokaty - Yes, sir. I understand.

3129  
3130 Mr. McKinney - It's not our function, anyway. He applies for the building permit, and  
3131 its routed through Public Works.

3132  
3133 Mr. Marlles - That is correct.

3134  
3135 Mr. McKinney - Public Works is going to say, "You need to do this."

3136  
3137 Mr. Marlles - Exactly.

3138  
3139 Mr. McKinney - I don't know why its even in this form.

3140  
3141 Mr. Marlles - Mr. Chairman, I think the reason its in there is to just alert the  
3142 applicant that there are additional approvals required.

3143  
3144 Mr. McKinney - The staff is helping him out.

3145  
3146 Mr. Wokaty - Yes, sir. That's acceptable.

3147  
3148 Mr. McKinney - Good staff move. All right, any other questions of Mr. Wokaty by  
3149 Board members? Any one in the audience like to speak, I'll ask again, in reference to A-120-99?  
3150 Staff have any other comments?

3151  
3152 Mr. Marlles - No, sir.

3153  
3154 Mr. McKinney - All right, entertain a motion.

3155  
3156 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the  
3157 Board **granted** the case.

3158  
3159 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
3160 Negative: 0  
3161 Abstained: 0  
3162

3163 The Board **granted** this request as it found from the evidence presented that authorizing this  
3164 variance will not be of substantial detriment to adjacent property and will not materially impair the  
3165 purpose of the zoning regulations.

- 3166
- 3167 1. Only the improvements shown on the plan filed with the application may be constructed  
3168 pursuant to this approval. Any additional improvements shall comply with the applicable  
3169 regulations of the County Code.
  - 3170
  - 3171 2. This approval is subject to all conditions that may be placed on the proposed subdivision by the  
3172 Planning Commission.
  - 3173
  - 3174 3. The applicant shall present a complete grading, drainage, and erosion control plan prepared by  
3175 a Professional Engineer certified in the state of Virginia to the Department of Public Works for  
3176 approval. This plan must include the necessary floodplain information if applicable.
  - 3177
  - 3178 4. A septic system must be approved by the Health Department.
  - 3179
  - 3180 5. Approval of this request does not imply that a building permit will be issued. Building permit  
3181 approval is contingent on Health Department requirements, including, but not limited to, soil  
3182 evaluation for a septic drainfield and reserve area, and approval of a well location.

3183

3184 Mr. McKinney - You're welcome. Have a good day. We've got one at 9:00 o'clock,  
3185 a passed over case, A-93-99. I don't think the applicant is here. It was deferred, so it can't be  
3186 deferred again. Mr. Secretary, T. E. Palmer, Jr.

3187

3188 Mr. Marlles - Yes, sir.

3189

3190 Mr. McKinney - Any one here for A-93-99?

3191

3192 Mr. Wright- Could we permit it to be withdrawn without prejudice?

3193

3194 Mr. McKinney - It's entirely up to this Board.

3195

3196 Mr. Kirkland- I make a motion it be withdrawn without prejudice.

3197

3198 Mr. Wright- Second.

3199

3200 Mr. McKinney - We have a motion and a second. All those in favor say aye—all  
3201 those opposed by saying nay. The motion carries.

3202

3203 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the  
3204 Board **granted the withdrawal of this case without prejudice.**

3205

|                   |   |   |
|-------------------|---|---|
| 3206 Affirmative: | Balfour, Kirkland, McKinney, Nunnally, Wright | 5 |
| 3207 Negative:    |   | 0 |
| 3208 Abstained:   |   | 0 |

3209

3210 Mr. Marlles - Do we have any nominations for the position of Chairman of the  
3211 Board of Zoning Appeals?

3212

3213 Mr. McKinney - Yes.

3214  
3215 Mr. Wright- I nominate Mr. Richard E. Kirkland as Chairman of this august body.  
3216  
3217 Mr. McKinney - I second the motion. I move the nominations be closed.  
3218  
3219 Mr. Marlles - All those in favor, vote aye. Are there any nays? Mr. Kirkland,  
3220 congratulations.  
3221  
3222 Mr. Kirkland - Thank you, sir.  
3223  
3224 Mr. Marlles - Are there any nominations for Vice-Chairman of the Board of Zoning  
3225 Appeals?  
3226  
3227 Mr. McKinney - I nominate Dan Balfour, Vice-Chairman.  
3228  
3229 Mr. Kirkland- I second that motion.  
3230  
3231 Mr. McKinney - I move the nominations be closed.  
3232  
3233 Mr. Wright- Second.  
3234  
3235 Mr. Marlles - All those in favor of the nomination for Vice-Chairman say aye—all  
3236 those opposed say nay. Congratulations, Mr. Vice-Chairman.  
3237  
3238 After discussion, the Board approved the changes to application by a motion by Mr. Wright and  
3239 seconded by Mr. Balfour.  
3240  
3241 After discussion, the Board approved the changes to the information sheet of the application by a  
3242 motion made by Mr. Wright and seconded by Mr. Balfour.  
3243  
3244 After discussion, the Board approved the Calendar of the year 2000 by a motion made by Mr.  
3245 Wright and seconded by Mr. McKinney.  
3246  
3247 There being no further business and on a motion by Mr. Nunnally, seconded by Mr. Kirkland, the  
3248 Board adjourned until September 21, 1999.  
3249  
3250  
3251  
3252 

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Gene L. McKinney, Chairman, C. P. C., C. B. Z. A.  
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3255  
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John R. Marlles, Secretary  
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