

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**  
2 **HENRICO COUNTY, HELD IN THE BOARD ROOM OF THE COUNTY**  
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**  
4 **COMPLEX, ON THURSDAY, DECEMBER 15, 2005, AT 9:00 A.M., NOTICE HAVING**  
5 **BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH ON NOVEMBER 23 AND**  
6 **30, AND DECEMBER 8, 2005.**  
7

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

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

8  
9 Mr. Nunnally - Welcome to the December meeting of the County of Henrico  
10 Board of Zoning Appeals. Would you stand and join us for the **Pledge of Allegiance to**  
11 **the Flag of our Country.** Mr. Blankinship, would you read the rules, please.  
12

13 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies  
14 and gentlemen. The rules for this meeting are as follows. Acting as Secretary, I will call  
15 each case. Then at that time the applicant should come to the podium. I will ask  
16 everyone who intends to speak on that case, in favor or in opposition, to stand and be  
17 sworn in. The applicants will then present their testimony. After the applicants have  
18 spoken, the Board will ask them questions, and then anyone else who wishes to speak  
19 will be given the opportunity. After everyone has had an opportunity to speak, the  
20 applicant, and only the applicant, will be given the opportunity for rebuttal. After hearing  
21 the case, and asking questions, the Board will take the matter under advisement. They  
22 will render all of their decisions at the end of the meeting. If you wish to know their  
23 decision on a specific case, you can either stay until the end of the meeting, or you can  
24 call the Planning Office later this afternoon, or you can check the website. The vote on  
25 each case will be posted to our website within an hour of the end of the meeting. This  
26 meeting is being tape recorded, so we will ask everyone who speaks, to speak directly  
27 into the microphone on the podium, to state your name, and to spell your last name  
28 please. And finally, out in the foyer, there are two binders, containing the staff report for  
29 each case, including the conditions that have been recommended by the staff. Mr.  
30 Chairman, we have a withdrawal and a deferral. UP-32-2005 has been withdrawn.  
31 They decided they were going to have the model home open early enough that it won't  
32 be worth their time to put a temporary sales trailer on the site.  
33

34 Mr. Kirkland - I don't have a UP-32.  
35  
36 Mr. Blankinship - That's right, because they withdrew it. Sometimes we get  
37 the Agenda reprinted after that; sometimes it's not. The deferral is A-106-2005, Louis  
38 and Marie Martinette. They asked to be deferred to the January 26 meeting.  
39  
40 Mr. Nunnally - Could I have a motion on that?  
41  
42 Mr. Wright - I move we defer it.  
43  
44 Mr. Kirkland - Second.  
45  
46 Mr. Nunnally - Motion by Mr. Wright; second by Mr. Kirkland. All in favor  
47 say aye. Opposed? It's carried.  
48  
49 Mr. Blankinship - We also have one request for a rehearing. Do you want to  
50 take it up first?  
51  
52 Mr. Nunnally - All right, let's take it up first.  
53  
54 Mr. Blankinship - We have a request for rehearing of A-103-2005, which was  
55 an application from Paul and Peggy Christofakis for a variance. It was denied last  
56 month.  
57  
58 Mr. Nunnally - Has everyone had a chance to look this over?  
59  
60 Mr. Wright - I haven't had a chance.  
61  
62 Mr. Nunnally - Maybe I spoke too soon. Let's defer it to the end of the  
63 meeting.  
64  
65 Mr. Kirkland - Yes, I need a few minutes to read it.  
66  
67 Mr. Wright - We just got it.  
68

69 **Deferred from Previous Meeting**

70  
71 **UP- 28-2005 RESOURCE DEVELOPMENT ASSOCIATES** requests a  
72 conditional use permit pursuant to Sections 24-52(d) and 24-103 to  
73 extract materials from the earth at 1801 Kingsland Road (Parcel  
74 818-676-5915), zoned A-1, Agricultural District (Varina).  
75

76 Mr. Nunnally - Is anyone else here interested in this case? If so, please  
77 stand and raise your right hand and be sworn.  
78

79 Mr. Blankinship - Do you swear that the testimony you are about to give is the

80 truth, the whole truth, and nothing but the truth, so help you God?

81  
82 Ms. Fisher - I do. My name is Courtney Fisher; I'm with Engineering  
83 Design, and I'm representing the applicants. We are requesting to renew a conditional  
84 use permit for mining and extracting materials, as well as doing a bit of debris landfill  
85 reclamation back to the area. We were here last month, as you recall. At that time  
86 there was some concern that it had not been reviewed quite to the extent necessary  
87 because of the change. This has been previously renewed again and again, but this is  
88 the first time we have presented that we would like to, rather than reclaim the land  
89 directly at zero grade, to actually create some mounding.

90  
91 Ms. Dwyer - These would be 40-foot mounds?

92  
93 Ms. Fisher - Thirty to forty-foot mounds. The staff report noted that there  
94 was some concern about restoring the land to stable and useable condition, and I would  
95 like to speak to that. A 4-to-1 slope, which is what those side slopes are, most definitely  
96 is stable. The erosion and sediment control plan will ensure that it is stable. For a  
97 visual example, I'd like to ask you to look at the Board Room floor. I have not measured  
98 it, but looking at it, I estimate it to be about a 5-to-1 slope, a little flatter than a 4-to-1, if  
99 you can get that visual. Another visual that may be helpful is that you can ride a  
100 lawnmower on a 3-to-1 slope. You might feel a little tilt, but you can definitely cut the  
101 grass there. On a 4-to-1, you're not going to feel the tilt.

102  
103 Ms. Dwyer - It appears that the case as presented to us and the  
104 conditions are really just for the excavation part of what you're doing. It seems to me if  
105 you're going to be adding fill, then you're creating a landfill, which would be under a  
106 different Code section altogether, and should be handled differently. Am I correct in  
107 that, Mr. Blankinship?

108  
109 Mr. Blankinship - One of the conditions – it is not uncommon for there to be  
110 some off-site fill brought in as part of the reclamation of these sites. A lot of times when  
111 they scrape the topsoil, to begin with, there is only an inch or two of topsoil above the  
112 gravel.

113  
114 Ms. Dwyer - Right, but this is a forty-foot mound.

115  
116 Mr. Blankinship - Right, this is an extreme case of that, but we do have a  
117 standard condition. I want to say that it's # 25, but I haven't put my hand on it.

118  
119 Mr. Wright - It is # 25.

120  
121 Mr. Blankinship - Okay, condition # 25 relates to bringing off-site materials to  
122 the site to fill with.....

123  
124 Ms. Dwyer - .....without prior approval of the Director of Planning, so  
125 that seems to contemplate what you're talking about, where you're just filling to grade....

126  
127 Mr. Blankinship - Right, which is the more common.  
128  
129 Ms. Dwyer - .....to reclaim the land, but this appears to me to be  
130 a different sort of animal. It looks to me like we're getting into the landfill; we've crossed  
131 over filling the hole, where they have dug out the sand and gravel, and now we're  
132 creating a new thing, which is a landfill with forty-foot mounds. That's very different  
133 from reclaiming to grade, so I'm not sure where we are. This report quotes Section 24-  
134 52 and 24-103, or should we be looking at this under 24-116, which is the landfill  
135 section?  
136  
137 Mr. Wright - How much material will you be bringing in? Our indication is,  
138 I was questioning the same thing that Ms. Dwyer was. It says, "The applicant is now  
139 proposing to use the site as a construction debris landfill." Is it going to be a real landfill  
140 operation? Are you going to be bringing in a lot of material?  
141  
142 Ms. Fisher - It won't be a landfill as per my mind, as the only materials to  
143 be brought in are inert materials – dirt, concrete, asphalt, brick, and the like. There  
144 won't be any biodegradable material brought in to the site.  
145  
146 Mr. Wright - But how much material will be brought in? Is this going to be  
147 a very active endeavor?  
148  
149 Ms. Fisher - I'll have to defer to the owner on the amount of activity going  
150 on in there, but as the site plan accompanying the application shows, we would like the  
151 opportunity to be able to bring final contour elevations as shown.  
152  
153 Mr. Wright - It looks to me like # 25, Mr. Blankinship, is really not the type  
154 of condition you would use for a landfill, because that means every time they bring a  
155 truck in there, they'd have to check it with the Director of Planning. It says no off-site  
156 generated materials, and that's what we're talking about, isn't it? So each time a truck  
157 would come in, wouldn't it have to check with the Planning Director?  
158  
159 Mr. Blankinship - It's normally not handled truck-by-truck, but job-by-job. If  
160 they have some site where there are 150 cubic yards of material to be brought in, then  
161 they get permission to bring that material in.  
162  
163 Ms. Dwyer - Again, that's to reclaim the land, and I assume, to bring it to  
164 grade and put the topsoil over it.  
165  
166 Mr. Blankinship - That's the normal case.  
167  
168 Ms. Dwyer - Correct me if I'm wrong, but I don't think the definition of a  
169 landfill depends on the type of material. We have another case today, where they're  
170 using construction material and not biodegradable things.  
171

172 Mr. Blankinship - The State license is two different kinds of landfills, sanitary  
173 landfills, and construction demolition debris, CDD landfills.

174 .  
175 Mr. Wright - This would be construction demolition material.

176  
177 Ms. Dwyer - But for our purposes, it's a landfill, seems to me, under 24-  
178 116, so I really need to have that question resolved, before we move on.

179  
180 Ms. Fisher - One thing I'd like to point out is # 25, in fact all of these  
181 conditions are suggested staff conditions. This isn't the permit itself; these are well  
182 thought out staff conditions, but .....

183  
184 Ms. Dwyer - .....but they're conditions for a borrow pit. They're  
185 not conditions for a landfill, which is my point.

186  
187 Mr. Ragland - My name is Dana Ragland; I'm employed by S. B. Cox, Inc.  
188 I'd like to answer the question about whether this is legally a landfill that we're  
189 proposing. The State of Virginia Department of Environmental Quality, issues permits  
190 for landfills in the State, no matter what county they're in, in which we own three of  
191 them. They issue permits for sanitary landfills; CDD landfills, which stands for  
192 construction and demolition debris; which have to be lined landfills, which we own three  
193 of them. According to DEQ, State of Virginia, when you propose to fill a hole or a piece  
194 of property with what they call and define as inert materials, that is not a landfill, and it's  
195 not permitted under DEQ as a landfill. It's not considered a landfill because all the  
196 materials that are allowed to be dumped are inert, which means it does not rot or pollute  
197 the ground water, and therefore does not fall under the definition of any kind of a landfill.  
198 The materials that Cox is proposing to backfill this pit with, is all inert material that does  
199 not rot and does not pollute. It has very little difference from filling the hole with dirt. It's  
200 concrete, asphalt, and bricks, and it's not, at least by DEQ in the State of Virginia,  
201 anything that is to be examined as a landfill.

202  
203 Ms. Dwyer - Did you say the State issues a permit for a CDD landfill?  
204 And how is that different from what you are doing? So that you don't need a permit?

205  
206 Mr. Ragland - Construction debris that can rot, that is generated by  
207 knocking down buildings, etc. – it has wood, plastic, sheetrock, and other materials that  
208 can rot and can potentially pollute. You have paint on the walls, shingles on the roofs,  
209 plywood, cardboard, and construction debris can be materials in addition to knocking  
210 buildings down, it also includes construction materials used to construct new buildings,  
211 which is pallets, cardboard boxes, plastic bags, any kind of wood , shingles. That is  
212 called CDD construction material that is not inert. In other words, it can rot and degrade  
213 and potentially pollute. That CDD material is considered a landfill; it requires a permit  
214 from the State DEQ. It's got to be a lime facility, and the State inspects it every three  
215 months. We own three of those facilities; two of them are in Henrico. According to  
216 DEQ, there is a separate definition for inert materials which do not rot and do not pollute  
217 and are not a hazard. They do not require a permit from the State, and they're not

218 particularly regulated and not recognized, and the inert material we're proposing to  
219 backfill this excavation with is specifically defined as inert. That's why we feel like it  
220 should not be examined as a landfill. We will not place lumber, sheetrock, and  
221 degradable construction items in this landfill. That will be separated and hauled to our  
222 CDD landfills.

223  
224 Ms. Dwyer - Mr. Blankinship, the County would only consider this to be a  
225 landfill if it's required to get a landfill permit from the State, is that our definition? Is that  
226 the definition staff uses?

227  
228 Mr. Blankinship - I've never been asked that question, and I'd want to give that  
229 some more thought and probably confer with others. Are you going to be doing the  
230 filling within the next two years, do you anticipate?

231  
232 Mr. Ragland - I would anticipate possibly some filling within two years, but I  
233 would imagine that the time span to finish excavating the dirt out of the pit and begin  
234 filling, some will be done within two years, but the majority of it would be beyond two  
235 years. I'd also like to mention that since inert landfills do not require permits, that there  
236 is already similar inert dumping areas being used in Henrico County, and they are not  
237 issued landfill permits. This is not new.

238  
239 Mr. Blankinship - Where material is being put in the hole as part of  
240 reclamation, that has been consistently allowed in the past, provided it is not landfill  
241 material. This is certainly the best explanation I've heard yet of the distinction between  
242 a CDD landfill and what you're doing here, and I appreciate that very much.

243  
244 Mr. Wright - Don't you think that we need to revisit this, to get these  
245 conditions in the proper perspective?

246  
247 Mr. Blankinship - I think that if the Board wanted to act this morning on the  
248 excavation permit, you could do that; they've been operating this as an excavation site  
249 for many years, and it sounds to me like they will continue to do so, and we can  
250 continue to do some more research into this question about what point do we want them  
251 to be permitted separately as a landfill. If there is a need in a year or a year and a half  
252 for them to come back for a landfill permit, I think that can be heard differently. I would  
253 like to see the Board specifically address the question of the reclamation plan, because  
254 I think if you approve a reclamation plan with a 40-foot mound on it, you have  
255 authorized the filling.

256  
257 Ms. Dwyer - That's my concern. This is now a growing area. We have a  
258 subdivision that is adjacent to this property now, and I have a concern about the 40-foot  
259 mound. I don't have a problem necessarily with filling it with inert materials and  
260 reclaiming it to grade; that's what I personally expected this excavation permit to allow.  
261 What is it in here that allows the 40-foot mound? I didn't see that in any of the  
262 conditions.

263

264 Mr. Blankinship - The reclamation plan is submitted as a part of their  
265 application package. The condition states that the property will be reclaimed consistent  
266 with the approved plan.  
267  
268 Ms. Dwyer - I don't have a copy of that plan, I don't think in my packet.  
269  
270 Mr. Blankinship - It should be shown on those plans.  
271  
272 Ms. Dwyer - I didn't see a mound.  
273  
274 Mr. Blankinship - There wouldn't be a section or an elevation drawing, but is  
275 there a grading plan there that shows just the contour?  
276  
277 Ms. Dwyer - Just for drainage and erosion control.  
278  
279 Mr. Blankinship - Here, on this one, see where it shows the elevation much  
280 higher than the existing elevation that indicates fill.  
281  
282 Ms. Fisher - If it may be helpful, I have a profile elevation shown; it does  
283 not show with respect to the proposed subdivision, Roundabout Estates; that's actually  
284 one of EDA's subdivisions, but I have a profile shown here, that shows the mounds with  
285 respect to I-295. The slope on this is a bit skewed. In order to have gotten this on an 8  
286 ½ by 11, you'll notice that the horizontal and vertical scale on that is skewed, so it's not  
287 that steep a slope as I had brought up to you before. That 4-to-1 slope is not quite as it  
288 appears on here, and that's simply because of the scaling.  
289  
290 Mr. Nunnally - There's no one else who brings debris into this place except  
291 employees of Cox, is that correct? There's no other commercial business coming in?  
292  
293 Ms. Fisher - Yes sir.  
294  
295 Mr. Ragland - Particularly on inner landfills that are being already operated,  
296 similar to what we are requesting, it's typical that our permit states that we can only  
297 place inert material in there, and it's typical that we be allowed to haul in and place the  
298 material as we do jobs and generate it without having the condition that requires that  
299 every time we haul some in, that we contact the County and get permission. That gets  
300 to be cumbersome for the County and for us also. Typically, if we are in agreement,  
301 that we can be trusted to just place inert material in here, and are not found guilty of  
302 doing otherwise, it is typically not necessary to have this comprehensive tracking by  
303 both parties every time we try to haul something in.  
304  
305 Mr. Blankinship - Are you describing on an extraction permit or a landfill  
306 permit?  
307  
308 Mr. Rayland - On the placing of the inert waste into the excavated areas of  
309 the property.

310  
311 Mr. Blankinship - Where your use permit is for landfilling, then right, we don't  
312 anticipate inspecting every load that comes into the site. Where the use permit is for  
313 extraction, and the landfilling is kind of an ancillary use to that, we always have either  
314 this condition or one that simply states you cannot bring any off-site material onto the  
315 property. On extraction permits, those are your two choices.

316  
317 Ms. Fisher - What I had suggested previously at the last month, for you to  
318 consider on that aspect is, I believe they keep monthly reports that you have to log in  
319 and out each truck, and they could submit those reports at any request of the Director of  
320 Planning, or the Board of Zoning Appeals, for examination, and even turn in, quarterly  
321 reports if you so desire, rather than report every job, simply because of the fact that  
322 could be very cumbersome, but just to consolidate and present the information on a  
323 quarterly basis as per request.

324  
325 Ms. Dwyer - I don't think we're suggesting that you have to get approval  
326 for every truck that you bring in; I think that was just a question for clarification earlier.  
327 For me, I see two issues. One is the existing conditions which don't seem to  
328 contemplate the 40-foot berms that would be created. In condition # 2 it says, ".....the  
329 land will be restored to a reasonably level ..... condition," and then # 25, which says,  
330 "no offsite-..... materials shall be deposited.....," so those would need to be  
331 amended to achieve what you want. I guess my thought is that I don't think a 40-foot  
332 mound is appropriate in this location, given the encroachment of residential  
333 development that's so close. In fact, one of your own plans shows four lots on  
334 Kingsland Road that are part of this whole property. So if we already have subdivisions  
335 that are contiguous to this, so it seems to me that it would be appropriate to approve  
336 this permit if it allows for the excavation and reclamation to the original grade, but not  
337 the 40-foot mound. That would be my perspective on it. And I don't have a problem  
338 with – if the County prior to now has not monitored inert materials that go in to fill a  
339 borrow pit, that's fine to continue that process as it's been going. I don't see any need  
340 to impose new regulations.

341  
342 Mr. Blankinship - As far as I know, wherever we allow offsite materials to be  
343 brought in, they are required to have the approval of the director of Planning.

344  
345 Mr. Ragland - I'd like to speak to what has been submitted. This item # 25,  
346 it says, "No offsite-generated materials shall be deposited ..... without prior  
347 written approval." It doesn't say, "can't come from offsite material"; it says that you have  
348 to be told about it and approve it, so that # 25 doesn't prohibit it. The other item is, as  
349 far as the consideration today of the Board, since the last hearing, the EDA engineers  
350 have submitted for the staff's review, grading plans that show the contours of the  
351 finished mounds and the rest of the property. On the comments from the staff, it doesn't  
352 say that it shouldn't be allowed; it simply says there may be some concern about the  
353 slope steepness of the mounds creating unusable property, and we're here this  
354 morning, to try to explain that the two mounds, the slopes are 4-to-1 slopes, which are  
355 roughly, if you look at the slope, it would look like this. It means you can walk on it, ride



356 on it with a mower, with absolutely no problem, so it should not be a safety hazard,  
357 should not, in particular, prohibit future use of the property, as you can have cattle and  
358 horses grazing on that for agricultural use. You can grow trees on it; you can do  
359 multiple things, so the grade and the mounding have been presented to the staff for  
360 your consideration this morning. The slope of the mounds was the staff's concern, and I  
361 guess that we're trying to say that it's not straight up and down, and it's not a real steep  
362 slope; it's fairly flat. It can be used for planting trees or horses and cattle to graze on,  
363 very safely.

364  
365 Ms. Harris - You said there were two other sites in Henrico County that  
366 Cox owns or manages.

367  
368 Mr. Ragland - We have two CDD landfills that are actual CDD landfills,  
369 permitted by the State. One of them is off Laburnum Avenue, on Darbytown Road, and  
370 the first one is on Charles City Road, right off Laburnum.

371  
372 Ms. Harris - I need to ask you about those mounds. What feet are we  
373 talking about in height for those two?

374  
375 Mr. Ragland - On the landfills?

376  
377 Ms. Harris - Yes.

378  
379 Mr. Ragland - The one on Charles City Road has been filled with debris  
380 and has been capped and closed, which means it's been capped with dirt, topsoil, and  
381 seeded. It's been closed for three or four years. If you visit the site, and you look at the  
382 landfill, the height of that landfill is probably sixty to seventy feet above original ground.  
383 That, I believe, has either 3-to-1 slopes or 4-to-1 slopes. The second landfill is on  
384 Darbytown Road, right off Laburnum, and that's an active landfill that has not been  
385 finished, so it hasn't been capped, but when you visit that and you look at it, the height  
386 of the top of the landfill will be about 60 to 70 feet above original ground and will have 3-  
387 to-1 slopes, which is steeper than what we're asking for here. These slopes are flatter.

388  
389 Ms. Harris - I did drive down there the last two days. I had quite a tour of  
390 that area, and I noticed on one of the maps we have adjacent to this site is a church.  
391 Do they know that you propose a 40-foot mound next to them?

392  
393 Mr. Ragland - That church is under construction across the road from the  
394 landfill?

395  
396 Ms. Harris - No, it's on the same side.

397  
398 Ms. Dwyer - You're talking about the Kingsland Road Landfill.

399  
400 Mr. Ragland - I'm sorry; I thought you were still talking about the landfill.  
401 The church is there; we've never had any complaints from them. We've left 100-foot

402 forested buffer that's permanent, on our property, between our excavation and the  
403 church's property. They've never complained about our operation.

404  
405 Ms. Harris - But you've never had a 40-foot mound next door to them  
406 before, right?

407  
408 Mr. Ragland - That's true.

409  
410 Ms. Fisher - But they do currently have an 18-to-20 foot soil stockpile  
411 right there.

412  
413 Mr. Ragland - Yes, we have a soil stockpile; they've never complained. I  
414 guess the diagram that she has submitted for you to look at this morning attempts to  
415 show you that with a 100-foot buffer, that it would be very hard, with a sight angle, to  
416 see over top of a 100-foot buffer and see the 40-foot mound. That's the diagram she  
417 presented so you would understand. A 40-foot mound is not tall enough that a person  
418 outside of our property, looking over top of a 100-foot forested buffer, would not be able  
419 to see the top of it. If it was 70 or 80 feet tall, you would see it, but 40 feet would be  
420 typically below your sight vision because of the 100-foot forested buffer. Most of the  
421 forested buffer is more than 40 feet tall; the trees are taller than what the mound is  
422 going to be, so a person outside of our property would be hard pressed to see the top of  
423 the 40-foot mounds. Most of the trees there are 60 and 70 feet tall.

424  
425 Ms. Harris - Could we see the site map?

426  
427 Mr. Wright - Mr. Blankinship, is it possible to have a separate permit for  
428 each of these activities?

429  
430 Mr. Blankinship - I think it would be a good idea, yes.

431  
432 Mr. Wright - In other words, separate these so we could consider. We're  
433 getting mixed up, I think, between the excavation and the landfill, and it looks like to me,  
434 in view of all these questions, the best idea, it doesn't look like to me that these  
435 suggested conditions suit our situation here. We could proceed to consider the  
436 excavation permit and defer, even readvertise, a separation for the landfill.

437  
438 Mr. Blankinship - Yes sir, I think that would be advisable.

439  
440 Ms. Harris - I asked to see the site map, because this little upper right-  
441 hand corner there, that's the church, right, and I don't believe we notified anyone on  
442 Strath Road. There are some homes on Strath Road, I noticed, not too far from the site,  
443 that certainly this mound would be visible to. Kingsland Estates, is there any  
444 development there at all yet? This map doesn't show it.

445  
446 Ms. Fisher - There's a house that does show up, right adjacent to the  
447 boundary of the property. It's a newer house that's been built since the mining permit

448 has been operating. You see where that shows up?  
449

450 Ms. Harris - Yes, I see that. The upper right-hand corner on the site  
451 map, where you have this little U-shaped diagram, that is the church, and he was saying  
452 that he does not think that it would be that visible to the 40-foot elevation. I just wanted  
453 to be sure that we saw this.  
454

455 Mr. Nunnally - Mr. Blankinship, have we ever had any complaints about this  
456 operation?  
457

458 Mr. Blankinship - Not that I'm aware of. It hasn't been that active of a site, so  
459 it really hasn't drawn any attention that I'm aware of.  
460

461 Ms. Dwyer - So how could we approve the continued excavation without  
462 approving the 40-foot mound today? Mr. Wright suggested separating that out some  
463 way.  
464

465 Mr. Blankinship - I think you could make it clear in your approval that you  
466 expect the reclamation plan to be amended and resubmitted showing whatever you  
467 would be comfortable with. You mentioned earlier just raising it up to a consistent  
468 height with what's already there.  
469

470 Ms. Dwyer - So because this includes the reclamation plan, we could just  
471 simply not approve that part of it. Is that drawing 2 of 4, is that the one we're talking  
472 about? Is there anything else? And that didn't have a name; that still says "erosion  
473 control plan"; it didn't have a separate designation as a reclamation plan or a fill plan or  
474 anything like that. The reason I'm asking is because, is there something else we should  
475 – will that be sufficient to accomplish our purpose, to simply say we're not including  
476 .....?  
477

478 Mr. Blankinship - They need to have a reclamation plan, rather than just  
479 saying you would not include it, that you require that it be revised and resubmitted and  
480 give them, or us, some guidance as to what you want to see there instead of a 40-foot  
481 mound.  
482

483 Mr. Nunnally - We can do that when we vote on it today then?  
484

485 Mr. Blankinship - Yes sir.  
486

487 Ms. Fisher - Would that be a revised plan submitted back, to come before  
488 the BZA, or is that something that staff would approve according to instructions given by  
489 the BZA?  
490

491 Mr. Blankinship - You could do it either way.  
492

493 Ms. Fisher - Would it be possible to get advice, if we get this approved,

494 just to reclaim to a flat grade, would it be possible to get advice from either staff or  
495 members of the BZA on their preferences? I'm understanding, feeling that the mounds  
496 are somewhat of a uncomfortable situation on something that would be more  
497 preferential? And simply because I understand my client's need to – there is so much  
498 construction going on in the County, you need fills here, you need cuts here, and when  
499 there's excess, it is helpful to find a necessary approved site to bring materials. I've  
500 worked for a local government actually, and one of my problem children was when  
501 VDOT would say to a landowner, "hey, we've got some free dirt – do you want to take  
502 it?" And here I am, I've got an erosion sediment control problem, unpermitted activity. I  
503 live in the adjacent County of Hanover, and I got my County newsletter last night, and  
504 Public Works actually had an article in there by the Director of Public Works, Becky  
505 Draper, speaking to that issue. It said, "Beware of free dirt; it can get you in trouble," so  
506 if you would have some suggestions on how you would like us to better present this  
507 type of situation when there is a need, rather than, I guess our other option would be to  
508 take it to a regular landfill, which in my mind is, somewhat taking up space and not as  
509 good an idea, because that has more potential environmental complications than would  
510 this inert material being filled. What I'm asking for are suggestions on where to take  
511 additional earth and dirt and this material that we have proposed for this site.

512  
513 Mr. Nunnally - Can you put that in whatever decision we make today, Mr.  
514 Blankinship?

515  
516 Mr. Blankinship - I think I got a little lost toward the end there. Are you asking  
517 for guidance on how to revise this plan, or suggestions on where to take material when  
518 there's extra material?

519  
520 Ms. Fisher - I guess if you don't feel it's appropriate to mound at the end  
521 .....

522  
523 Mr. Wright - I guess her question is, without the mounding this wouldn't  
524 work, is that your point?

525  
526 Ms. Fisher - We can certainly use, and we don't wish to be denied  
527 completely, certainly. We'll accept graciously, if you will allow the operation to, after  
528 mining is complete, reclaim to a flat grade.

529  
530 Mr. Wright - I think that's the concern I have, the mound.

531  
532 Ms. Dwyer - If it's reclaimed to grade, can it be used for residential  
533 development, or is the land unusable after that? For that purpose.

534  
535 Mr. Ragland - The plan shows four lots with four houses at the front of the  
536 property. The land behind the lots would have two mounds with gentle slopes; they  
537 would be top soiled and seeded. They would look like grass mounds; they would be  
538 areas that kids could run around and play on. The area could either be seeded or could  
539 be allowed to grow up as woods and be used as woods for what our woods are used

540 for. They could be seeded and used for grass areas, just open areas. As far as could  
541 you come on those two mounds and build a house, .....

542

543 Ms. Dwyer - No, I mean if it were flat, not mounded, would it be suitable  
544 for residential development?

545

546 Mr. Ragland - To build houses on? It would require a special engineering  
547 of the foundation of the house.

548

549 Ms. Dwyer - But it could be, potentially.

550

551 Ms. Fisher - You would probably have to hook up to sanitary sewer or at  
552 least get in an engineer's system, as you've got disturbed soil, so conventional probably  
553 wouldn't work.

554

555 Mr. Ragland - One other condition in here that we want to change is so that  
556 if we wanted to, we could operate on Saturday – is that negotiable, or is that out of the  
557 question?

558

559 Mr. Blankinship - That's condition # 9.

560

561 Mr. Ragland - We'd like to rewrite that so that we could operate on  
562 Saturdays the same hours as the rest of the week. Right now it's written that it's  
563 prohibited. That's one change that we would like to make while you're making changes,  
564 if possible.

565

566 Mr. Nunnally - Any other questions from the Board or staff? Does anyone  
567 else have any questions? That concludes the case. Thank you for coming. UP-28-  
568 2005.

569

570 Ms. Harris - I move that we approve, excluding the mound, the forty-foot  
571 mound, in the reclamation plan.

572

573 Mr. Kirkland - And to bring it back to the existing grade. Do we have to  
574 give some sort of grade, Mr. Blankinship?

575

576 Mr. Blankinship - Usually they just put six inches of topsoil over wherever they  
577 finish digging. I think you're saying, bring it back up as if they had never removed any  
578 material.

579

580 Mr. Wright - They're going to do that anyhow, when they put the junk in  
581 there, aren't they?

582

583 Mr. Blankinship - That's the question.

584

585 Ms. Dwyer - Condition 2 says that it's to be restored to a reasonably level  
586 condition. So just leave it as is. Do they have to come back to us with a new  
587 reclamation plan, or .....

588

589 Mr. Blankinship - That's up to you.

590

591 Mr. Kirkland - I think they should.

592

593 Ms. Dwyer - Or can the staff do that?

594

595 Mr. Kirkland - I think we need to know about this for future use, in case we  
596 have another case like this.

597

598 Ms. Dwyer - I think maybe if we just say it has to be filled to grade, I think  
599 we've made that decision, and they just have to amend their plan.

600

601 Mr. Blankinship - I can certainly bring it back to you as an information item. If  
602 they come back and want to go to the 40 feet, they're going to have to come back to us  
603 again to revise their reclamation plan? At that point, I think, based on this morning's  
604 discussion, I would tell them to submit an application for a landfill.

605

606 Mr. Wright - What about Saturdays?

607

608 Ms. Harris - The reason we have, neighbors don't say too much, and I do  
609 know some of the neighbors. In fact, one of the neighbors, who was not contacted on  
610 Strath Road, his son was killed by a truck from this landfill, so they talked to me about  
611 this over the years, but I contend that the reason we don't have too many complaints is  
612 because the neighbors have accepted the site pretty much as is. If we do a lot of  
613 changing, with the church being there, having different activities, certainly on Sunday,  
614 but maybe even some on Saturday, in fact the child was killed on a Saturday, I just feel  
615 that we need to leave it as is.

616

617 Mr. Wright - How about # 25? No off-site – you say that has to be in this  
618 type of permit?

619

620 Mr. Blankinship - It doesn't have to be – it always is. You have always  
621 attached either a condition saying “no off-site fill” or you have said “any off-site fill has to  
622 be approved, case by case, by the Director of Planning.” It's your condition. You can  
623 change it to whatever you think is appropriate.

624

625 Mr. Wright - Why couldn't you have the same condition that you've got in # 21 in the  
626 case UP-29, “landfill,” without the Commonwealth of Virginia thing in, because they're  
627 not involved in that, “the matter to be deposited shall not include any hazardous  
628 materials as defined by the Virginia Hazardous Waste Management Regulations.” You  
629 could add other language in there, “limited to non-perishable materials, such as stone,  
630 brick” – that part of it I don't have any problem with. Can we do something to temper it

631 so they have to file a written report or something, every so often for you to check? It  
632 looks like to me it would just take up more of your time. I don't know how to interpret  
633 that. It looks like to me that every truckful will have to be approved by you.  
634

635 Mr. Blankinship - All we get is a letter on the other cases. We typically get a  
636 letter saying 'we have been contracted to remove 2,000 cubic yards of material from this  
637 site, and this is what the material consists of, and we'll be bringing it in over these days,  
638 and we estimate it will be this many truckloads.' We write them back a letter saying,  
639 "you're approved to deposit those materials and no other."  
640

641 Mr. Wright - Is that the way this is going to be, or is it an ongoing thing,  
642 that they go get a truckload from this site one day, and a truckload from that site another  
643 day.  
644

645 Mr. Blankinship - That's the question – is that what you want? Do you want to  
646 approve that. Do you want to give them permission to do that, because at some point,  
647 they are crossing over into being a landfill.  
648

649 Mr. Kirkland - This is one company, running one landfill. This is not people  
650 coming from outside. It's only S. B. Cox, right?  
651

652 Mr. Blankinship - Yes, they are restricted to that.  
653

654 Mr. Kirkland - Only S. B. Cox, bringing their materials, wherever they get  
655 them, and so the letter would fit the bill in that situation, because there are no outsiders.  
656 They are grouped, and they know exactly what they are doing.  
657

658 Mr. Blankinship - But if you want to just state, any material that is brought by  
659 S. B. Cox that is only these materials, is fine, if it's fine with you.  
660

661 Ms. Dwyer - That's what we say, isn't it.  
662

663 Mr. Blankinship - What it says now is that it has to be approved .....

664  
665 Mr. Wright - Prior to the time they take it over. I didn't get a good feel for  
666 how the operation is. If they're going to do a major job, and they're going to go and  
667 demolish this area or something, and you could give them one approval, that's fine, but I  
668 got the sense that they may be going to do something from this little job, and this little  
669 job, which wouldn't lend itself to that sort of thing.  
670

671 Mr. Blankinship - I agree – if they were doing that kind of work, this would be  
672 cumbersome.  
673

674 Mr. Wright - As long as you restrict what goes in there, and if you want,  
675 you could add that they would file a report every so often of what went in there .....

676

677 Mr. Blankinship - If you'd prefer, we can certainly do that.  
678  
679 Ms. Dwyer - Is that instead of getting written approval?  
680  
681 Mr. Wright - I'm looking at # 25.  
682  
683 Ms. Dwyer - They didn't seem to have a problem with # 25.  
684  
685 Mr. Wright - Yes he did. He talked about having to get a prior written  
686 approval for whatever they were going to do.  
687  
688 Ms. Harris - Remember # 21 is what became an issue, because the  
689 words, "within the Commonwealth of Virginia" .....  
690  
691 Mr. Wright - Wait a minute – you're looking at the wrong one.  
692  
693 Ms. Harris - # 21 on .....  
694  
695 Mr. Wright - But you're on the wrong case.  
696  
697 Mr. Blankinship - You're on Up-29. We came back to that as an example.  
698  
699 Ms. Harris - I thought you wanted to switch # 21 to # 25.  
700  
701 Mr. Wright - But this doesn't apply to this particular thing. I was just using  
702 – we didn't have that in that UP, and that's a landfill, isn't it?  
703  
704 Mr. Blankinship - Right, that was approved as a landfill.  
705  
706 Mr. Wright - But we didn't have any offsite stuff in that one.  
707  
708 Mr. Blankinship - Right – the only purpose of a landfill is to carry offsite  
709 material.  
710  
711 Mr. Kirkland - How about if we put on there, Mr. Blankinship, "The operator  
712 shall submit a request stating the origin, nature and quantity of material to be deposited  
713 each quarter, and certifying that no hazard, contaminated, or put the quarter afterwards,  
714 every three months send you a letter of what they've done in the previous three months.  
715  
716 Ms. Dwyer - That's after the fact.  
717  
718 Mr. Kirkland - I don't know; I guess they wouldn't lie to you, because you're  
719 the County, but at least if you saw something on there, then you can go back. You can  
720 stop the operation immediately.  
721



722 Mr. Wright - Even if they got prior approval, that doesn't say they would  
723 do it.  
724

725 Mr. Blankinship - We do not have an inspector standing out there watching  
726 them unload the trucks.  
727

728 Mr. Wright - I would have liked that last sentence in # 25, "shall be limited  
729 ...." – that strictly says what goes in there.  
730

731 Mr. Kirkland - Right, put that in there too.  
732

733 Mr. Wright - Even if they get prior approval, they could slip something  
734 else in there.  
735

736 Ms. Harris - That's grounds for revoking of this .....

737

738 Mr. Wright - Well, it's grounds if they put something in there that doesn't  
739 meet this description too, of course if they report it. They're not going to tell you if they  
740 put in something that's off.  
741

742 Ms. Harris - So how do you think # 25 should be worded again?  
743

744 Mr. Wright - Whatever Mr. Kirkland just said.  
745

746 Mr. Blankinship - You could put in there, in place of the first sentence, we  
747 would have a requirement that they report on a quarterly basis, what materials have  
748 been deposited.  
749

750 Mr. Wright - And then describe the materials that can be put in, in that  
751 last sentence.  
752

753 Mr. Blankinship - The first two sentences would be altered.  
754

755 Mr. Wright - I just think it makes more sense.  
756

757 Ms. Harris - Did you say you're going to change the last sentence to "the  
758 materials deposited shall be limited," – you're going to keep it .....

759

760 Mr. Blankinship - No, keep the last sentence.  
761

762 Mr. Wright - The last sentence clearly defines what they can put in there.  
763

764 Mr. Nunnally - You've got all that, Mr. Blankinship?  
765

766 Mr. Blankinship - I have a motion by Ms. Harris, and I did not record a second.  
767

768 Mr. Nunnally - Mr. Kirkland.  
769  
770 Mr. Kirkland - Did I second that? Yes, I did.  
771  
772 Mr. Nunnally - All in favor of approval, with the conditions, say aye.  
773 Opposed? It's approved.  
774  
775 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
776 Kirkland, the Board **granted** application **UP-28-2005** for a conditional use permit to  
777 extract materials from the earth at 1801 Kingsland Road (Parcel 818-676-5915). The  
778 Board granted the use permit subject to the following conditions:  
779  
780 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of  
781 the County Code.  
782  
783 2. [AMENDED] Before beginning any work, the applicant shall provide a financial  
784 guaranty in an amount of \$2,000.00 per acre for each acre of land to be disturbed, for a  
785 total of \$ 31,600.00, guaranteeing that the land will be restored to a reasonably level  
786 and drainable condition, consistent with the elevation of the land prior to the beginning  
787 of excavation. This permit does not become valid until the financial guaranty has been  
788 approved by the County Attorney. The financial guaranty may provide for termination  
789 after 90 days notice in writing to the County. In the event of termination, this permit  
790 shall be void, and work incident thereto shall cease. Within the next 90 days the  
791 applicant shall restore the land as provided for under the conditions of this use permit.  
792 Termination of such financial guaranty shall not relieve the applicant from its obligation  
793 to indemnify the County of Henrico for any breach of the conditions of this use permit. If  
794 this condition is not satisfied within 90 days of approval, the use permit shall be void.  
795  
796 3. Before beginning any work, the applicant shall submit erosion control plans to the  
797 Department of Public Works (DPW) for review and approval. Throughout the life of the  
798 operation, the applicant shall continuously satisfy DPW that erosion control procedures  
799 are properly maintained, and shall furnish plans and bonds that DPW deems necessary.  
800 The applicant shall provide certification from a licensed professional engineer that  
801 dams, embankments and sediment control structures meet the approved design criteria  
802 as set forth by the State. If this condition is not satisfied within 90 days of approval, the  
803 use permit shall be void.  
804  
805 4. Before beginning any work, the applicant shall obtain a mine license from the  
806 Virginia Department of Mines, Minerals and Energy. If this condition is not satisfied  
807 within 90 days of approval, the use permit shall be void.  
808  
809 5. Before beginning any work, the areas approved for mining under this permit shall  
810 be delineated on the ground by five-foot-high metal posts at least five inches in diameter  
811 and painted in alternate one foot stripes of red and white. These posts shall be so  
812 located as to clearly define the area in which the mining is permitted. They shall be

813 located, and their location certified, by a certified land surveyor. If this condition is not  
814 satisfied within 90 days of approval, the use permit shall be void.

815  
816 6. In the event that the approval of this use permit is appealed, all conditions  
817 requiring action within 90 days will be deemed satisfied if the required actions are taken  
818 within 90 days of final action on the appeal.

819  
820 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
821 state and local regulations administered under such act applicable to the property, and  
822 shall furnish to the Planning Department copies of all reports required by such act or  
823 regulations.

824  
825 8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight Savings  
826 Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.

827  
828 9. No operations of any kind are to be conducted at the site on Saturdays, Sundays,  
829 or national holidays.

830  
831 10. All means of access to the property shall be from the established entrance onto  
832 Kingsland Road.

833  
834 11. The applicant shall erect and maintain gates at all entrances to the property.  
835 These gates shall be locked at all times, except when authorized representatives of the  
836 applicant are on the property.

837  
838 12. The applicant shall post and maintain a sign at the entrance to the mining site  
839 stating the name of the operator, the use permit number, the mine license number, and  
840 the telephone number of the operator. The sign shall be 12 square feet in area and the  
841 letters shall be three inches high.

842  
843 13. The applicant shall post and maintain "No Trespassing" signs every 250 feet  
844 along the perimeter of the property. The letters shall be three inches high. The  
845 applicant shall furnish the Chief of Police a letter authorizing the Division of Police to  
846 enforce the "No Trespassing" regulations, and agreeing to send a representative to  
847 testify in court as required or requested by the Division of Police.

848  
849 14. Standard "Truck Entering Highway" signs shall be erected on Kingsland Road on  
850 each side of the entrance to the property. These signs will be placed by the County, at  
851 the applicant's expense.

852  
853 15. The applicant shall post and maintain a standard stop sign at the entrance to  
854 Kingsland Road.

855  
856 16. The applicant shall provide a flagman to control traffic from the site onto the  
857 public road, with the flagman yielding the right of way to the public road traffic at all  
858 times. This flagman will be required whenever the Division of Police deems necessary.

- 859  
860 17. All roads used in connection with this use permit shall be effectively treated with  
861 calcium chloride or other wetting agents to eliminate any dust nuisance.  
862
- 863 18. The operation shall be so scheduled that trucks will travel at regular intervals and  
864 not in groups of three or more.  
865
- 866 19. Trucks shall be loaded in a way to prevent overloading or spilling of materials of  
867 any kind on any public road.  
868
- 869 20. The applicant shall maintain the property, fences, and roads in a safe and secure  
870 condition indefinitely, or convert the property to some other safe use.  
871
- 872 21. If, in the course of its preliminary investigation or operations, the applicant  
873 discovers evidence of cultural or historical resources, or an endangered species, or a  
874 significant habitat, it shall notify appropriate authorities and provide them with an  
875 opportunity to investigate the site. The applicant shall report the results of any such  
876 investigation to the Planning Office.  
877
- 878 22. If water wells located on surrounding properties are adversely affected, and the  
879 extraction operations on this site are suspected as the cause, the effected property  
880 owners may present to the Board evidence that the extraction operation is a contributing  
881 factor. After a hearing by the Board, this use permit may be revoked or suspended, and  
882 the operator may be required to correct the problem.  
883
- 884 23. Open and vertical excavations having a depth of 10 feet or more, for a period of  
885 more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect the  
886 public safety.  
887
- 888 24. Topsoil shall not be removed from any part of the property outside of the area in  
889 which mining is authorized. Sufficient topsoil shall be stockpiled on the property for  
890 respreading in a layer with five inches of minimum depth. All topsoil shall be stockpiled  
891 within the authorized mining area and provided with adequate erosion control  
892 protection. If the site does not yield sufficient topsoil, additional topsoil shall be brought  
893 to the site to provide the required five-inch layer of cover. All topsoil shall be treated  
894 with a mixture of seed, fertilizer, and lime as recommended by the County after soil  
895 tests have been provided to the County.  
896
- 897 25. [AMENDED] The operator shall submit a quarterly report stating the origin,  
898 nature and quantity of any off-site generated material deposited on the site, certifying  
899 that no contaminated or hazardous material was included. The material to be deposited  
900 on the site shall be limited to imperishable materials such as stone, bricks, tile, sand,  
901 gravel, soil, asphalt, concrete and like materials, and shall not include any hazardous  
902 materials as defined by the Virginia Hazardous Waste Management Regulations.  
903

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

909  
910 27. A progress report shall be submitted to the Board on April 1, 2007. This progress  
911 report must contain information concerning how much property has been mined to date  
912 of the report, the amount of land left to be mined, how much rehabilitation has been  
913 performed, when and how the remaining amount of land will be rehabilitated, and any  
914 other pertinent information about the operation that would be helpful to the Board.

915  
916 28. Excavation shall be discontinued by April 1, 2008 and restoration accomplished  
917 by not later than April 1, 2009, unless a new permit is granted by the Board of Zoning  
918 Appeals.

919  
920 29. [AMENDED] The rehabilitation of the property shall take place simultaneously  
921 with the mining process. The final grading of the site shall be consistent with the  
922 elevation of the land prior to the beginning of excavation. Rehabilitation shall not be  
923 considered completed until the mined area is covered completely with permanent  
924 vegetation.

925  
926 30. All drainage and erosion and sediment control measures shall conform to the  
927 standards and specifications of the Mineral Mining Manual Drainage Handbook. Any  
928 drainage structures in place prior to October 14, 1992 and which do not conform to the  
929 Mineral Mining Manual Drainage Handbook may remain in place until such time as any  
930 reconstruction is required at which time said structures shall be brought into  
931 conformance with the Mineral Mining Manual Drainage Handbook.

932  
933 31. Failure to comply with any of the foregoing conditions shall automatically void this  
934 permit.

935  
936 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
937 Negative: 0  
938 Absent: 0

939  
940 The Board granted the request because it found the proposed use will be in substantial  
941 accordance with the general purpose and objectives of Chapter 24 of the County Code.

942  
943 **UP- 29-2005 THE EAST END LANDFILL, LLC** requests a conditional use permit  
944 pursuant to Section 24-116(c)(3) to transfer ownership of a  
945 construction debris landfill at 1820 Darbytown Road (Parcel 809-  
946 707-1585), zoned M-2, General Industrial District (Varina).

947

948 Mr. Nunnally - Is anyone else here interested in this case? If so, please  
949 stand and raise your right hand and be sworn. How about Mr. Tokarz – is he going to  
950 be here?

951  
952 Mr. Blankinship - I don't believe so. I think we've got all the legal issues on  
953 this application ironed out.

954  
955 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
956 truth, the whole truth, and nothing but the truth, so help you God?

957  
958 Mr. Pollard - I do. Mr. Chairman, Members of the Board, and Mr.  
959 Blankinship, my name is Speaker Pollard. I'm a partner with the law firm of Christian  
960 and Barton. I'm here this morning representing your applicant, The East End Landfill,  
961 LLC, who I'll refer to as TEEL for convenience as we go through this proceeding. TEEL  
962 appreciates the opportunity today to discuss its pending application for a conditional use  
963 permit, or CUP. With me today is Mr. Mathew Appelget, President of TEEL, from whom  
964 you'll hear a little more in a few minutes. Also here today are Mr. Joseph A. Simons,  
965 and Mr. R. Wayne Greenwood, of Simons Hauling Company. First let me explain, if I  
966 can, the purpose and need for this conditional use permit application by TEEL. TEEL is  
967 the contract purchaser of the Simons Hauling Company, Construction, Demolition and  
968 Debris Landfill, located off Darbytown Road in eastern Henrico County. TEEL intends  
969 to continue operation of the landfill and its planned expansion is currently contemplated  
970 by current permits and pending applications before various agencies. Consequently, as  
971 a prospective owner of the landfill, TEEL in essence today seeks the transfer of the  
972 current terms and conditions of the existing conditional use permits of the Simons  
973 Hauling Company Landfill. We understand that you've been presented with a staff  
974 report concerning the application, and we'd like to offer just a few additional remarks  
975 and supporting information, and then answer any questions you might have. As noted  
976 in the staff report in 1993 and 2002, Simons Hauling received CUPs for this landfill  
977 property. The 2002 CUP was issued in the main to allow and account for the proposed  
978 expansion of that landfill. Applications for State permits to allow that expansion are now  
979 pending before the Virginia Department of Environmental Quality, or DEQ, and the first  
980 stage of this permit has already been issued in the form of what's called a Part A permit,  
981 to Simons Hauling this past summer. The DEQ has also just recently issued to Simons  
982 Hauling, a temporary authorization to construct the first phase of that expansion area.  
983 TEEL and Simons Hauling have already set in motion the process for having the other  
984 landfill permits transferred from Simons Hauling to TEEL, notably, especially those  
985 permits that would be issued through DEQ. In that process, TEEL does not intend to  
986 seek any material changes to those existing permit terms and conditions, essentially  
987 stepping into the shoes of Simons hauling for purposes of the existing permits and for  
988 purposes of the pending applications of the expansion. Likewise in this case, TEEL  
989 does not seek any changes in any material form, from the existing permit conditions that  
990 Simons Hauling now has under its CUPs, in essence again, stepping into the shoes of  
991 Simons Hauling, for the purposes of this CUP. Having explained a little bit about the  
992 purposes and the need for this CUP, I'd like to address or explain a little bit about what  
993 or who TEEL is and who some of the members of the company are, and give you a little

994 background information on the company. TEEL itself is a Limited Liability Company  
995 that's been formed to own and operate the landfill. It has located offices on Charles City  
996 Road, near the landfill, from which it will conduct its local business activities. The  
997 principals of TEEL are rather experienced in the waste management industry, having  
998 run a significant row of container businesses, waste transportation firms, and transfer  
999 station enterprises. While the principals of TEEL are experienced in the waste  
1000 management industry, they also recognize that institutional memory and familiarity with  
1001 the landfill going forward is going to be very important to insuring a smooth transition,  
1002 and continuing good service to its customers, so they have made arrangements with Mr.  
1003 Wayne Greenwood, to retain him. Mr. Greenwood is the long-time operator and  
1004 manager of the landfill for Simons Hauling, and TEEL has arranged to retain Mr.  
1005 Greenwood for a period of six months after taking ownership of the property to insure  
1006 that smooth transition, to have Mr. Greenwood's personal familiarity with the landfill, and  
1007 knowledge and experience, be able to be shared with TEEL as it takes over ownership  
1008 and operation. TEEL intends to run this facility as it has been run, as a quality  
1009 operation. They want to build on the good work that Simons Hauling has done with this  
1010 landfill and continue that expansion plan and essentially run this as a first-rate facility.  
1011 I'd now like to ask Mr. Appelget to come forward and say a few remarks of his own.  
1012

1013 Mr. Appelget - Good morning. My name is Mathew Appelget, and I'm the  
1014 President of The East End Landfill LLC. TEEL is a new company, formed to own and  
1015 operate the landfill, but TEEL's principals have between them a collective 50 years of  
1016 experience in the waste management industry. I personally have been involved in the  
1017 formation and operation of several successful and ongoing waste management  
1018 businesses, which have between them, more than \$70,000,000 in annual revenues.  
1019 This includes a local roll off container company, operating under the name of Richmond  
1020 Waste Services, to handle the roll off removal needs of developers and contractors  
1021 working in Henrico County and surrounding areas. Some of our customers include  
1022 Sims Metals and Philip Morris. As Mr. Pollard mentioned, TEEL and other local  
1023 companies are basing their business activities out of offices located at 3450 Charles  
1024 City Road, which are very near the landfill. TEEL anticipates a positive working  
1025 relationship with developers, builders, and governmental entities and agencies. Again, I  
1026 would like to thank you for your time today and for your consideration of TEEL's  
1027 conditional use permit application. Thank you. At this time, we'll do our best to answer  
1028 any questions the Board may have.  
1029

1030 Mr. Wright - I understand that you propose no change in the operation  
1031 from that which Simons was conducting. What you're saying is, you want the same  
1032 conditions on your permit that they had.  
1033

1034 Mr. Appelget - Yes sir. Again, essentially the idea of TEEL as a new owner  
1035 of the landfill is essentially to step into the shoes of Simons for the purposes of having  
1036 these conditions carried forward.  
1037

1038 Mr. Wright - Have you looked at the proposed conditions?  
1039

1040 Mr. Appelget - Yes sir, and I guess I would say that we have reviewed the  
1041 stats report and the recommended terms and conditions and TEEL is amenable to and  
1042 willing to accept those conditions as presented by staff.  
1043  
1044 Mr. Wright - So every condition that we have here?  
1045  
1046 Mr. Appelget - Yes sir.  
1047  
1048 Ms. Harris - How close is the property that you have on Charles City  
1049 Road to this site?  
1050  
1051 Mr. Simons - One and a half miles driving distance, by road. This is an  
1052 office and parking for the roll off containers and roll off truck. It's not another waste  
1053 management facility.  
1054  
1055 Ms. Dwyer - So the conditions are acceptable to you in their entirety?  
1056 There are no recommendations for any changes?  
1057  
1058 Mr. Appelget - Yes ma'am.  
1059  
1060 Mr. Blankinship - The County Attorney's Office was referred to earlier. We  
1061 have been working rather diligently with them to iron out some issues, and the County  
1062 Attorney's Office has in conjunction with us, the Planning Department, has developed  
1063 some specific questions that we would like to have addressed. I don't know that you  
1064 can address them standing at the podium, but you may be able to address them this  
1065 morning with the other people that you brought. Mr. Chairman, I would suggest giving  
1066 them these questions in writing and carrying over this case toward the end of the  
1067 Agenda, giving them the opportunity to address these at the end of the meeting.  
1068  
1069 Mr. Kirkland - I only have one real question – how long do you think you'll  
1070 be operating at this facility?  
1071  
1072 Mr. Appelget - With the expansion in place, my understanding is that the  
1073 expansion would allow the facility to operate to about 2015, using the full extension.  
1074  
1075 Mr. Nunnally - Mr. Blankinship, if they agree that they're going to operate  
1076 just like Simons did, what do we need with all this other stuff?  
1077  
1078 Mr. Kirkland - They accept the conditions here.  
1079  
1080 Mr. Wright - I don't see where we need anything further.  
1081  
1082 Mr. Nunnally - You might give them that letter if you want to and let them  
1083 read it while we go through these other cases, and see if they come up with anything,  
1084 but .....  
1085



1086 Mr. Kirkland - This pretty much satisfies the situation.  
1087  
1088 Mr. Blankinship - The questions relate to how much material is brought into  
1089 the landfill annually, how many truckloads, how many cubic yards you have experienced  
1090 over the last three or four years, what you anticipate use of the landfill being over the  
1091 next four years.  
1092  
1093 Mr. Appelget - We may be able to address those issues. The amount of  
1094 material that comes in is set, in a sense, by the State permits, so it is my understanding  
1095 that the amount of material that's been coming in has been consistent with those State  
1096 permits and will be consistent with those permits as they may be amended due to the  
1097 expansion. The current limit is 1500 tons per day, whether that amount actually comes  
1098 in every single day, I don't know that that's the case, but that's the current limit that's  
1099 set.  
1100  
1101 Mr. Blankinship - Can you translate that into truckloads?  
1102  
1103 Mr. Greenwood - My name is Wayne Greenwood, and I'm employed by  
1104 Simons Hauling Company. I am the certified operator for this facility, and I have  
1105 managed it since its inception in 1988. Both Henrico County Traffic and Engineering  
1106 Division and DEQ limit us to a maximum of 1500 tons per day. The vehicles that we  
1107 have coming in vary in size from single-axel dump trucks up to 40-yard containers, so  
1108 that's a variability in the size per load. On average, we take in 25 to 40 loads per day,  
1109 currently.  
1110  
1111 Mr. Blankinship - Do you anticipate that remaining at that level for the next  
1112 three years?  
1113  
1114 Mr. Greenwood - We can't exceed that maximum, and I don't foresee any  
1115 change at this time.  
1116  
1117 Mr. Appelget - It sounds like that's just a function of what kind of trucks are  
1118 coming in.  
1119  
1120 Mr. Nunnally - Any other questions from the Board or staff? Is anyone here  
1121 interested in this case? That concludes the case. Thank you for coming. UP-29-2005  
1122 East End Landfill.  
1123  
1124 Mr. Wright - Move we approve it.  
1125  
1126 Ms. Harris - Second.  
1127  
1128 Mr. Nunnally - Motion by Mr. Wright that we approve it; second by Ms.  
1129 Harris.  
1130

1131 Mr. Blankinship - They had asked for Saturday hours. Do you want to  
1132 consider that? I'm sorry, was that them, or was that the other case?

1133  
1134 Mr. Kirkland - That was the "bumps in the road" case.

1135  
1136 Mr. Nunnally - Okay, all in favor of UP-29-2005 say aye. Opposed? It's  
1137 been approved.

1138  
1139 After an advertised public hearing and on a motion by Mr. Wright, seconded by Ms.  
1140 Harris, the Board **granted** application **UP-29-2005** for a conditional use permit to  
1141 transfer ownership of construction debris landfill at 1820 Darbytown Road (Parcel 809-  
1142 707-1585). The Board granted the use permit subject to the following conditions:

1143  
1144 1 This use permit is subject to all requirements of the County Code.

1145  
1146 2. Before beginning any work, the applicant shall provide a financial guaranty in an  
1147 amount of \$2,000 per acre for each acre of land to be disturbed, for a total of \$11,000,  
1148 guaranteeing that the land will be restored in accordance with Virginia Department of  
1149 Environmental Quality regulations. This permit does not become valid until the financial  
1150 guaranty has been approved by the County Attorney. The financial guaranty may  
1151 provide for termination after 90 days notice in writing to the County. In the event of  
1152 termination, this permit shall be void, and work incident thereto shall cease, and within  
1153 the next 180 days the applicant shall restore the land as provided for under the  
1154 conditions of this use permit. Termination of such financial guaranty shall not relieve  
1155 the applicant from its obligation to indemnify the County of Henrico for any breach of the  
1156 conditions of this use permit. If this condition is not satisfied within 90 days of approval,  
1157 the use permit shall be void.

1158  
1159 3. Before beginning any work, the applicant shall submit erosion control plans to the  
1160 Department of Public Works for review and approval. Throughout the life of the  
1161 operation, the applicant shall continuously satisfy the Department of Public Works that  
1162 erosion control procedures are properly maintained, and shall furnish plans and bonds  
1163 that the department deems necessary. The applicant shall provide certification from a  
1164 licensed professional engineer that the landfill facilities and sediment control structures  
1165 meet the approved design criteria as set forth by the State. If this condition is not  
1166 satisfied within 180 days of approval, the use permit shall be void.

1167  
1168 4. Before beginning any work, the applicant shall obtain a permit from the Virginia  
1169 Department of Environmental Quality. If this condition is not satisfied within one year of  
1170 approval, the use permit shall be void.

1171  
1172 5. In the event that the approval of this use permit is appealed, all conditions  
1173 requiring action within 90 days will be deemed satisfied if the required actions are taken  
1174 within 90 days of final action on the appeal.

1175

- 1176 6. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
1177 state and local regulations administered under such act applicable to the property, and  
1178 shall furnish to the Planning Department copies of all reports required by such act or  
1179 regulations.  
1180
- 1181 7. Hours of operation shall be from 7:00 a.m. to 6:00 p.m. when Daylight Savings  
1182 Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.  
1183
- 1184 8. No operations of any kind are to be conducted at the site on Sundays or national  
1185 holidays.  
1186
- 1187 9. All means of access to the property shall be from the established entrance onto  
1188 Darbytown Road.  
1189
- 1190 10. The applicant shall erect and maintain gates at all entrances to the property.  
1191 These gates shall be locked at all times, except when authorized representatives of the  
1192 applicant are on the property.  
1193
- 1194 11. The applicant shall post and maintain a sign at the entrance to the site stating the  
1195 name of the operator, the use permit number, the DEQ license number, and the  
1196 telephone number of the operator. The sign shall be 12 square feet in area and the  
1197 letters shall be three inches high.  
1198
- 1199 12. The applicant shall post and maintain "No Trespassing" signs every 250 feet  
1200 along the perimeter of the property. The letters shall be three inches high. The  
1201 applicant shall furnish the Chief of Police a letter authorizing the Division of Police to  
1202 enforce the "No Trespassing" regulations, and agreeing to send a representative to  
1203 testify in court as required or requested by the Division of Police.  
1204
- 1205 13. Standard "Trucks Entering Highway" signs shall be erected on Darbytown Road  
1206 on each side of the entrance to the property. These signs will be placed by the County,  
1207 at the applicant's expense.  
1208
- 1209 14. The applicant shall post and maintain a standard stop sign at the entrance to  
1210 Darbytown Road.  
1211
- 1212 15. The applicant shall provide a flagman to control traffic from the site onto the  
1213 public road, with the flagman yielding the right of way to the public road traffic at all  
1214 times. This flagman will be required whenever the Division of Police deems necessary.  
1215
- 1216 16. All roads used in connection with this use permit shall be effectively treated with  
1217 calcium chloride or other wetting agents to eliminate any dust nuisance.  
1218
- 1219 17. The operation shall be so scheduled that trucks will travel at regular intervals and  
1220 not in groups of three or more.  
1221

1222 18. The applicant shall maintain the property, fences, and roads in a safe and secure  
1223 condition indefinitely, or convert the property to some other safe use.

1224  
1225 19. If, in the course of its preliminary investigation or operations, the applicant  
1226 discovers evidence of cultural or historical resources, or an endangered species, or a  
1227 significant habitat, it shall notify appropriate authorities and provide them with an  
1228 opportunity to investigate the site. The applicant shall report the results of any such  
1229 investigation to the Planning Department.

1230  
1231 20. If water wells located on surrounding properties are adversely affected, and the  
1232 landfill operations on this site are suspected as the cause, the effected property owners  
1233 may present to the Board evidence that the landfill operation is a contributing factor.  
1234 After a hearing by the Board, this use permit may be revoked or suspended, and the  
1235 operator may be required to correct the problem.

1236  
1237 21. The landfill shall only accept construction demolition debris originating within the  
1238 Commonwealth of Virginia, hauled by the applicant and other contract haulers licensed  
1239 by the Commonwealth of Virginia. The material to be deposited shall not include any  
1240 hazardous materials as defined by the Virginia Hazardous Waste Management  
1241 Regulations.

1242  
1243 22. A superintendent, who shall be personally familiar with all the terms and  
1244 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the terms  
1245 and conditions of this use permit, shall be present at the beginning and conclusion of  
1246 operations each work day to see that all the conditions of the Code and this use permit  
1247 are observed.

1248  
1249 23. Each day the applicant shall monitor and clean up any trash, dust or mud along  
1250 Darbytown Road within 2,000 feet of the entrance to the site.

1251  
1252 24. A progress report shall be submitted to the Board on November 30 of each year.

1253  
1254 25. Failure to comply with any of the foregoing conditions shall automatically void this  
1255 permit.

1256  
1257 26. This use permit shall only take effect upon the transfer of title to the subject  
1258 property from Simons Hauling Co., Inc. to The East End Landfill, LLC, provided that  
1259 such transfer occurs within 180 days of the date of the issuance of this use permit. If  
1260 such transfer has not occurred within such 180 day period, this use permit shall become  
1261 void.

1262  
1263 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1264 Negative: 0  
1265 Absent: 0

1266  
1267 The Board granted the request because it found the proposed use will be in substantial

1268 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1269

1270 **New Applications**

1271

1272 **A - 81-2005**

**JOHN G. AND TINA M. D. SHURLEY** request a variance from Section 24-95(t) to demolish and replace a one-family dwelling at 4508 Creighton Road (Charles A Smith) (Parcel 817-735-3028), zoned C-1, Conservation District (Fairfield). The required lot area outside the floodplain is not met. The applicants have 0 acre outside the floodplain, where the Code requires 1 acre outside the floodplain. The applicants request a variance of 1 acre outside the floodplain.

1273

1274

1275

1276

1277

1278

1279

1280

1281 Mr. Nunnally - Is anyone else here interested in this case? If so, please  
1282 stand and raise your right hand and be sworn.

1283

1284 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1285 truth, the whole truth, and nothing but the truth, so help you God?

1286

1287 Mr. Deal - I do. My name is John Deal. I'm the attorney for Mr. and  
1288 Mrs. Shurley. The Gaston storm came up about 18 inches inside their house. As a  
1289 result, a mold condition got into the house, and they were unable to remedy the mold  
1290 condition. The only way to remedy it was to tear the house down and rebuild a new  
1291 home. That was 16 months ago, and they've been living in an apartment for the last 16  
1292 months with their three children. We've now processed through the Planning  
1293 Commission and the Board of Supervisors, I believe it was last evening, to have the  
1294 property rezoned from C-1 to A-1, because in C-1, obviously, you cannot build a  
1295 residence or get a permit to repair a residence. With the A-1 zoning, we are ready to  
1296 proceed. What happened was, in the rezoning case the other night, the property was  
1297 zoned A-1 from Creighton Road towards the swamp for a period of 100 feet beyond  
1298 their house. That was obviously agreeable to them. Then there's the issue that we've  
1299 got two floodplains we're dealing with here. We've got a FEMA floodplain, which the  
1300 Shurley house is not in at all. We have the Henrico County designated floodplain, which  
1301 includes more land than the FEMA floodplain. The Henrico floodplain goes all the way  
1302 to Creighton Road. During the Gaston flood, there were only two residences affected  
1303 by that in this area, even though there are at least ten down there. One was the  
1304 Shurleys, and the other had water come up in it also. What the Shurleys are doing, is  
1305 they want to rebuild and raise the elevation of their home to a point that would even  
1306 exceed what would have been required under the Gaston 500-year storm, for the  
1307 bottom of their floor joists would be up high enough. The Code says you need in A-1  
1308 one acre out of the floodplain. However, when I'm reading the evaluation report done  
1309 by the Planning staff, actually the Department of Public Works, on page 2 of 3, the  
1310 second paragraph under Evaluation, it says, "Since the Property lies in the floodplain, it  
1311 cannot be used for a dwelling unless the Shurleys place enough fill on the property to  
1312 raise 1 acre above the floodplain. The Department of Public Utilities (Works) does not  
1313 object to placing enough fill on the property to raise the dwelling site above the

1314 floodplain, but they would oppose filling an entire acre of the property. The variance  
1315 would allow the owners to make reasonable use of the property without the  
1316 environmental impact of excessive filling.” Really, all the Shurleys wanted to do in the  
1317 first place is raise where the dwelling is going to be sitting and not an entire acre. The  
1318 objection of the Department of Public Works is right in keeping with what the Shurleys  
1319 want also. The variance we’re asking for today is that rather than the Shurleys being  
1320 required to have to raise the whole acre above the floodplain, we seek a variance to just  
1321 be able to raise the land under the footprint of the house, so that the house will be at  
1322 this new desired level, which would keep it safe, even from a 500-year storm.

1323  
1324 Mr. Nunnally - Mr. O’Kelly, were you at the meeting?

1325  
1326 Mr. O’Kelly - Yes sir.

1327  
1328 Mr. Nunnally - Can you tell us a little something about it?

1329  
1330 Mr. O’Kelly - Actually the applicant was not able to present their case.  
1331 The Board of Supervisors decided that they had enough information and recommended  
1332 approval of the rezoning to A-1. Later in the meeting, the Board of Supervisors  
1333 approved the introduction of an ordinance to address possibly other future applicants  
1334 that may have the same problem Mr. Shurley has encountered, so there may be an  
1335 ordinance amendment in the works to look at some of these things.

1336  
1337 Ms. Dwyer - Mr. O’Kelly, what is a Conservation District, and why was it  
1338 designated that originally?

1339  
1340 Mr. O’Kelly - The current C-1 Conservation District was adopted with the  
1341 original Zoning Ordinance in 1960. I guess as a district that would apply to areas that  
1342 may be subject to flooding and inundation, to protect those areas.

1343  
1344 Ms. Dwyer - And to protect people from living in them, because houses  
1345 couldn’t be built?

1346  
1347 Mr. O’Kelly - On a year-round basis, yes ma’am, but recreational facilities  
1348 and cabins and campgrounds and things of that nature are permitted uses.

1349  
1350 Ms. Dwyer - What is the rationale for requiring a 1-acre piece of the  
1351 property to be outside of the floodplain?

1352  
1353 Mr. O’Kelly - That’s the minimum lot size permitted in the Agricultural  
1354 District for a dwelling.

1355  
1356 Ms. Dwyer - So it’s not related to the question of flooding; it’s just more  
1357 the fact that whatever the minimum lot size is required, all of that must be out of the  
1358 floodplain? So if it were zoned R-3, a smaller portion would be required to be out?

1359

1360 Mr. O'Kelly - Right, that would be 11,000 square feet, with water and  
1361 sewer.  
1362  
1363 Mr. Nunnally - What are you going to do with disposal of sewerage? Do  
1364 you have a septic tank?  
1365  
1366 Mr. Deal - Yes sir, they have a sewage system; in the rebuilding of their  
1367 home, they're going to put one of these Advek Systems in, and the Advek System has  
1368 been passed by the Health Department. This house was build in 1963, as best we can  
1369 determine from the tax records; the County somewhere has misplaced the building  
1370 permit, and I can understand that since 1963, but the tax records changed in 1963 and  
1371 showed that an assessment was changed when the house was built. The Shurleys  
1372 have lived there since 1993, and not really had any problems with the system, but  
1373 they're going to put this Advek System in when they move in, which has become very  
1374 popular in Varina, because there's a lot of land that's marginal percolation, and the  
1375 Advek System injects highly oxygenated water into the drain field, which allows the  
1376 zygotes and hygotes in the drain field to do their thing and eat each other up. It's a very  
1377 well accepted system and is used in a lot of areas.  
1378  
1379 Mr. Wright - Will that be in the floodplain area, or will that be .....  
1380  
1381 Mr. Deal - Yes sir, that's in the floodplain.  
1382  
1383 Mr. Wright - So the raising of the lot to accommodate the house doesn't  
1384 have anything to do with the sewage?  
1385  
1386 Mr. Deal - That's exactly right, has nothing to do with it, and so far as  
1387 the Health Department is concerned, I have no reason to believe they're not going to  
1388 pass it. He's showing the Advek System. The house has been there now for 42 years  
1389 since the flood came.  
1390  
1391 Mr. Wright - What do you do for water?  
1392  
1393 Mr. Deal - You'd have to drill a well.  
1394  
1395 Mr. Shurley - That's correct. I'm John Shurley. The permit has already  
1396 been issued for the septic system. The well is existing, a very deep well.  
1397  
1398 Mr. Wright - The whole purpose of the one acre in Agricultural District, is  
1399 to allow for a septic system, and the well to be compatible on the same lot.  
1400  
1401 Mr. Deal - Yes sir, and we've got a ten-acre lot here.  
1402  
1403 Mr. Wright - That's the reason for the one acre, and it looks like to me  
1404 this strains it, because here you already have your septic system on more than the acre,  
1405 I take it. For that purpose, you've got plenty of land.

1406  
1407 Mr. Deal - Yes sir, we've got plenty of land.  
1408  
1409 Mr. Wright - This is sort of a unique situation. Am I not right, Mr.  
1410 Blankinship, the whole purpose of the one acre is so that the septic system and the well  
1411 will be able to operate successfully.  
1412  
1413 Mr. Blankinship - I hesitate to say the whole reason, but that's certainly one of  
1414 the most important reasons.  
1415  
1416 Mr. Wright - Because you can't have a well and a septic system jammed  
1417 up right next to each other.  
1418  
1419 Mr. Deal - What we've got here, is we've got a family with a husband  
1420 and a wife and three children, that lived there as a family of five for several years.  
1421 Everything was functioning well before the Gaston flood.  
1422  
1423 Mr. Wright - How did this happen, Mr. Blankinship, that the house was  
1424 built illegitimately, illegally, before they changed the designation to C-1, is that what it  
1425 was?  
1426  
1427 Mr. Blankinship - We have turned over every rock that we could think of and  
1428 not been able to satisfactorily answer that question. There are a couple of conjectural  
1429 answers to how the permit got issued, but a building permit was issued, a dwelling was  
1430 built in the C-1 District, and the C-1 District did not allow dwellings.  
1431  
1432 Mr. Deal - I have in my hand the septic tank permit from 1963, by the  
1433 County. The only reason you get a septic permit is to build a house, and I have also the  
1434 tax records, to show that in mid-year of 1963, the assessment of the property was  
1435 changed from raw land to raw land and a house sitting on it, so I've got to assume, that  
1436 since a building permit can't be found, the tax records have got to speak for something,  
1437 and this is a septic tank that was permitted, and this is the same soil, same elevation  
1438 and everything there now, and I would be glad to introduce this into evidence if you'd  
1439 like.  
1440  
1441 Mr. Wright - I don't think that's necessary.  
1442  
1443 Mr. Blankinship - One of the conjectures has been that the building permit  
1444 could have been for a summer house, which is a permitted use, and may have required  
1445 a septic system, but that's just conjecture.  
1446  
1447 Mr. Deal - But in any event, this septic system has served very well.  
1448  
1449 Ms. Harris - Mr. Shurley, you see this map that's before you? Those  
1450 other sites, those homes, were they affected too by the flooding?  
1451



1452 Mr. Shurley - There's only one that was affected. That house had about  
1453 the same amount of water in it that ours did, and the County has condemned their  
1454 house, but that was not due to flooding; that was an issue that was there before the  
1455 flooding, so that's the only other house that had water in it.  
1456  
1457 Ms. Harris - Will you be building your home on fill land?  
1458  
1459 Mr. Shurley - No ma'am, the plan is to tear down the house to the  
1460 foundation only and reuse footings, and those footings would be in the existing soil.  
1461  
1462 Mr. Kirkland - Are you going to build a flow-through footing type thing for  
1463 the flood water, open for it?  
1464  
1465 Mr. Shurley - The Building Inspection Department does address how we  
1466 have to build the house, and one suggestion is vents that allow water to go through it.  
1467  
1468 Mr. Kirkland - I had a home where six feet of water went through it, so I  
1469 can sympathize. A lot of damage.  
1470  
1471 Mr. Deal - These people have been out of this house, and they have  
1472 been diligently working with the Planning and everybody to try to rebuild this house.  
1473 Their savings is tied up in that ten acres, and if they can't get this variance, they can't  
1474 use that ten acres, unless you give them an acre outside of it to fill up. The septic has  
1475 worked fine; the well has worked fine; these people have got to have a place to go.  
1476  
1477 Ms. Dwyer - Our staff report says that if the rezoning's approved, they will  
1478 fill in the front 1/6 acre to elevate it above the floodplain.  
1479  
1480 Mr. Deal - I think that must be the footprint of the house.  
1481  
1482 Mr. Blankinship - From Creighton Road back to the required setback. The  
1483 house has to be at least twenty feet from the floodplain.  
1484  
1485 Mr. Deal - Where did the 1/6 come from?  
1486  
1487 Mr. Blankinship - That's just an approximation of what you would end up with.  
1488  
1489 Mr. Deal - It's a very narrow lot, as you can see. I think it's about 150  
1490 feet wide and goes all the way to the swamp. When the rezoning was done the other  
1491 night, they rezoned A-1 from Creighton Road, beyond the house 100 feet, to give them  
1492 plenty of room to be able to rebuild their home on this property.  
1493  
1494 Ms. Dwyer - Will there be fill added to the lot, back to the house?  
1495  
1496 Mr. Deal - Only under the house. The problem was the house. The  
1497 water only came up 16 inches into the house, so what they're going to do, is to take the

1498 cinder blocks off of the existing foundation, go down to it, put in new cinder blocks, and  
1499 build this thing up high enough so that they're how many inches above the Gaston  
1500 flood?

1501  
1502 Mr. Shurley - At least a foot. The bottom of our floor joists will have to be  
1503 a foot above the Gaston flood elevation.

1504  
1505 Ms. Dwyer - It doesn't sound like it's going to be fill; it almost sounds like  
1506 it's going to be putting the house on a tall foundation, right?

1507  
1508 Mr. Shurley - Yes ma'am. Right now I'd have to add two feet of material  
1509 underneath of my house, based on the elevation of the floodplain, from the County, and  
1510 I've actually had a surveyor come down there and verify that.

1511  
1512 Ms. Dwyer - So there'd be no fill – you're just raising the house on its  
1513 existing footings – you're not adding fill to the rest of the yard?

1514  
1515 Mr. Shurley - In the Building Permit office, there is a small addition to the  
1516 front of the house, so I would be adding there also, but it is a fairly small addition to the  
1517 front corner of the house.

1518  
1519 Mr. Deal - So the fill is only going to be where the house is going to be,  
1520 and we've taken the cinder block and everything off of the existing footing, to bring it up,  
1521 so that if a Gaston 500-year flood came again, he would be at least a foot or more  
1522 above the water level. Under the County Code, if you can build a house and let it clear  
1523 a 100-year storm, it would be fine. We far exceed the County requirements.

1524  
1525 Ms. Harris - Will they be getting any help from FEMA?

1526  
1527 Mr. Shurley - Originally, after the flood, FEMA gave us \$2100, and that's  
1528 all we got, and that's all we're going to get.

1529  
1530 Mr. Deal - The mold has permeated the place. It's got to be torn down.

1531  
1532 Ms. Dwyer - What implications does this have for mortgage companies  
1533 and future sales?

1534  
1535 Mr. Shurley - If I don't get the variance, I can't rebuild, so it's absolutely  
1536 worthless. If I rebuild the house, then it is sellable, and I've already talked to the  
1537 mortgage company, and they have no problem giving me a loan to rebuild the house, so  
1538 from their standpoint, and from an insurance standpoint .....

1539  
1540 Mr. Deal - The issue that we had with the Planning Office and how to  
1541 work this out was, you could technically probably get a building permit to rebuild a  
1542 house under these circumstances, under a proposed ordinance, that if something's  
1543 destroyed in Gaston, you can rebuild it, and it stays C-1. The problem, if you build a

1544 \$100,000 house there, have a \$1500 fire in the kitchen, and you've got to move out  
1545 because it's an electrical fire and you can't repair your house, because that requires  
1546 another building permit, which would require another ordinance change. So nobody  
1547 would insure that, and that would be totally unmarketable. What we have now, and  
1548 that's why we had to go for A-1 zoning, and we all worked that out together, so the A-1  
1549 zoning was put on the property so that now we can get financing. It's an A-1 home; he's  
1550 above the 500-year floodplain; and everything works out now. The problem we've been  
1551 dealing with for 16 months was the zoning, and we tried everything. The Board of  
1552 Supervisors had to make a decision. There's not going to be a problem with getting  
1553 insurance on this at all; however, if you own a home in C-1, you're going to have a  
1554 tough time getting any financing, and if you know you've got these problems, when you  
1555 sell it, you could be guilty of fraud for passing it on to a buyer. Then they can't repair it  
1556 or resell it. That was the whole purpose of the A-1; this is the only A-1 in that whole  
1557 area.

1558  
1559 Mr. Nunnally - Any other questions from the Board or staff? Is anyone in  
1560 opposition? That concludes the case. Thank you for coming. A-81-2005.

1561  
1562 Ms. Harris - I move that we approve this.

1563  
1564 Mr. Kirkland - Second.

1565  
1566 Mr. Nunnally - Motion by Ms. Harris that we approve it; second by Mr.  
1567 Kirkland. All in favor, say aye.

1568  
1569 Mr. Blankinship - Can we get some statement on the record as to the findings.

1570  
1571 Ms. Harris - To me, this answers the threshold question. This is a typical  
1572 case of hardship, as defined by Cochran. These residents will have no use at all of their  
1573 premises without this variance.

1574  
1575 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
1576 Kirkland, the Board **granted** application **A-81-2005** for a variance to demolish and  
1577 replace a one-family dwelling at 4508 Creighton Road (Charles A Smith) (Parcel 817-  
1578 735-3028). The Board granted the variance subject to the following conditions:

1579  
1580 1. This variance applies only to the minimum lot area requirement. All other  
1581 applicable regulations of the County Code shall remain in force.

1582  
1583 2. Approval of this request does not imply that a building permit will be issued.  
1584 Building permit approval is contingent on Health Department requirements, including,  
1585 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval  
1586 of a well location.

1587  
1588 3. At the time of building permit application, the applicant shall submit the  
1589 necessary information to the Department of Public Works to ensure compliance with the

1590 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
1591 water quality standards.

1592  
1593 4. The applicants shall submit plans to the Department of Public Works for review  
1594 and approval, demonstrating that any fill placed in the floodplain will be compensated  
1595 for. The applicant shall continuously satisfy all requirements of the Department of  
1596 Public Works regarding the grading of the property.

1597  
1598 5. The proposed dwelling shall comply with the requirements of Section 24-106.1 of  
1599 the County Code.

1600  
1601 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1602 Negative: 0  
1603 Absent: 0

1604  
1605 The Board granted this request, as it found from the evidence presented that, due to the  
1606 unique circumstances of the subject property, strict application of the County Code  
1607 would produce undue hardship not generally shared by other properties in the area, and  
1608 authorizing this variance will neither cause a substantial detriment to adjacent property  
1609 nor materially impair the purpose of the zoning regulations.

1610  
1611 Mr. Blankinship - Mr. Chairman, with your permission, I'll call the next two  
1612 cases together. It's the same applicant, but two completely separate sites.

1613  
1614 **UP- 30-2005** **PARKER-ORLEANS BUILDERS** requests a temporary conditional  
1615 use permit pursuant to Section 24-116(c)(1) to locate a temporary  
1616 sales trailer at 11576 Hunton Park Boulevard (The Ridge at Hunton  
1617 Park) (Parcel 764-774-3512), zoned R-2AC (correct), {RTHC in  
1618 Agenda}, One-Family Residential District (correct) {Residential  
1619 Townhouse District in Agenda} (Conditional) (Brookland).

1620  
1621 **UP- 31-2005** **PARKER-ORLEANS BUILDERS** requests a temporary conditional  
1622 use permit pursuant to Section 24-116((c)(1) to locate a temporary  
1623 sales trailer at 11870 Old Washington Highway (Thomas Mill)  
1624 (Parcel 773-779-3998), zoned A-1, Agricultural District (Brookland).

1625  
1626 Mr. Nunnally - Is anyone else here interested in this case? If so, please  
1627 stand and raise your right hand and be sworn.

1628  
1629 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1630 truth, the whole truth, and nothing but the truth, so help you God?

1631  
1632 Mr. Watson - I do. My name is James Watson; I represent the applicant.  
1633 We're applying for the conditional use permit for both those locations.

1634  
1635 Mr. Wright - Mr. Watson, have you read the conditions that have been

1636 proposed for these two cases? You're agreeable to those conditions?  
1637  
1638 Mr. Watson - Yes, we are.  
1639  
1640 Mr. Wright - How long do you think you will need these temporary sales  
1641 trailers?  
1642  
1643 Mr. Watson - Less than one year.  
1644  
1645 Ms. Dwyer - It says that you'll screen the sanitary facilities. What do the  
1646 sanitary facilities look like? Is it a separate .....

1647  
1648 Mr. Watson - It would be a holding tank outside, and you just put a  
1649 stockade fence around it so it wouldn't be visible.  
1650  
1651 Mr. Blankinship - It stands up above the ground? How high?  
1652  
1653 Mr. Watson - It would, almost on the ground, just a foot or so high.  
1654  
1655 Mr. Blankinship - How high is the top of the tank?  
1656  
1657 Mr. Watson - I'm guessing three feet.  
1658  
1659 Mr. Nunnally - Any other questions from the Board or staff? That concludes  
1660 the case. Thank you for coming. UP-30-2005.  
1661  
1662 Mr. Kirkland - Move we approve it.  
1663  
1664 Mr. Wright - Second.  
1665  
1666 Mr. Nunnally - Motion by Mr. Kirkland; second by Mr. Wright, that it be  
1667 approved. All in favor, say aye. Opposed? It's been approved.  
1668  
1669 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
1670 Wright, the Board **granted** application **UP-30-2005** for a temporary conditional use  
1671 permit to locate a temporary sales trailer at 11576 Hunton Park Boulevard (Parcel 764-  
1672 774-3512). The Board granted the use permit subject to the following conditions:  
1673  
1674 1. Only the improvements shown on the plan filed with the application may be  
1675 constructed pursuant to this approval. No substantial changes or additions to the layout  
1676 may be made without the approval of the Board of Zoning Appeals. Any additional  
1677 improvements shall comply with the applicable regulations of the County Code..  
1678  
1679 2. The trailer shall be skirted on all sides with a durable material as required by the  
1680 building code for a permanent installation.  
1681

1682 3. A detailed landscaping and lighting plan shall be submitted to the Planning  
1683 Department with the building permit for review and approval. Approved landscaping  
1684 shall be installed as soon as the weather permits. All landscaping shall be maintained  
1685 in a healthy condition at all times. Dead plant materials shall be removed within a  
1686 reasonable time and replaced during the normal planting season.

1687  
1688 4. The bathroom in the trailer shall be connected to sanitary facilities approved by  
1689 the Virginia Department of Health. This facility shall be screened from adjacent  
1690 property.

1691  
1692 5. The trailer shall be removed from the property on or before December 15, 2006,  
1693 at which time this permit shall expire.

1694  
1695 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1696 Negative: 0  
1697 Absent: 0

1698  
1699 The Board granted the request because it found the proposed use will be in substantial  
1700 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1701  
1702 Mr. Nunnally - UP-31-2005, Parker-Orleans Builders.

1703  
1704 Mr. Kirkland - Move we approve it.

1705  
1706 Mr. Wright - Second.

1707  
1708 Mr. Nunnally - Motion by Mr. Kirkland; second by Mr. Wright, that it be  
1709 approved. All in favor, say aye. Opposed? It's been approved.

1710  
1711 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
1712 Wright, the Board **granted** application **UP-31-2005** for a temporary conditional use  
1713 permit to locate a temporary sales trailer at 11870 Old Washington Highway (Thomas  
1714 Mill) (Parcel 773-779-3998). The Board granted the use permit subject to the following  
1715 conditions:

1716  
1717 1. Only the improvements shown on the plan filed with the application may be  
1718 constructed pursuant to this approval. No substantial changes or additions to the layout  
1719 may be made without the approval of the Board of Zoning Appeals. Any additional  
1720 improvements shall comply with the applicable regulations of the County Code..

1721  
1722 2. The trailer shall be skirted on all sides with a durable material as required by the  
1723 building code for a permanent installation.

1724  
1725 3. A detailed landscaping and lighting plan shall be submitted to the Planning  
1726 Department with the building permit for review and approval. Approved landscaping  
1727 shall be installed as soon as the weather permits. All landscaping shall be maintained

1728 in a healthy condition at all times. Dead plant materials shall be removed within a  
1729 reasonable time and replaced during the normal planting season.

1730  
1731 4. The bathroom in the trailer shall be connected to sanitary facilities approved by  
1732 the Virginia Department of Health. This facility shall be screened from adjacent  
1733 property.

1734  
1735 5. The trailer shall be removed from the property on or before December 15, 2006,  
1736 at which time this permit shall expire.

1737  
1738 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1739 Negative: 0  
1740 Absent: 0

1741  
1742 The Board granted the request because it found the proposed use will be in substantial  
1743 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1744  
1745 **A -106-2005** **LOUIS A. AND MARIE C. MARTINETTE** request a variance from  
1746 Section 24-94 to allow an addition to remain at 2818 Waterford  
1747 Way West (Waterford) (Parcel 735-756-6916), zoned R-4, One-  
1748 Family Residence District (Three Chopt). The rear yard setback is  
1749 not met. The applicants have 27 feet rear yard setback, where the  
1750 Code requires 35 feet rear yard setback. The applicants request a  
1751 variance of 8 feet rear yard setback.

1752  
1753 Mr. Blankinship - A-106 has been deferred.

1754  
1755 Mr. Nunnally - A-106-2005 has been deferred to next month.

1756  
1757 Upon a motion by Mr. Wright, seconded by Mr. Kirkland the Board **deferred** application  
1758 **A-106-2005** for a variance to allow an addition to remain at 2818 Waterford Way West  
1759 (Waterford) (Parcel 735-756-6916).

1760  
1761 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1762 Negative: 0  
1763 Absent: 0

1764  
1765 The case was deferred at the request of the applicant, to allow time for further  
1766 information to be introduced, from the December 2005, until the January 2006, meeting.

1767  
1768 **UP- 33-2005** **RYAN HOMES** requests a temporary conditional use permit  
1769 pursuant to Section 24-116(c)(1) to locate a temporary sales trailer  
1770 at 4160 Glenside Drive (Glenside Woods) (Parcel 771-748-5588  
1771 (part)), zoned RTHC, Residential Townhouse District (Conditional)  
1772 (Brookland).

1773

1774 Mr. Nunnally - Is anyone else here interested in this case?  
1775  
1776 Mr. Blankinship - Raise your right hand, please. Do you swear that the  
1777 testimony you are about to give is the truth, the whole truth, and nothing but the truth, so  
1778 help you God?  
1779  
1780 Mr. Collins - I do. My name is Gary Collins; I'm representing the  
1781 applicant, Ryan Homes, and we're requesting a sales trailer to be placed at Glenside  
1782 Woods Townhome Development on Glenside Drive.  
1783  
1784 Mr. Wright - Have you read the conditions?  
1785  
1786 Mr. Collins - Yes sir.  
1787  
1788 Mr. Wright - Satisfied?  
1789  
1790 Mr. Collins - Yes sir.  
1791  
1792 Mr. Nunnally - Any other questions from the Board or staff? Is anyone here  
1793 interested in this case?  
1794  
1795 Mr. Blankinship - Mr. Chairman, I'd just like to clarify that the landscaping plan  
1796 that is required with the building permit will need to be something a little more detailed  
1797 than what was submitted with the application.  
1798  
1799 Mr. Collins - Absolutely.  
1800  
1801 Mr. Nunnally - Any other questions? That concludes the case. Thank you  
1802 for coming. Up-33-2005, Ryan Homes.  
1803  
1804 Mr. Kirkland - Move we approve it.  
1805  
1806 Ms. Harris - Second.  
1807  
1808 Mr. Nunnally - Motion by Mr. Kirkland to approve it; second by Ms. Harris.  
1809 All in favor say aye. Opposed? It's been approved.  
1810  
1811 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.  
1812 Harris, the Board **granted** application **UP-33-2005** for a temporary conditional use  
1813 permit to locate a temporary sales trailer at 4160 Glenside Drive (Glenside Woods)  
1814 (Parcel 771-748-5588 (part)). The Board granted the use permit subject to the following  
1815 conditions:  
1816  
1817 1. Only the improvements shown on the plan filed with the application may be  
1818 constructed pursuant to this approval. No substantial changes or additions to the layout



1819 may be made without the approval of the Board of Zoning Appeals. Any additional  
1820 improvements shall comply with the applicable regulations of the County Code.

1821  
1822 2. The trailer shall be skirted on all sides with a durable material as required by the  
1823 building code for a permanent installation.

1824  
1825 3. A detailed landscaping and lighting plan shall be submitted to the Planning  
1826 Department with the building permit for review and approval. Approved landscaping  
1827 shall be installed as soon as the weather permits. All landscaping shall be maintained  
1828 in a healthy condition at all times. Dead plant materials shall be removed within a  
1829 reasonable time and replaced during the normal planting season.

1830  
1831 4. The bathroom in the trailer shall be connected to sanitary facilities approved by  
1832 the Virginia Department of Health. This facility shall be screened from adjacent  
1833 property.

1834  
1835 5. The trailer shall be removed from the property on or before December 14, 2006,  
1836 at which time this permit shall expire.

1837  
1838 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1839 Negative: 0  
1840 Absent: 0

1841  
1842 The Board granted the request because it found the proposed use will be in substantial  
1843 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1844  
1845 **UP- 34-2005** **STEPHANIE PHILIPS** requests a conditional use permit pursuant  
1846 to Section 24-12(e) to operate a non-commercial kennel at 5904  
1847 West Rois Road (Chamberlayne Heights) (Parcel 790-752-7240),  
1848 zoned R-0, One-family Residence District (Fairfield).

1849  
1850 Mr. Nunnally - Is anyone else here interested in this case? If so, please  
1851 stand and raise your right hand and be sworn.

1852  
1853 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1854 truth, the whole truth, and nothing but the truth, so help you God?

1855  
1856 Ms. Philips - I do. My name is Stephanie Philips, and I request a special  
1857 use permit.

1858  
1859 Ms. Dwyer - For what and why?

1860  
1861 Ms. Philips - To operate a kennel at 5904 West Rois Road,

1862  
1863 Ms. Dwyer - When you say "to operate a kennel," what are your plans?  
1864

1865 Ms. Philips - I have over the required number of dogs that's permitted in  
1866 Henrico County.  
1867  
1868 Mr. Kirkland - So you have three?  
1869  
1870 Ms. Philips - I have more than three.  
1871  
1872 Mr. Kirkland - How many is more than three?  
1873  
1874 Ms. Philips - I have nine.  
1875  
1876 Mr. Nunnally - They all belong to you?  
1877  
1878 Ms. Philips - Yes. I co-own some of them.  
1879  
1880 Mr. Wright - Tell me what that means, when you co-own a dog.  
1881  
1882 Ms. Philips - These are dogs that are shown in confirmation, in AKC  
1883 sanctioned confirmation shows, so that once they get their championships, then these  
1884 dogs would be bred, and in breeding there's a co-ownership.  
1885  
1886 Mr. Wright - So the dog has a license, doesn't it? In whose name is the  
1887 license issued?  
1888  
1889 Ms. Philips - They're not all licensed.  
1890  
1891 Mr. Wright - You mean you have a dog that doesn't have a dog tag in  
1892 Henrico County?  
1893  
1894 Ms. Philips - Yes.  
1895  
1896 Mr. Wright - How can that be?  
1897  
1898 Ms. Philips - I don't know.  
1899  
1900 Mr. Wright - As I understand the Ordinance, every dog is supposed to  
1901 have a dog tag or license.  
1902  
1903 Mr. Kirkland - And a rabies shot to go along with it.  
1904  
1905 Ms. Philips - My animals all have their rabies, but no, no.  
1906  
1907 Mr. Wright - Sounds like to me that's another problem.  
1908  
1909 Mr. Blankinship - Yes, we'll have to address that separately.  
1910

1911 Ms. Dwyer - Do you ever have more than nine dogs?  
1912  
1913 Ms. Philips - There have been occasions where there's been more than  
1914 nine dogs. When this all came about, an inspector came out from the zoning board,  
1915 and the day that she came out, I had a dog with me that was going to be shown that  
1916 following weekend in Leesburg, and so that dog was with me, so there were more than  
1917 nine dogs in the house.  
1918  
1919 Ms. Dwyer - So part of your business is to train and show dogs, and dog-  
1920 sit, and take care of dogs?  
1921  
1922 Ms. Philips - The dog-sitting I was doing prior to this happening. With the  
1923 dogs that I own and co-own, it's not a business.  
1924  
1925 Ms. Dwyer - You don't breed them, and breeding doesn't .....

1926  
1927 Ms. Philips - Breeding is a very complicated issue, and thus far, since  
1928 living in this house, I have an older bitch that's 14, and she has had two litters of  
1929 puppies and four offspring that are champions, so from her there was selling of puppies,  
1930 but not for money, for breeding back and whatever, so there was not really an exchange  
1931 of money with her.  
1932  
1933 Ms. Dwyer - It's a commercial transaction. Something of value was  
1934 exchanged.  
1935  
1936 Ms. Philips - Since living in this house, I've only had one litter of puppies,  
1937 and that was in October 2003, and there were only two puppies, and I lost the female  
1938 shortly after birth, and the male I kept.  
1939  
1940 Ms. Harris - Where do you lodge them in your house? Is there a special  
1941 room with cages?  
1942  
1943 Ms. Philips - I have crates for all of my dogs, only because, if I had an  
1944 emergency with the gentleman that I live with, I would want to have them contained  
1945 while rescue squad had to come into the home. During the day, they're my family;  
1946 they're loose in the house.  
1947  
1948 Ms. Harris - They have free range of the house during the day?  
1949  
1950 Ms. Philips - Yes, I also have, for some of the dogs when I'm getting them  
1951 ready to be shown, I utilize what is known as an X-pen, or an exercise pen, and I have  
1952 that up in the house. They have free range of the house, and some of the dogs are  
1953 companions to Will and sleep with Will.  
1954  
1955 Ms. Dwyer - So you were unaware that you were violating the law by  
1956 having so many dogs in your residential neighborhood?

1957  
1958 Ms. Philips - I never really paid much attention to what the law was,  
1959 because I was negligent on that, and I didn't pay any attention. I felt that my dogs do  
1960 not run at large in the community, and that sort of thing, so I really didn't address that.  
1961  
1962 Mr. Wright - Ms. Philips, we've got several letters that came to us from  
1963 people who are supporting your application, who say that they use your services to  
1964 board their dogs. There are several of them.  
1965  
1966 Ms. Philips - They have, yes. Originally, I walked, and some of these  
1967 dogs I still walk.  
1968  
1969 Mr. Wright - If somebody's going to take off for the weekend or a week's  
1970 vacation, they bring their dog and leave it with you, right? Several of them, a lot of  
1971 them. This is supposed to be a non-commercial kennel, which indicates, the whole  
1972 purpose of this ordinance was that you, as the owner, could keep more than three dogs.  
1973  
1974 Ms. Philips - Yes. Right, and that's what I am requesting. I have ceased  
1975 doing that.  
1976  
1977 Mr. Wright - You're not going to board any more dogs.  
1978  
1979 Ms. Philips - No, no, no, not since this happened, there haven't been any  
1980 dogs other than my dogs at the house.  
1981  
1982 Mr. Wright - I just wanted to insure, the purpose of these folks writing  
1983 these letters, because they want you.....  
1984  
1985 Ms. Philips - No, no, no.  
1986  
1987 Ms. Dwyer - So if this is not granted, you realize that you can only have  
1988 three dogs in your home, even if they are yours?  
1989  
1990 Ms. Philips - Correct.  
1991  
1992 Ms. Dwyer - So you'll have to get rid of six of your dogs.  
1993  
1994 Ms. Philips - I wanted to also ask that if this is something that can't be  
1995 requested, in lieu of the fact that this will drastically change the existence of the person  
1996 that I've lived with and cared for, for the last 32 years, if we could do a grace time period  
1997 or whatever, because I operated the first residential children's program in the state of  
1998 Virginia, in Roanoke, in 1975, and that's when Will came into my life, and we left that  
1999 program and moved on to Cincinnati and then lived in the state of Florida for a short  
2000 period of time, because he was having health problems, and then we came to  
2001 Richmond. I'm not parting with my family, although Will is a part of my family, so that if  
2002 this isn't requested {granted}, if we could have a time period to make arrangements on

2003 what we're going to do as far as caring and housing for Will. Will's dad is aware that  
2004 this is going on and whatever, and he's an attorney and lives in Roanoke, but I feel that  
2005 I have a responsibility to Will and that if this isn't requested {granted}, it's going to  
2006 change his life drastically, and that we would need a time period to make arrangements  
2007 for him.

2008  
2009 Mr. Wright - What has this got to do with him?

2010  
2011 Ms. Philips - We live together.

2012  
2013 Mr. Wright - I understand he lives there, but what has your keeping dogs  
2014 have to do with your taking care of him?

2015  
2016 Ms. Philips - Since he's lived with me, we've had dogs.

2017  
2018 Mr. Blankinship - If she can't keep the dogs, she's going to move.

2019  
2020 Ms. Harris - What do you consider a reasonable grace period?

2021  
2022 Ms. Philips - Again, this is kind of a unique situation, because Will has  
2023 been very, very ill, but he is improving in his health, so I have requested to get day  
2024 placement for Will at a life skills type of program, and he's going to be assessed for that  
2025 next week. We don't know yet if he's a candidate, nor do we know if he's going to be  
2026 able to attend this program because of his health problems, but if he then gets into that  
2027 program, there'll be an adjustment for him being in day programming. He hasn't been in  
2028 any programming since 1989. Then the arranging would be what is going to happen to  
2029 his living, so I think that could take time. I just know how long it's taken to get the ball  
2030 rolling on getting him into a day program.

2031  
2032 Ms. Harris - My question was, if our Board decides that we will not grant  
2033 you the variance, and you do have to make adjustments. You say you have nine dogs  
2034 that you're not going to get rid of – how long would it take you to find suitable lodging for  
2035 yourself, and Will?

2036  
2037 **(Tape ended without warning, lost maybe 2 minutes)**

2038  
2039 Mr. Hopkins - My name is Bob Hopkins, and this is my brother Jeff. He  
2040 and I own the house directly beside 5902 Rois Road, directly beside Stevie. First of all,  
2041 I hate the fact that I have to be here, because Stevie is and always has been a great  
2042 neighbor, aside from the dogs. I don't own dogs, so she doesn't watch my dogs, but  
2043 when I'm away, which I frequently am on weekends, she gets my newspaper, gets my  
2044 mail, looks after the place, I do things for her like jumping her vehicle, flipping breakers,  
2045 a great neighborly relationship, so this first and foremost has nothing to do with Stevie  
2046 herself.

2047  
2048 The dogs are an issue. It's somewhat a source of embarrassment for me, sometimes

2049 when friends come over, and if the dogs are out, dogs are going to bark, and not only  
2050 bark. I've got a letter that a friend wrote about aggressive charging of the fence. Some  
2051 of these dogs are pretty aggressive, and Stevie has warned me on one dog in  
2052 particular, not to reach over the fence, do not reach through the fence, and it really  
2053 worries me, as I start thinking about having kids. I've lived at this residence for fourteen  
2054 years. My brother and I bought it; originally we were going to have it as rental property,  
2055 but it's become my home. I'm worried as I get older and my friends come over with  
2056 kids, that kids are going to reach their hands through the fence.

2057  
2058 Again, Stevie is usually out there with the dogs, but not always. As far as a dog owner,  
2059 she's great, but it's hard to control nine dogs. If I'm out in the back yard, the dogs will  
2060 come to the fence and bark, and I've tried to make friends; I reach over the fence and  
2061 pet them. I love dogs, but I just can't shut the dogs up. Usually Stevie can't either.  
2062 Usually the solution is, the dogs are barking; she brings the dogs inside, sometimes  
2063 immediately, sometimes after I've been out there for a while and get really frustrated. I  
2064 don't even own a gas grill any more, because I can't sit in my back yard and enjoy  
2065 grilling out in the back yard. I've got pictures; I'm sorry I didn't bring but one copy, but  
2066 I'll send up pictures. Where the dogs like to stay is, they come to the fence, and that  
2067 area is 16 feet from my kitchen window and living room window, so when the dogs are  
2068 out, even if I'm not in the back yard, and someone's walking a dog, the dogs are there  
2069 barking. Not always nine at a time; I've seen as many as six of them at a time. It's rare  
2070 that all nine dogs are out in the yard unattended, but it is an issue for me. The one dog  
2071 that is what I call vicious, I don't come to the fence at all. When he was not out there, a  
2072 couple of years ago, the other dogs were out there, I reached my hand over the fence  
2073 and tried to make friends and was bitten, broke the skin, and I didn't even mention it,  
2074 because I'm not that kind of person. It's not that big a deal for me, but I worry about,  
2075 down the road, getting married and wanting to have kids, what kind of environment I'm  
2076 going to have. I travel a lot with work, and I'm not there a ton, but I've been home on  
2077 numerous occasions where I'm trying to work from home, and I'm in the kitchen on a  
2078 laptop, and the cell phone's ringing, and I have to walk into the back bedroom and close  
2079 the door to try to carry on a conversation from work. That's rare, but those are the  
2080 instances that really upset me. I hate to be here, and I'm sorry the situation has come  
2081 to this, but those are my feelings. These are pictures of the residence.

2082  
2083 Mr. Nunnally - We have to keep those for thirty days now.

2084  
2085 Mr. Hopkins - They're yours.

2086  
2087 Mr. Nunnally - Next.

2088  
2089 Ms. Sally Phillips - Good morning. My name is Sally Phillips, no relation, at  
2090 5905 Chamberlayne Road. I'm also a neighbor, and just like my other neighbor said, I  
2091 hate to be here. My back yard and Stevie's back yard are only separated by a chain link  
2092 fence. I have a double lot, so her back yard, and I'm assuming this gentleman's back  
2093 yard, are my back yard, so I cover both areas there. On the occasions that I have seen  
2094 Stevie, they have been mostly with the dogs, about three times, talking to her about

2095 them.

2096

2097 This property was formerly my aunt's; I found it for her twenty years ago, and she lived  
2098 in it and owned it, and I bought it from her and I've been renovating it for about a year  
2099 and a half. On two separate occasions we talked over the fence about the noise of the  
2100 dogs, and she assured me then, that the dogs were dogs that she kept. She did not tell  
2101 me that she was a co-owner or an owner at that time. In our conversation, just being  
2102 new to the community and everything, I thought this was an occasional thing. Then the  
2103 dogs got barking so badly, I went over to the yard, and she was not present, and that's  
2104 when I realized there were more than three dogs there.

2105

2106 At times, it didn't seem like they were the same dogs; it seemed like they were rotating,  
2107 and so I went to my neighbor at that time, and said I didn't understand what was going  
2108 on. He said "good luck," and I asked him what he meant. He said she was a nice  
2109 neighbor, but those dogs are totally uncontrollable. I told him I'd talked to her a couple  
2110 of times. I guessed the next step was to call someone in the County. He said, "good  
2111 luck with that too." I started calling around, and there's not really one person you call.  
2112 Evidently there are four to six people, even to the Police, and hopefully you get  
2113 someone who's going to take that complaint. I also travel a whole lot, and I work on a  
2114 laptop at home. My office window is right there at the back yard. I've got a pretty good  
2115 distance in my back yard, and on occasion, when I've had workers come out and help  
2116 me on my house, because I'm single and there by myself, and they have asked how I  
2117 live there. I've had relatives come in, and they say the same thing. I've had small  
2118 children there, and I've warned them not to go to the fence.

2119

2120 As the neighbor said, there are one or two particular dogs, when I come out, they start  
2121 barking. Whenever they see me, they start barking, so I thought maybe they're not  
2122 familiar with me. I go towards the fence, and I get very scared, because I grew up on a  
2123 Doswell farm. I'm very familiar with dogs and cats and animals, but I'm very leery of  
2124 these. One of my questions was, when I found out, if you're talking about vet bills and  
2125 keeping them for people, to me that's business, and at times, the dogs are so  
2126 uncontrollable that you can't even think. At one time I was painting in the bathroom,  
2127 with a window out to the back yard. It was summer and hot, and I didn't have an air  
2128 conditioner, and I had to put the window down because the noise was so loud it was  
2129 giving me a headache.

2130

2131 I went to my neighbor to ask what to do. He said "good luck" and told me she was not  
2132 an owner; she was a renter. Her landlord was out of town, did not live on the premises  
2133 or even near the location, and that she did help him with a handicapped adult child.  
2134 Having worked in mental health and retardation for several years, I know that having  
2135 animals around a handicapped child really helps them, soothes them, etc. We were  
2136 also always concerned in advising people who brought in pets to their house, that you  
2137 want to be careful, because when you're working with handicapped people, dogs run in  
2138 and run out, there's a chance that the handicapped person, or the adult, will fall, trip  
2139 over the dog, might make a motion to the dog that the dog thinks is aggressive, might  
2140 be bitten. When you're looking at 3, 5, 9, 7, 10 dogs in a house that small and a back

2141 yard that small, and when you've got a person who is handicapped like that, that's a big  
2142 concern for me because I've worked in the area before. My parents have a house dog,  
2143 and yes, when I come up, he barks, but that's what he's supposed to do; he's a  
2144 protection dog. When he sees me and he knows I'm coming into the house, he stops,  
2145 and that's okay.

2146  
2147 I had two other people who wanted me to address this on their behalf, and I've got  
2148 letters to that affect. We all sent letters to Mr. Paul Johnson, Community Maintenance;  
2149 Tom Henry, the President of the North Chamberlayne Civic Association; Randall Silber,  
2150 Director of Planning; Frank Thornton, Supervisor; and Harvey Hinson, County Manager  
2151 {Deputy County Manager}, because we all thought that it's just not an issue of the dogs.  
2152 There are certain other issues too, one of them being health concerns, and  
2153 responsibility, and who's going to control this type of thing if given this permit. Even if  
2154 the owner, who does not live here, approves of this, he is not local. How can he  
2155 observe, control, supervise, or oversee this on any type of regular basis? There's no  
2156 way possible that he can do that. That's a concern for us too. What constitutes a  
2157 business, whether it's money exchanged, or a barter method used? We just feel like it's  
2158 not in our best interest to have any type of kennel located in a residential community.  
2159 Thomas Henry, President of the North Chamberlayne Association, was very concerned  
2160 about changing the zoning, upholding the Supervisors' Codes and regulations that are  
2161 in force now, so there was much effort and time put in those things, and he would like to  
2162 see those enforced, and he foresees great problems in the County in allowing this to go  
2163 through at this time, with other people who might want to do this. Sandra Glass, who's  
2164 also a member of the same Association, she was very disturbed that this is a one-family  
2165 residence district. The noise cannot be controlled. Her issues were odor and health  
2166 concerns. She read Stevie's request initially, and her statement was that pets are our  
2167 family, but a kennel is not, so her concern was how many pets we are talking about.

2168  
2169 I think that was one of the conditions too. We're not objecting to pets in the house.  
2170 There's too many unanswered questions here. Does this mean that there should be a  
2171 building constructed outside, because the house is so small, to take care of ten dogs.  
2172 Am I going to look out my back door window and see construction going on? There are  
2173 just questions that are not answered. When you move to Henrico County, or  
2174 somewhere there's a planned community like this, you don't think that you'll have a  
2175 problem like this, because there are already codes and regulations in force, and we're  
2176 sort of assured in an indirect way, that we're going to have peace and tranquility for the  
2177 homeowners who have invested their time and money. If the permit is issued, who's  
2178 responsible for monitoring this – is there an agency in the County that does this? How  
2179 many dogs are we talking about? If it comes to this, isn't this considered a business,  
2180 and wouldn't it be considered in a residential district. Stevie's already said she's out of  
2181 compliance; she's already said she doesn't have a license, and my concern is, if there's  
2182 breeding on the premises, that's a whole different issue that you've got here, and if the  
2183 regulations currently are not being upheld, how can we expect new regulations to be  
2184 upheld also. Personally, I'm a little confused on the issue of the child and the dogs. It  
2185 seems like there is a choice being made here. I don't see why they can't stay where  
2186 they are and have dogs in the house, just have dogs that are in the regulations and



2187 licensed, so if the dog gets out and it's on my property, I'll know where to take it. I am  
2188 on a major highway; if a dog or cat gets past that, they're gone. My biggest concern is  
2189 the noise level, and I don't know what to do with it; that's why I came here, and that's  
2190 why Tom and Sandra wanted me to also address it too.

2191  
2192 Ms. Harris - For the record, I do need to say that I did speak with you by  
2193 phone, to tell you the procedures. Supervisor Thornton, in view of the letters that he  
2194 received, told me to contact Ms. Sally Phillips, and I did, and I wouldn't listen to her  
2195 testimony, but I told her the procedure that she should follow, that we would be voting at  
2196 the end of the meeting.

2197  
2198 Ms. Sally Phillips - And I appreciate your help, because I'd never been before a  
2199 Board before, and I didn't know what the regulations were, and Ms. Harris was very  
2200 informative and very helpful.

2201  
2202 Mr. Nunnally - Anyone else?

2203  
2204 Mr. Vance - My name is Robert W. Vance. I'm an adjacent property  
2205 owner. I'm at the base of a triangle, and Ms. Philips lives on the left-hand angle, and I  
2206 have not observed some of these things that they say they're talking about today,  
2207 directly. I have never observed more than three dogs in the yard at a time, but I'm a  
2208 good distance from the house, so I can't really say tactfully that there's only three dogs  
2209 in the yard, but that's my observation. As far as the cleanliness, there couldn't be a  
2210 neighbor that's any more clean than she is with the dogs. She carries the plastic  
2211 wrappers that the newspapers come in with her, and every time the dog has to go to the  
2212 bathroom, she cleans it up. I have neighbors that don't even do that. They come over  
2213 on my property, and I run my lawnmower through it, not knowing it's there, but they  
2214 don't hesitate to let the dogs come over there, either on a leash, or run freely, onto my  
2215 land, so you can't say that it's an unsanitary thing being developed over at her house,  
2216 because it's not. As far as the noise is concerned, I only hear the two or three dogs, but  
2217 I'm far enough away to where it doesn't really bother me. To allow this to go on as she  
2218 has been operating it, I have no objection to it.

2219  
2220 Mr. Blankinship - What is your address?

2221  
2222 Mr. Vance - My address is 1 Luray Drive.

2223  
2224 Mr. Nunnally - Thank you sir. Is there anyone else here in opposition to  
2225 this? Ms. Philips, you have time for rebuttal.

2226  
2227 Mr. Wright - Mr. Chairman, I wonder if Ms. Philips has seen this letter  
2228 from Ms. Glass and Mr. Henry. They were deposited here when we came in this  
2229 morning, and I think she ought to have an opportunity to look at those. I think we ought  
2230 to give her a minute or two.

2231  
2232 Ms. Philips - Thank you. I found something humorous in this letter, and I

2233 probably should start by saying that's because this one person talked about a Jack  
2234 Russell, and one of the problems, perhaps, is that I have terriers, and terriers are known  
2235 to bark, and they run the fence line. I have one male that I got to show, and because of  
2236 his temperament, I elected not to show him. I think that he probably could have gotten  
2237 his championship, but I would not want to breed him because of his temperament, and  
2238 it's not as much that he is aggressive, but he's been diagnosed as having a neurological  
2239 problem and probably a very slow-growing tumor, which explains a lot of his erratic  
2240 barking. There's times when he barks, when it's blood-curdling. You would think that  
2241 he or somebody else is being murdered. As far as the safety factor, he has lived with  
2242 this gentleman since he was a young puppy. He came to the house when he was about  
2243 four months old, because most breeders that are placing dogs for showing and  
2244 confirmation are not going to place dogs before four months of age, because there are  
2245 things in terriers that you really don't know if you are going to be able to show, until their  
2246 permanent teeth come in, because bite is very important in a terrier. I think that is a lot  
2247 of the problem, and then the other two dogs are Pembroke Welsh Corgis, and they are  
2248 herding dogs, and the male is more of a barker than the female. I was born in New  
2249 York City, and summered on the eastern end of Long Island, and when I was born, my  
2250 parents had two standard poodles. In growing up in the city, we had as many as six  
2251 dogs in an apartment in New York, and we lived very well, and the dogs lived very well.  
2252 When I ran group homes, as Ms. Phillips stated, it was very therapeutic. The first  
2253 children's group home that I ran in Roanoke, we had six West Highland Terriers living in  
2254 that house. Today, because the standards have changed, and whatever, that would not  
2255 be allowed, but the whole idea of group home is different today than it was when I first  
2256 ran group homes, and one of the reasons that I left, because the homes that I ran, I  
2257 lived there. Now they're not staffing homes that way. They're staffed 24 hours. I  
2258 apologize for the noise, and I think because I live with this, I'm just not aware that  
2259 they're as noisy as they are. They're never out for extended periods of time. In Ms.  
2260 Phillips letter, she stated on an occasion, they were out barking for thirty minutes.  
2261 They've never been out longer than that barking, and if it was that long, more than  
2262 likely, I was involved in the activity as well, throwing balls, doing that kind of thing. I  
2263 hope that we can. The likelihood of me getting this is probably very slim, but what I  
2264 hope that we can do, is come to an amicable resolution of this, so that his life can  
2265 continue somewhat as it is. In the interim, if you will allow a grace period, I will do  
2266 whatever to keep the noise to a minimum, and I think that since this has happened, I've  
2267 become a lot more aware of it, and I don't think that you're getting the barking that you  
2268 were getting two months ago. I could be wrong, because in the morning I'm walking the  
2269 dogs, and I'm a very, very early riser. I'm up at 5:30 in the morning, and I walk them, so  
2270 that there's not as much barking in the yard. Last evening, Bob went out to his shed to  
2271 do something, and I was out with maybe three dogs, and they barked, and again,  
2272 because they're terriers, you never can befriend them when you're on the other side of  
2273 the fence. It's a motion kind of thing, because that's what these dogs were bred to do,  
2274 except they were bred to do it with rodents. I will do whatever we can do to minimize  
2275 the barking. I don't think there's a lot of barking when they're in the house; I think the  
2276 barking is basically when they're out in the yard.

2277  
2278 Mr. Nunnally - Thank you ma'am; we'll make a decision before the end of

2279 the day. UP-34-2005.  
2280  
2281 Ms. Harris - I move that we deny this.  
2282  
2283 Mr. Nunnally - Up-34-2005, motion made by Ms. Harris that we deny it.  
2284  
2285 Mr. Kirkland - Second.  
2286  
2287 Mr. Nunnally - Second by Mr. Kirkland. All in favor of denial. Discussion?  
2288  
2289 Mr. Wright - Are we going to give her any time?  
2290  
2291 Mr. Kirkland - Mr. Blankinship, basically you wouldn't have more than 30  
2292 days you could give her, would you?  
2293  
2294 Mr. Blankinship - The enforcement staff will work that out, and if this ends up  
2295 in front of a judge, I would imagine the judge would give them some reasonable period  
2296 of time too. The Board could grant a temporary use permit for some short period of  
2297 time, if that was what you wanted to do, but if you deny the use permit, I'm not sure  
2298 what mechanism you have for granting her time.  
2299  
2300 Mr. Kirkland - Let's just deny it flat out.  
2301  
2302 Ms. Dwyer - And the basis for denial is that this many dogs and this  
2303 kennel-type use is incompatible with the existing neighborhood and the use and  
2304 enjoyment of the property owners.  
2305  
2306 Mr. Kirkland - The Ordinance only allows you three pets; she's way over.  
2307  
2308 Ms. Harris - If she's not willing to accept the conditions, she's not willing  
2309 to give up any of those dogs, we could be a little more lenient with giving her time to  
2310 relocate. I don't know what it would take in a motion, but .....

2311  
2312 Mr. Kirkland - I guess I would agree with Mr. Blankinship, if we gave her  
2313 more time, then we would be giving her a temporary permit, so I really don't want to get  
2314 into the temporary permit situation myself.  
2315  
2316 Mr. Blankinship - I guess we can communicate to the enforcement staff that  
2317 it's the sense of the Board that they should have some period of time.  
2318  
2319 Mr. Wright - It's a question of when you go after them, when you pursue  
2320 it. You could be busy on other things.  
2321  
2322 Mr. Blankinship - And what would be your sense of a reasonable time, just so I  
2323 could pass it on?  
2324

2325 Ms. Harris - I say no more than three months.  
 2326  
 2327 Mr. Blankinship - She said no less than that.  
 2328  
 2329 Mr. Wright - Ninety days?  
 2330  
 2331 Mr. Blankinship - I'll pass that along to the enforcement staff as the sense of  
 2332 the Board.  
 2333  
 2334 Mr. Nunnally - Okay, ninety days.  
 2335  
 2336 Ms. Dwyer - Looking at the kennel request, it's more than the fact that  
 2337 she has three dogs, because she's asking for more than three dogs under the  
 2338 conditional use permit, but it's just incompatible with the adjacent uses, and it adversely  
 2339 affects the welfare of those residing in the neighborhood.  
 2340  
 2341 Mr. Nunnally - All right, motion by Ms. Harris, second by Mr. Kirkland, that  
 2342 we deny it. All in favor, say aye. Opposed? It's been denied.  
 2343  
 2344 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
 2345 Kirkland, the Board **denied** application **UP-34-2005** for a conditional use permit to  
 2346 operate a non-commercial kennel at 5904 West Rois Road (Chamberlayne Heights)  
 2347 (Parcel 790-752-7240).  
 2348  
 2349 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
 2350 Negative: 0  
 2351 Absent: 0  
 2352  
 2353 The Board denied your request as it found from the evidence presented that approving  
 2354 the permit would be of substantial detriment to adjacent property or would materially  
 2355 impair the purpose of the zoning regulations.  
 2356  
 2357 Mr. Nunnally - The Board is going to take a ten-minute recess, please.  
 2358  
 2359 **A -109-2005** **INTERFAITH HOUSING CORPORATION** requests a variance from  
 2360 Section 24-9 to build a one-family dwelling at 325 Marlin Drive  
 2361 (Parcel 810-720-1152), zoned R-3, One-family Residence District  
 2362 (Varina). The public street frontage requirement is not met. The  
 2363 applicant has 0 feet public street frontage, where the Code requires  
 2364 50 feet public street frontage. The applicant requests a variance of  
 2365 50 feet public street frontage.  
 2366  
 2367 **A -110-2005** **INTERFAITH HOUSING CORPORATION** requests a variance from  
 2368 Section 24-9 to build a one-family dwelling at 324 Marlin Drive  
 2369 (Parcel 809-720-9145), zoned R-3, One-family Residence District  
 2370 (Varina). The public street frontage requirement is not met. The

2371 applicant has 0 feet public street frontage, where the Code requires  
2372 50 feet public street frontage. The applicant requests a variance of  
2373 50 feet public street frontage.  
2374

2375 Mr. Nunnally - Is anyone else here interested in this case? You want to  
2376 come down, sir, and be ready? Anyone else? If so, please stand and raise your right  
2377 hand and be sworn.  
2378

2379 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2380 truth, the whole truth, and nothing but the truth, so help you God?  
2381

2382 Mr. Whaley - I do. My name is Chad Whaley. I'm with Interfaith Housing  
2383 Corporation, and I'm the Director of Development. IHC is a non-profit community  
2384 development corporation; our mission is to create healthy neighborhoods, the  
2385 development and re-development of affordable housing for home ownership purposes.  
2386 We have been a very long-time partner of Henrico County. We're here today to request  
2387 a variance for a road frontage requirement for the two lots at Marlin Drive. In 2005  
2388 Interfaith Housing Corporation acquired these lots to build two affordable houses.  
2389 When they were acquired by Interfaith Housing, we believed that they would be  
2390 buildable as is. When we went to file for the building permit, we were informed that the  
2391 existing cul-de-sac was only a temporary easement and not a right-of-way, and that we  
2392 technically had no road frontage, and that we would have to take out the existing cul-de-  
2393 sac and construct a new one on our property. This makes the project very cost  
2394 prohibitive for affordable housing.  
2395

2396 Based on rent money received from Henrico County HOME Program, this property must  
2397 be sold to a family earning 80% or less of the area median income as defined by HUD.  
2398 The cost of the road construction to create road frontage on the existing lots would  
2399 create undo hardship on our organization, as well as our in-line homeowners. We will  
2400 have the ability to access this property from a public hard surface road, because there is  
2401 a hard surface publicly maintained road existing. The difference is that it is an  
2402 easement, as opposed to a right-of-way. That is, technically, the County has  
2403 considered it a terminus of a road, even though there is an existing cul-de-sac on the  
2404 property. I did submit to Mr. Blankinship a few minutes ago, a piece of paper that was  
2405 not included in our packet that we did submit. One was showing the option for us to  
2406 develop the property the way the lot lines currently exist. What you're looking at now is  
2407 where we could move the lot lines over, so that both properties do have public road  
2408 frontage access, so they'd both have access from the public street; there would not be  
2409 an easement running to either one. Both properties would be connected to public water  
2410 and sewer. We would be extending sewer lines to them, as well as extending a water  
2411 line a little further down Marlin, according to the direction of Public Works.  
2412

2413 Mr. Wright - If this is approved, would you have any objection to our  
2414 requiring that the lot be divided as you show there?  
2415

2416 Mr. Whaley - Actually, that would be our preference.

2417  
2418 Mr. Wright - So you'd have direct access from the main street to both  
2419 properties.  
2420  
2421 Mr. Whaley - In talking with Planning early on, they recommended that I  
2422 show both options.  
2423  
2424 Mr. Wright - So you're amenable to this option, shown here?  
2425  
2426 Mr. Whaley - That is our preference, actually.  
2427  
2428 Mr. Wright - That makes more sense.  
2429  
2430 Mr. Whaley - We don't like to build houses where folks have to travel  
2431 across easements to get to their property.  
2432  
2433 Mr. Nunnally - Are you building these houses for rental, or for sale?  
2434  
2435 Mr. Whaley - All of our properties are for home ownership purposes. We  
2436 get grant money from Henrico County, as well as other sources, provide down payment  
2437 assistance for families to acquire these properties for ownership, and they are required,  
2438 as part of the grant, to live there for five years, or they have to repay the grant.  
2439  
2440 Mr. Nunnally - It's just one family can live in these houses?  
2441  
2442 Mr. Whaley - Yes sir, that's correct, and they're required to be owner  
2443 occupied during those five years, so if they're found to be non-owner occupied, they  
2444 would have to repay the grant and sell the property, and that's a federal restriction.  
2445  
2446 Mr. Nunnally - You have someone check this out, whether it's one family or  
2447 two families or three families?  
2448  
2449 Mr. Whaley - We generally don't go around monitoring that. Henrico has  
2450 monitored that in the past because it is their grant money ultimately in it. We also rely  
2451 on neighbors around the property that have notified us in the past, and we enforce it  
2452 through that. We don't have the capacity or the ability from a physical standpoint to go  
2453 in to the properties and verify that information.  
2454  
2455 Mr. Nunnally - I've noticed that most of these houses around here are brick  
2456 veneer. What type of construction are you going to use?  
2457  
2458 Mr. Whaley - Typically, our houses are constructed with either vinyl siding  
2459 or hardy plank siding.  
2460  
2461 Mr. Kirkland - What kind of foundation?  
2462

2463 Mr. Whaley - We always do at least a brick front to the foundations. It  
2464 depends on the project, but it's always a brick front.  
2465  
2466 Ms. Dwyer - Will they be single story or two story?  
2467  
2468 Mr. Whaley - Single story.  
2469  
2470 Ms. Dwyer - So that will be compatible with the neighborhood.  
2471  
2472 Mr. Whaley - Yes ma'am. We always try to make sure that our houses  
2473 complement the neighborhood and become an asset to the neighborhood, because our  
2474 mission is to create healthy neighborhoods, so if we're incompatible, that doesn't help  
2475 our mission.  
2476  
2477 Ms. Dwyer - And if you change the lot line so that the two lots are more  
2478 equally divided, each house, I assume, would be aligned with the other houses on  
2479 Marlin Drive. In other words, they would face in the same direction and be .....  
2480  
2481 Mr. Whaley - They would both be facing the cul-de-sac that exists. You  
2482 can't see the cul-de-sac there, because it's actually a right-of-way, but they would be  
2483 aligned so that they would be facing the cul-de-sac.  
2484  
2485 Ms. Dwyer - Would they be in a straight line with the other houses on  
2486 Marlin Drive, or would they be angled?  
2487  
2488 Mr. Whaley - They would be angled towards the cul-de-sac. You couldn't  
2489 put them in a straight line with the houses that are there, because right there at the end,  
2490 you have the cul-de-sac that circles around. I'm not sure why the surveyor drew it like  
2491 that, but the house would be angled down to face the cul-de-sac, like you would  
2492 normally see in a subdivision where you have a cul-de-sac constructed, the houses face  
2493 the cul-de-sac, so it's almost like a circle.  
2494  
2495 Mr. Blankinship - So it would not really be like this illustration shows?  
2496  
2497 Mr. Whaley - No.  
2498  
2499 Mr. Kirkland - Mr. Blankinship, he's not going to have any setback  
2500 problems, is he?  
2501  
2502 Mr. Blankinship - The lots should be big enough to site the house.  
2503  
2504 Ms. Dwyer - I don't think it would have to necessarily be angled. I think it  
2505 could be done in the way the drawing depicts the houses, and then they would be in a  
2506 straight line with the other houses on Marlin. I think either one would probably work.  
2507 You often do see houses on a cul-de-sac that are angled, but they also are not on  
2508 rectangular lots; they usually are on pie-shaped lots, so it seems to me it would be

2509 compatible with the neighborhood to do it either way.

2510

2511 Mr. Whaley - We'll situate it once the final lot lines are drawn, so that it fits  
2512 within the neighborhood. We rely on public support for our organization, and the one  
2513 thing we don't want is to take our funders, especially Henrico County, out there to show  
2514 this project that we did, and it looks ugly. The key development folks, Mr. Carter  
2515 especially, are extremely particular when we use the County grant money, about the  
2516 end product, and they're very particular about how we do that. The County has quite a  
2517 bit of control in this.

2518

2519 Mr. Nunnally - Any other questions? Have a seat sir, and let that other  
2520 gentleman speak. Are you in opposition sir?

2521

2522 Mr. Lewis - Yes and no. My name is Mike Lewis, and I own the home at  
2523 322 Marlin Drive. My mother lives in that home; she's been living in that home for over  
2524 40 years. She's 88 years old, and I'm just concerned about where the house is being  
2525 put, about what type of house is going to be put there, and how it's going to affect the  
2526 property value of my home, and also how the house is going to be aligned, if it is going  
2527 to be put on that property.

2528

2529 Ms. Dwyer - Do you have a preference?

2530

2531 Mr. Lewis - I was hoping that, if the home is put there, that my mother is  
2532 not looking in the back of someone's home. She's always enjoyed the peace and quiet  
2533 of those fields there. At this point in her life, it's very upsetting to her; that's one of the  
2534 main reasons I'm here, I'm also concerned that my brother and I own that home; that it  
2535 may affect the property value of the home years later if we decide to sell the home. I'd  
2536 also like to know how close the home is planned to be put next to my property line  
2537 there, because the house my mother lives in is, borders this lot right here.

2538

2539 Ms. Dwyer - It's zoned R-3, so it will meet all the setbacks that are  
2540 required for R-3 zoning.

2541

2542 Mr. Lewis - It also does concern me a little bit what he said about there's  
2543 no verification about who lives in the home and how many people live in the home, that  
2544 they don't do that.

2545

2546 Mr. Blankinship - He said that they don't do that, but it is done, and if you ever  
2547 have any questions about it, you can call the Planning Department or Community  
2548 Development.

2549

2550 Mr. Wright - It could be done in any house on that street. It's done all  
2551 over. People move in; they're not supposed to, but they do.

2552

2553 Mr. Blankinship - The minimum side yard setback would be 12 feet from your  
2554 common property line.



2555  
2556 Ms. Dwyer - Which is the case for every house in the neighborhood.  
2557  
2558 Mr. Lewis - How much square footage is going to be in this home?  
2559  
2560 Mr. Blankinship - The applicant said 1150 to 1700 square feet.  
2561  
2562 Ms. Dwyer - What is the square footage of your mother's home?  
2563  
2564 Mr. Lewis - I think my mother's home is probably about 1100 to 1200  
2565 square feet, something like that. It's all brick, and actually the last three or four homes  
2566 on each side of Marlin Drive are all brick.  
2567  
2568 Ms. Dwyer - I'm assuming, looking at the acreage here, it looks like we  
2569 have almost an acre and a half between the two, so  $\frac{3}{4}$  of an acre for each house, the  
2570 lots are going to be considerably larger.  
2571  
2572 Mr. Lewis - I'm just most concerned about how that house is going to be  
2573 angled, so my mother's not looking into the back of someone's home.  
2574  
2575 Mr. Wright - She won't be looking at the back of it; I assure you.  
2576  
2577 Mr. Lewis - The original one showed the house next to my lot being way  
2578 in the back .....  
2579  
2580 Mr. Blankinship - You don't want them to do that? You want it to be up in line  
2581 with the other homes on the street?  
2582  
2583 Ms. Dwyer - But they've redesigned that.  
2584  
2585 Mr. Lewis - I think it would look better and help as far as property values.  
2586  
2587 Ms. Dwyer - So that the front yards are roughly aligned.  
2588  
2589 Mr. Nunnally - Thank you, Mr. Lewis. Mr. Whaley, do you want time to  
2590 rebut, to assure Mr. Lewis that his mother won't be looking at the back of a house?  
2591  
2592 Mr. Whaley - We would not situate a house as such to be a detriment to  
2593 anybody else's property in the neighborhood. Our whole goal is to compliment the  
2594 neighborhood, not to create a hardship or an eyesore for anyone else in it. We've got a  
2595 very long track record with all the municipalities here in the greater Richmond area, the  
2596 City of Richmond, and Henrico County, we are a long-time grant recipient of Henrico  
2597 County. With the scrutiny that we get from Henrico County, I dare say that if we were  
2598 creating eyesores or problems for neighbors in the communities we were developing,  
2599 the County would not continue to fund us on an annual basis. If you look at the  
2600 redevelopment work that we have done, especially in the Church Hill neighborhood, in

2601 the City of Richmond, and the quality and the value that we've brought back to that  
2602 neighborhood, over the last fifteen years, I think our record definitely speaks for itself.  
2603 We truly will not and would not create something that devalued property in the  
2604 neighborhood. If you actually look at the neighborhoods where we've gone in and done  
2605 in-fill construction, it's actually brought up the value of the neighborhoods and  
2606 stimulated property values to rise, based on seeing new housing in the neighborhood.  
2607 It's almost like a draw, because new construction is going to sell for more money, so it  
2608 actually works for pulling the value of the neighborhoods up.

2609  
2610 Ms. Harris - Would you meet with Mr. Lewis to share with him the plans  
2611 so that he could feel good about it.

2612  
2613 Mr. Whaley - I'll be happy to meet with him once we've gotten our plans. I  
2614 have no problem with that at all.

2615  
2616 Mr. O'Kelly - Mr. Whaley, is your group actually the contractor?

2617  
2618 Mr. Whaley - In different situations, it depends. Sometimes we actually  
2619 hire a general contractor to come in and build it for us, and we just act as the developer.  
2620 In some instances, we act as the general contractor and just subcontract out the work.

2621  
2622 Mr. O'Kelly - How long do you think it would take to build these homes?

2623  
2624 Mr. Whaley - I would say that by the time we get our surveys done and  
2625 resubdivide the lot, get that through Planning, I would say we're probably looking at mid-  
2626 summer before we have them completed.

2627  
2628 Mr. O'Kelly - My concern is, I guess, considering the age of some of the  
2629 neighbors who are represented here, the fact that they've been in this neighborhood for  
2630 many years, certainly construction activity is going to have an impact on their living  
2631 conditions – the hours of operation that are going to be taking place, where are these  
2632 contractors and employees going to park? We want to try to minimize these types of  
2633 things on the existing neighborhood.

2634  
2635 Mr. Whaley - Parking would exist on the property. There should be no  
2636 contractors parking on the street; there's plenty of space here for a contractor to work.  
2637 We always have dumpsters set on our sites, as well as porta-johns, so there's never  
2638 any issue of sanitation or debris blowing in other people's yards. We try to locate those  
2639 so that they're not up next to the property – in other words, we wouldn't want to set our  
2640 dumpster right on her property line, so she's looking at a dumpster the whole time.

2641  
2642 Mr. O'Kelly - Those are the kind of things that I think should be  
2643 addressed, and I think Mr. Lewis would appreciate for his mother that those things are  
2644 taken into account.

2645  
2646 Mr. Whaley - We're definitely very sensitive to that, and again, as an

2647 organization that relies on public support, if we were consistently doing things like that,  
2648 we could not continue to exist, because even though the greater Richmond community  
2649 is fairly big, it's relatively small, and word travels very fast.

2650  
2651 Mr. O'Kelly - Thank you.

2652  
2653 Mr. Nunnally - Any other questions of Mr. Whaley? Hearing none, that  
2654 concludes the case. Thank you for coming. A-109-2005, Interfaith Housing  
2655 Corporation.

2656  
2657 Mr. Wright - Move that it be approved, with the same conditions as A-  
2658 110-2006.

2659  
2660 Mr. Nunnally - Moved by Mr. Wright. Seconded by .....

2661  
2662 Mr. Kirkland - I second it.

2663  
2664 Mr. Nunnally - Moved by Mr. Wright; second by Mr. Kirkland, that it be  
2665 approved. Same as A-110-2005, Mr. Blankinship, right?

2666  
2667 Ms. Dwyer - I was going to ask that we state for the record, the basis for  
2668 the motion for approval.

2669  
2670 Mr. Wright - The same basis that we put on all of our zero road frontage,  
2671 that it's a hardship, that they wouldn't have a reasonable use of the property without the  
2672 variance.

2673  
2674 Ms. Dwyer - And that it's not a detriment to the neighborhood, that it's  
2675 compatible, appropriate use.

2676  
2677 Mr. Nunnally - All in favor of A-109, say aye. Opposed? It's been  
2678 approved.

2679  
2680 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
2681 Kirkland, the Board **granted** application **A-109-2005** for a variance to build a one-family  
2682 dwelling at 325 Marlin Drive (Parcel 810-720-1152). The Board granted the variance  
2683 subject to the following conditions:

2684  
2685 1. This variance applies only to the public road frontage requirement. All other  
2686 applicable regulations of the County Code shall remain in force.

2687  
2688 2. Any dwelling on the property shall be served by public water and sewer.

2689  
2690 3. [ADDED] The boundary line between the subject property and 324 Marlin Drive  
2691 shall be adjusted so that each of the two lots abuts the terminus of Marlin Drive for a  
2692 distance of 25 feet.

2693  
2694 4. [ADDED] Any dwelling to be built on the property shall have a brick foundation,  
2695 and shall be sited in a manner compatible with the adjoining houses.  
2696

2697 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2698 Negative: 0  
2699 Absent: 0

2700  
2701 The Board granted this request, as it found from the evidence presented that, due to the  
2702 unique circumstances of the subject property, strict application of the County Code  
2703 would produce undue hardship not generally shared by other properties in the area, and  
2704 authorizing this variance will neither cause a substantial detriment to adjacent property  
2705 nor materially impair the purpose of the zoning regulations.  
2706

2707 Mr. Nunnally - A-110-2005, Interfaith Housing Corporation.  
2708

2709 Mr. Kirkland - I move that it be approved, with the new layout.  
2710

2711 Mr. Wright - With the lot divided in half, roughly, whatever way it was  
2712 proposed at that last picture.  
2713

2714 Mr. Blankinship - So you want to add a condition that they have to adjust the  
2715 boundary line consistent with the .....

2716  
2717 Mr. Wright - Based on the last that they showed, whatever they showed  
2718 here. I think that's what they favored anyhow.  
2719

2720 Ms. Dwyer - It roughly divides the two parcels so that they have equal,  
2721 roughly, approximately.  
2722

2723 Mr. Wright - I'm not so sure it's equal. The line would go right down the  
2724 middle of the street, and half of each property would be in the street.  
2725

2726 Mr. Blankinship - Anything about the alignment of the house?  
2727

2728 Mr. Wright - I don't have any way to do that. I don't know anything about  
2729 that.  
2730

2731 Ms. Dwyer - We want it to at least be the front of the house to at least be  
2732 in line with the other houses, but if it's curved, and when you look at the photograph, it  
2733 looks like curving it as you would a cul-de-sac lot might be better.  
2734

2735 Mr. Kirkland - That's what I was thinking.  
2736

2737 Mr. Wright - I think it would look better. That's the way it would kind of  
2738 make a finished product there.

2739  
2740 Ms. Dwyer - We can trust the Planning Department.  
2741  
2742 Mr. O'Kelly - It would be the Permit Center.  
2743  
2744 Ms. Dwyer - How could we get someone in the County to review the  
2745 placement of the house?  
2746  
2747 Mr. Wright - Could we leave that up to Mr. Blankinship?  
2748  
2749 Mr. Blankinship - We can look at it on the building permit application. Did you  
2750 state a preference?  
2751  
2752 Mr. Wright - No, just something that would be compatible. I think angling  
2753 it a little bit would look better than just straight.  
2754  
2755 Mr. Blankinship - Apparently that's what Mr. Lewis asked the applicant. The  
2756 applicant just mentioned that to me.  
2757  
2758 Mr. Nunnally - We have a motion by Mr. Wright.  
2759  
2760 Ms. Dwyer - Anyone want to say anything about materials?  
2761  
2762 Mr. Nunnally - I asked him about the brick.  
2763  
2764 Ms. Harris - He said vinyl.  
2765  
2766 Ms. Dwyer - Or hardy plank.  
2767  
2768 Mr. Wright - Is every house in there in brick?  
2769  
2770 Mr. Nunnally - Most every house in there is brick veneer.  
2771  
2772 Mr. Blankinship - At that end of the cul-de-sac they are. Up at the other end of  
2773 the cul-de-sac, there are several that are vinyl. Did they all have brick foundations,  
2774 Paul?  
2775  
2776 Mr. Wright - He said they will have a brick foundation. We can add. I  
2777 hate to put that burden on them if there are other houses that are vinyl, and vinyl  
2778 doesn't look that bad. It'll be sort of at the end.  
2779  
2780 Ms. Dwyer - Let's say at least a brick front foundation.  
2781  
2782 Mr. Wright - He said he was going to do that anyhow.  
2783  
2784 Mr. Nunnally - Can you brick the whole front of the house?

2785  
 2786 Mr. Whaley - The challenge that we have to that is money. We're working  
 2787 on this with County staff right now. Under our current contract, all of our houses have to  
 2788 be sold at or below \$140,000, so when you start constructing a 1200 square foot house  
 2789 and then try to put the brick on it, with the cost of the labor right now, it becomes very  
 2790 difficult to achieve that price.  
 2791  
 2792 Mr. Wright - He said he could put a brick foundation on it.  
 2793  
 2794 Mr. Whaley - We could do the entire foundation in brick. I think we can  
 2795 make that work.  
 2796  
 2797 Mr. Kirkland - Put that in.  
 2798  
 2799 Mr. Nunnally - Do I have a second?  
 2800  
 2801 Ms. Harris - Second.  
 2802  
 2803 Mr. Nunnally - Second by Ms. Harris. All in favor, say aye. Opposed?  
 2804 Been approved.  
 2805  
 2806 After an advertised public hearing and on a motion by Mr. Wright, seconded by Ms.  
 2807 Harris, the Board **granted** application **A-110-2005** for a variance to build a one-family  
 2808 dwelling at 324 Marlin Drive (Parcel 809-720-9145). The Board granted the variance  
 2809 subject to the following conditions:  
 2810  
 2811 1. This variance applies only to the public road frontage requirement. All other  
 2812 applicable regulations of the County Code shall remain in force.  
 2813  
 2814 2. Any dwelling on the property shall be served by public water and sewer.  
 2815  
 2816 3. [AMENDED] The boundary line between the subject property and 325 Marlin  
 2817 Drive shall be adjusted so that each of the two lots abuts the terminus of Marlin Drive for  
 2818 a distance of 25 feet.  
 2819  
 2820 4. [AMENDED] Any dwelling to be built on the property shall have a brick  
 2821 foundation, and shall be sited in a manner compatible with the adjoining houses.  
 2822  
 2823 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
 2824 Negative: 0  
 2825 Absent: 0  
 2826  
 2827 The Board granted this request, as it found from the evidence presented that, due to the  
 2828 unique circumstances of the subject property, strict application of the County Code  
 2829 would produce undue hardship not generally shared by other properties in the area, and

2830 authorizing this variance will neither cause a substantial detriment to adjacent property  
2831 nor materially impair the purpose of the zoning regulations.

2832  
2833 Mr. Nunnally - Mr. Blankinship, I think we've got one here for a rehearing  
2834 that came up this morning.

2835  
2836 Ms. Dwyer - Mr. Blankinship, do I understand that we rehear a case if  
2837 there is new evidence that could not have been presented at the time of the original  
2838 hearing?

2839  
2840 Mr. Blankinship - Yes ma'am, that's correct. We have a request for rehearing  
2841 of A-103-2005, which was an application from Paul and Peggy Christofakis for a  
2842 variance. It was denied last month.

2843  
2844 Mr. Kelleher - Good morning Mr. Chairman, members of the Board. My  
2845 name's Paul Kelleher; I'm with Stuart Simon and Associates, here representing the  
2846 applicants, the Christofakis, on their request for a rehearing of a variance for road  
2847 frontage. In the packet that we submitted, the applicant has provided additional  
2848 photographs that were not available at the time of the initial hearing because of the leaf  
2849 cover. I do have the color photographs if you'd like to review those now. I believe that  
2850 there are some black and white copies in your packet, along with a key of where each of  
2851 these photographs was taken from. Additionally, I addressed in my justification for the  
2852 rehearing, I was without the minutes, which I don't believe were available, and I don't  
2853 even know if they're available now, some of the reasons that were presented at the  
2854 hearing and how we believe that it affected your judgment in denying the hearing.

2855  
2856 We believe that the standard that you used of a taking was too high a bar, as far as the  
2857 statutes and the case law. This is borne out by the Packer Case, which is one of the  
2858 seminal cases - for granting the variance. There the court addressed both the hardship  
2859 approaching the confiscation, nor has their use of the land effectively prohibited it or  
2860 unreasonably restricted it. Those are two prongs that must be looked at, and we  
2861 believe that the unreasonable hardship, the taking, is too high a burden in this instance.

2862  
2863 Additionally, there were questions asked, does the applicant have other uses for the  
2864 property, since he owns an adjacent property. Under Roe, that is not really appropriate  
2865 to be looked at, because what we're looking at is what is the use for this individual piece  
2866 of property, this one-acre parcel. The adjacent landowner ownership or uses is  
2867 irrelevant. We're looking at the taking of the property, not the impact on the person or  
2868 the adjoining property. This is especially true because it would make an incongruent  
2869 result. If in fact, this property would be sold, would that person then be allowed to be  
2870 granted a variance because they don't own any adjoining lots. If Mr. Christofakis sold  
2871 his existing house, could he then get a variance, because he doesn't own any adjoining  
2872 property? In that instance, it needs to be looked at, what is the beneficial use of the  
2873 property in question, that being lot B, and without the road frontage easement granted,  
2874 that property has no value; it cannot be sold. You could take that even further if you

2875 apply just a “takings issue.” Any property can be said, has some beneficial value, from  
2876 a strip of land that some wildlife expert might say harbors a small beneficial use.

2877  
2878 In this case, it is zoned for residential use. In my opinion, it can’t be used for a tennis  
2879 court because there’s no primary use, and a tennis court is an accessory use. In this  
2880 case, it’s an individual lot; you can’t have a accessory use if there are no primary uses.  
2881 In that instance, we ask that you rehear this in light of looking at just this one piece of  
2882 landlocked parcel.

2883  
2884 Finally, there was some discussion on whether or not it was a valid subdivision. That  
2885 we were not aware of at the time of the staff report and I don’t know if this landlocked  
2886 parcel was created as a illegal subdivision in 1974. That would be addressed at the  
2887 time of applying for a building permit. That would be a zoning administrative decision  
2888 that would then be appealed to the Board, but I don’t believe it’s applicable under a  
2889 request for a variance for the road frontage. I would like to keep it brief. I’ve laid it all  
2890 out as briefly as I possibly could in the statement, and I ask your consideration, just to  
2891 rehear their request in light of these reasons.

2892  
2893 Mr. Blankinship - Mr. Chairman, can I address just that last question? I don’t  
2894 think our concern was that it was an illegal subdivision. The County Code requires that  
2895 any lot to be used for dwelling purposes has to have public street frontage. It doesn’t  
2896 say that every lot has to have public street frontage, so it’s not necessarily unlawful to  
2897 create a lot with no street frontage, but by creating a lot, knowing that it had no street  
2898 frontage, I believe the applicant put himself in a position of owning property that could  
2899 not be used for a dwelling.

2900  
2901 Mr. Kelleher - The applicant didn’t create this subdivision. This was done  
2902 in 1974.

2903  
2904 Mr. Blankinship - The applicant’s predecessor in title, and when the applicant  
2905 acquired title, he acquired that problem.

2906  
2907 Mr. Kelleher - Correct. In one of your recent approvals, it was very similar  
2908 factually, where they subdivided in 2002 and the property was, I believe landlocked,  
2909 they cut off four acres, and they requested a variance, which was granted. There was a  
2910 pond involved with it; I believe that’s the Albert Anderson case.

2911  
2912 Mr. Blankinship - When was that approved?

2913  
2914 Mr. Kelleher - August 25, 2005. A-91-2005. But in that case, what I was  
2915 trying to explain was that if the subdivision isn’t proper, because of the ordinance at the  
2916 time in 1974, that is a different request or procedure than at the variance stage, where  
2917 the applicant comes to the Board and asks to have the road frontage.

2918  
2919 Mr. Blankinship - But we’re not suggesting that the subdivision was not proper;  
2920 we’re suggesting that when the lot was created, it was created without street frontage,



2921 and it was created with at least constructive notice that it could not be used as a  
2922 dwelling, because it was created with no street frontage, when the Code required that a  
2923 lot to be used for a dwelling, had to have public street frontage.

2924  
2925 Ms. Dwyer - To hold otherwise, then anyone in the County could call in a  
2926 surveyor and divide their property in any way they feel like it, and then say they have a  
2927 lot that they can't use unless they get a variance for street frontage, and then we have a  
2928 hodge-podge of substandard lots. To hold otherwise, would allow that.

2929  
2930 Mr. Kelleher - I understand that, and in your minutes when you were  
2931 discussing the Cochran Case, the Assistant County Attorney alluded to that, that if a  
2932 builder came in and built on the building lot restriction line, and then the new owner  
2933 came in and asked for a deck, I totally agree, then under Cochran, you can't do that.  
2934 You're under notice that even if it's the second owner, they bought the problem. In this  
2935 case, this was a separate lot that is not buildable without the variance, just as in the  
2936 previous case, that without this variance, these lots are not buildable. To say that any  
2937 lot would be created, hodge-podge wise, belies the fact that you still have to get out of  
2938 the valid subdivision to get your building permit. So I can report whatever I would like,  
2939 and I agree that it's a trap for the unwary, but that would be addressed at the building  
2940 permit station, that it was a legally created lot.

2941  
2942 Mr. Blankinship - But it doesn't have to be an illegally created lot, to be a lot  
2943 that's not buildable. It could be created legally for other purposes, other than for a  
2944 dwelling. It's only because they want to put a dwelling there that they're required to  
2945 have public street frontage.

2946  
2947 Mr. Kelleher - What other structure could they put on there if you need a  
2948 primary structure, to have an accessory structure?

2949  
2950 Mr. Blankinship - And I'm not certain what other uses they could make of that  
2951 lot. I'm just trying to address the question that we seem to have some confusion on,  
2952 whether it's an illegal lot. It's not an illegal lot; there's no reason they can't create that  
2953 lot, and there's no reason they can't sell that lot, to a future owner. But if you  
2954 intentionally create, and I think this is Ms. Dwyer's point of view, I think if you  
2955 intentionally create a lot with no road frontage and then come back and say, "oh, I have  
2956 a lot with no road frontage," in this case it's not disingenuous because thirty years have  
2957 passed and title has changed, but that, I think, is the concern.

2958  
2959 Mr. Kelleher - And this other Board asked how were these lots created  
2960 without road frontage. But in any case, whenever anyone asks for a zero road frontage  
2961 variance, that lot had to be created in some fashion, and they're asking.

2962  
2963 Mr. Blankinship - And that's why the Board has to review them on a case by  
2964 case basis.

2965  
2966 Mr. Kelleher - Under that rationale, you could never approve .....

2967  
2968 Mr. Blankinship - In some cases the Board decides that it's reasonable, and in  
2969 some cases they decide that it's not reasonable.  
2970  
2971 Mr. Kelleher - I think it's the standard of reasonableness ; I understand  
2972 from talking to staff that they were approved sometimes for family subdivisions, but  
2973 that's not the standard that we look at for a variance. The standard that is set out in the  
2974 case line and the statute is unreasonable hardship, and a taking. It has nothing to do  
2975 with family or adjacent uses or any of these other peripheral issues, that once you cross  
2976 into that, that takes the administrative decision and brings it towards the legislative. Is it  
2977 a good idea, as opposed to the administrative, is it permissible or not?  
2978  
2979 Mr. Blankinship - I think under Cochran the hardship test is a threshold  
2980 question. They have to settle that first. Once they've settled that question, then they  
2981 consider all those other factors and they look at the individual cases. But they wouldn't  
2982 even get to that analysis if they didn't find it reasonable.  
2983  
2984 Mr. Kelleher - I apologize; I didn't attend the meeting, and I don't have the  
2985 minutes in front of me, but I believe that if we can have a rehearing and look at these  
2986 issues individually, and extract out the peripheral evidence, from what I understand from  
2987 staff and from the applicant, there was very little, if any, evidence in opposition of  
2988 substance, and I wasn't privy to your conversation prior to the vote.  
2989  
2990 Mr. Nunnally - Do I hear a motion from anyone that we rehear this case?  
2991 Or that we not rehear it?  
2992  
2993 Ms. Dwyer - I have not heard any new evidence that could not have been  
2994 presented at the first hearing. I've heard additional legal arguments made, based on  
2995 what has .....  
2996  
2997 Mr. Kelleher - Well, we didn't have the topography showing what can and  
2998 cannot be used without the leaf cover that was prevalent in October.  
2999  
3000 Ms. Dwyer - I didn't really need the pictures personally, because I looked  
3001 at the land myself in person, and everyone else on this Board was free to do that as  
3002 well. I would move that we deny the request for rehearing, because there is no  
3003 additional evidence that's been presented that would warrant such a rehearing.  
3004  
3005 Mr. Wright - Second.  
3006  
3007 Mr. Nunnally - Motion by Ms. Dwyer, second by Mr. Wright, that we deny  
3008 this rehearing. All in favor, say aye. Opposed. It's been denied.  
3009  
3010 On a motion by Ms. Dwyer, seconded by Mr. Wright, the Board **denied** the request for a  
3011 **Rehearing of A-103-2005**, which was an application from **Paul and Peggy**  
3012 **Christofakis** for a variance.

3013			
3014	Affirmative:	Dwyer, Harris, Kirkland, Nunnally, Wright	5
3015	Negative:		0
3016	Absent:		0
3017			
3018	Mr. Nunnally -	Let's go from the back.	
3019			
3020	Mr. Nunnally -	Now we've got some minutes.	
3021			
3022	Mr. Wright -	I didn't get any.	
3023			
3024	Mr. Kirkland -	I didn't get one of these minutes.	
3025			
3026	Mr. Blankinship -	November did not get distributed.	
3027			
3028	Mr. Wright -	I didn't get September either.	
3029			
3030	Ms. Dwyer -	That was given to us at our last meeting, I think.	
3031			
3032	Mr. Wright -	I thought it was October; that's what I've got.	
3033			
3034	Ms. Harris -	I've got September and October, but not November.	
3035			
3036	Mr. Wright -	I'm sorry, I must have buried those. I've got October.	
3037			
3038	Mr. Kirkland -	I just dug mine out today.	
3039			
3040	Mr. Wright -	And I wasn't here in October.	
3041			
3042	Ms. Harris -	I've got a couple of changes. They're small. Page 11, line	
3043		464, "we <u>would be</u> negligent"; and page 27, line 1194, "he had no problem with," I just	
3044		put, I think it's understood, but I put "the conditions" in parentheses. Whether I said it or	
3045		not, I don't know, but I know we were talking about the conditions. Those are the only	
3046		two I have.	
3047			
3048	Mr. Nunnally -	Any others? Do we have a motion on the September	
3049		minutes?	
3050			
3051	Ms. Harris -	I move that they be accepted as corrected.	
3052			
3053	Ms. Dwyer -	Second.	
3054			
3055	Mr. Nunnally -	Moved by Ms. Harris, that they be accepted as corrected;	
3056		seconded by Ms. Dwyer. All in favor, say aye.	
3057			

3058 On a motion by Ms. Harris, seconded by Ms. Dwyer, the Board **approved as**  
3059 **corrected**, the Minutes of the September 22, 2005, Henrico County Board of Zoning  
3060 Appeals meeting.

3061  
3062 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
3063 Negative: 0  
3064 Absent: 0

3065  
3066 Mr. Nunnally - What do we have here now?

3067  
3068 Ms. Harris - October 20, 2005.

3069  
3070 Mr. Wright - I have to abstain; I wasn't here.

3071  
3072 Ms. Harris - I move that the minutes of October 20, 2005, be accepted.

3073  
3074 Mr. Kirkland - Second.

3075  
3076 Mr. Nunnally - Moved by Ms. Harris that the minutes of October 20, 2005,  
3077 be approved; seconded by Mr. Kirkland. All in favor, say aye.

3078  
3079 Ms. Dwyer - I have to abstain this one also.

3080  
3081 On a motion by Ms. Harris, seconded by Mr. Kirkland, the Board **approved** the Minutes  
3082 of the October 20, 2005, Henrico County Board of Zoning Appeals meeting.

3083  
3084 Affirmative: Harris, Kirkland, Nunnally 3  
3085 Negative: 0  
3086 Abstain: Dwyer, Wright 2

3087  
3088 Mr. Blankinship - Mr. Chairman, before we break up, I'd like to introduce a  
3089 member of staff, that I don't know how many of you have ever met, but those lovely  
3090 maps that we look at every month, are produced by June Redford, who has joined us  
3091 here.

3092  
3093 Mr. Wright - Mr. Chairman, I'd like to also extend a commendation to the  
3094 staff, I guess specifically Priscilla Parker, for getting these minutes up to date. I've been  
3095 on this Board for I guess 33 years, and this is the first time we've ever, it looks like with  
3096 the November minutes, we're right up to date. That's so refreshing, because it's tough  
3097 when you get three months of minutes to review all at one time.

3098  
3099 Mr. Kirkland - You are recording this, right?

3100  
3101 Mr. Blankinship - This will go in the minutes.

3102

3103 Ms. Harris - Mr. Chairman, I'd like to thank the staff for the refreshments  
3104 we had, typical of the season; they're very good. Thank you.  
3105  
3106 Mr. Blankinship - That's also Ms. Parker.  
3107  
3108 Mr. Nunnally - Ms. Parker, you don't have to record this, but we also thank  
3109 you for the note you sent us.  
3110  
3111 Mr. Wright - And I extend a Merry Christmas, you note I said "Merry  
3112 Christmas," to all the staff, and a Happy New Year.  
3113  
3114 Ms. Dwyer - The Board of Supervisors is going to be reviewing the  
3115 amendment to the Ordinance that allows accessory structures to be placed all over the  
3116 place, as special exception.  
3117  
3118 Mr. Wright - I'd like to see a copy of that – do we have a copy of that?  
3119  
3120 Mr. O'Kelly - We can get you a copy, Mr. Wright.  
3121  
3122 Mr. Kirkland - What is this?  
3123  
3124 Mr. O'Kelly - Yesterday at the Planning Commission Meeting, there was a  
3125 public hearing held to allow accessory structures in the side and front yards, with  
3126 approval of a conditional use permit by the Board of Zoning Appeals. That ordinance  
3127 was recommended by the Planning Commission to the Board of Supervisors. The  
3128 earliest it could be heard would be at their January 24 meeting, but the staff is  
3129 somewhat limited, in that the Manager's Office decides when the public hearing will be  
3130 held. Mr. Kaechele, who sits on the Planning Commission, made it clear that he would  
3131 like to have it heard on January 24, so we're going to try to have the public hearing on  
3132 that day, with the blessing of the County Manager's Office.  
3133  
3134 Mr. Wright - I'm not so sure that it would be appropriate for us to have  
3135 any input on that.  
3136  
3137 Ms. Dwyer - I wasn't saying that we should have input, but I would like to  
3138 attend the meeting, just to hear what is said.  
3139  
3140 Mr. Kirkland - I would like to hear their pros and cons.  
3141  
3142 Mr. Wright - I would like to hear it too, but I don't think it would be  
3143 appropriate for us to take a stand on it, one way or the other.  
3144  
3145 Mr. O'Kelly - The Planning Commission was very supportive.  
3146  
3147 Mr. Wright - I think it's something that we really need; I really do.  
3148

3149 Mr. Kirkland - You're going to have it at the regular Board meeting on  
3150 January 24, right, or are they going to it in the Manager's Office. Are they doing a work  
3151 session?

3152  
3153 Mr. O'Kelly - No, it would have to be in a public hearing on the Board's  
3154 Agenda, right. We'd like to have it on the 24<sup>th</sup>; that's not official yet.

3155  
3156 Ms. Harris - What time is the meeting?

3157  
3158 Mr. Wright - Is that a nighttime meeting?

3159  
3160 Mr. O'Kelly - Yes sir, 7:00 pm

3161  
3162 Ms. Dwyer - You'll let us know?

3163  
3164 **(Unintelligible conversation between the Board members)**

3165  
3166 Mr. Wright - I move we adjourn.

3167  
3168 Ms. Dwyer - Second.

3169  
3170 Mr. Nunnally - All in favor of adjournment, stand please.

3171  
3172 There being no further business, and on a motion by Mr. Wright, seconded by Ms.  
3173 Dwyer, the Board adjourned until **January 26, 2006**, at 9:00 am.

3174  
3175  
3176 James W. Nunnally

3177 Chairman

3178

3179

3180 Benjamin Blankinship, AICP

3181 Secretary