

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**  
2 **HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**  
3 **HENRICO COUNTY GOVERNMENT COMPLEX, ON THURSDAY, JANUARY 27,**  
4 **2005, AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND**  
5 **TIMES-DISPATCH ON JANUARY 6 AND 13, 2005.**  
6

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

**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**

7  
8 Mr. Wright -                             I call the meeting of the County of Henrico Board of Zoning  
9 Appeals to order. Would you stand for the **Pledge of Allegiance to the Flag of Our**  
10 **Country**. Mr. Secretary, would you read the rules, please.  
11

12 Mr. Blankinship -                     Good morning, Mr. Chairman, Members of the Board, ladies  
13 and gentlemen. The rules for this meeting are as follows. As Secretary, I will call each  
14 case. Then at that time the applicant should come to the podium. I will ask everyone  
15 who intends to speak on that case, in favor or in opposition, to stand and be sworn in.  
16 The applicants will then present their testimony. After the applicant has spoken, the  
17 Board will ask them questions, and then anyone else who wishes to speak will be given  
18 the opportunity. After everyone has spoken, the applicant, and only the applicant, will  
19 be given the opportunity for rebuttal. After hearing the case, and asking questions, the  
20 Board will take the matter under advisement. They will render all of their decisions at  
21 the end of the meeting. If you wish to know their decision on a specific case, you can  
22 either stay until the end of the meeting, or you can call the Planning Office later this  
23 afternoon, or you can check the website. The vote on each case will be posted to our  
24 website within an hour of the end of the meeting. This meeting is being tape recorded,  
25 so we will ask everyone who speaks, to speak directly into the microphone on the  
26 podium, to state your name, and to spell your last name please. And finally, out in the  
27 foyer, there are two binders, containing the staff report for each case, including the  
28 conditions that have been recommended by the staff.  
29

30 **Beginning at 9:00:**  
31

32 Mr. Wright -                             Thank you sir. Do we have any requests for withdrawals or  
33 deferrals?

34  
35 Mr. Blankinship - There is one of each. The deferral is on the 9:00 o'clock  
36 agenda, case A-1-2005, the LoanMax case. They have requested deferral to February  
37 24.

38  
39 **A-151-2004** **ROBERT AND DARLENE DERKITS** request a variance from  
40 Section 24-95(i)(2) to build a detached garage at 1800 Le-Suer  
41 Road (Riohondo Hills) (Parcels 758-746-1659 and 2466), zoned R-  
42 2, One-family Residence District (Three Chopt). The accessory  
43 structure location requirement is not met. The applicants propose  
44 an accessory structure in the front yard, where the Code allows  
45 accessory structures in the rear yard. The applicants request a  
46 variance to allow an accessory structure in the front yard.

47  
48 Mr. Wright - Does anyone else desire to speak with reference to this  
49 case? Would you raise your right hand and be sworn please?

50  
51 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
52 truth, the whole truth, and nothing but the truth, so help you God?

53  
54 Mr. Derkits - I do. Robert F. Derkits. With me is my wife, Faye Derkits.  
55 We reside at 1800 Le-Suer Road, and we are seeking a variance to build a two-car  
56 garage in the side yard. Our lot is unique to the immediate neighborhood. As you can  
57 see, while other lots are rectangular, ours is pie-shaped. As seen on the plot, we have  
58 very little back yard because of a utility easement, but a large area to the left of the  
59 house. It is in this area where we would place the garage. The proposed garage would  
60 not adversely impact the neighborhood. I have talked to six of the eight property  
61 owners, and they have no objections. The other two properties face Michaels Road,  
62 and one of these is a vacant lot in the electric company's easement. The garage would  
63 sit at an angle to Le-Suer Road, presenting mainly a side view to the street. Several  
64 mature trees, along with proposed foundation plantings, would screen most of the view.  
65 The garage would be constructed with a brick foundation, vinyl siding, and windows and  
66 shutters to match the house. We believe the garage's placement will enhance safety in  
67 the neighborhood by allowing us to pull out of the driveway, rather than backing out as  
68 we have to do now. My wife and I would be pleased to answer any questions. Thank  
69 you.

70  
71 Mr. Wright - Would you describe the neighborhood there as far as trees  
72 or bushes.

73  
74 Mr. Derkits - Yes, we have probably thirteen trees in front of the house.  
75 In the garage area, at least two trees will remain there, to do the screening. Secondly,  
76 because we'll have the side view of the garage mainly facing Le-Suer Road, we can do  
77 a lot of plantings of bushes, etc. to screen it even more.

78  
79 Mr. Wright - It appears to me that you do have some screening across

80 the street also.

81  
82 Mr. Derkits - Yes, all the people in the summertime can't see generally  
83 across the street, because there are a lot of trees in the area, regardless of the  
84 hurricane taking down a lot. There are still a lot left there. In the shot they took, where  
85 the van is, is approximately where the garage doors would face.

86  
87 Ms. Dwyer - Had you considered attaching the garage to your home?

88  
89 Mr. Derkits - Yes, except that the property goes up onto the hill into the  
90 easement on the side of the house, and the back of the garage at that point would be,  
91 the roof of the garage would probably be about a foot or two away from the ground. If  
92 you could understand how the slope would go up, and we would be building into the  
93 earth and to keep it at grade of the garage level, it's not that obvious here, but I did take  
94 some measurements. The back part of the garage, where we even have it planned, will  
95 be three feet into the ground, so if we pushed it any further back and put it to the side of  
96 the house, it will probably be five feet into the ground.

97  
98 Ms. Harris - Do you know how many feet the side setback would be, or  
99 the front, when you build this garage, how close will it be to the street?

100  
101 Mr. Derkits - To the street? I took some measurements. On my plat,  
102 we're going to be 28 feet from the right front corner to Le-Suer Road, and the back of  
103 the garage, because it's at an angle, will be forty feet from Le-Suer Road.

104  
105 Mr. Wright - Any further questions of the Board? Is anyone here in  
106 opposition to this request? Hearing none, that concludes the case.

107  
108 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
109 Kirkland, the Board **granted** application **A-151-2004** for a variance to build a detached  
110 garage at 1800 Le-Suer Road (Riohondo Hills) (Parcels 758-746-1659 and 2466). The  
111 Board granted the variance subject to the following conditions:

112  
113 1. Only the improvements shown on the plan filed with the application may be  
114 constructed pursuant to this approval. No substantial changes or additions to the layout  
115 may be made without the approval of the Board of Zoning Appeals. Any additional  
116 improvements shall comply with the applicable regulations of the County Code.

117  
118 2. The new construction shall match the existing dwelling as nearly as practical.

119  
120 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
121 Negative: 0  
122 Absent: 0

123  
124 The Board granted this request, as it found from the evidence presented that, due to the  
125 unique circumstances of the subject property, strict application of the County Code



172 maintained.

173

174 Mr. Wright - It appears that your house is on a cul-de-sac, and that  
175 causes the house to have to sit back further from the street, and therefore it limits what  
176 you have to use in the back yard. Any further questions of the Board? Is anyone here  
177 in opposition to this request? Hearing none, that concludes the case.

178

179 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.  
180 Harris, the Board **granted** application **A-2-2005** for a variance to build a sunroom on an  
181 existing deck at 5920 Herrick Place (Dominion Hills) (Parcel 742-776-0785). The Board  
182 granted the variance subject to the following conditions:

183

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

187

188 2. The new construction shall match the existing dwelling as nearly as practical in  
189 materials and color.

190

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

192 Negative: 0

193 Absent: 0

194

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

200

201 **A-3-2005** **PAUL PENLAND** requests a variance from Section 24-41(e) to  
202 build a sunroom over the existing deck at 4025 Bush Lake Place  
203 (Lexington Village) (Parcel 751-760-2157), zoned RTHC,  
204 Residential Townhouse District (Conditional) (Three Chopt). The  
205 rear yard setback is not met. The applicant has 1 foot rear yard  
206 setback, where the Code requires 30 feet rear yard setback. The  
207 applicant requests a variance of 29 feet rear yard setback.

208

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

211

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

214

215 Mr. Penland - I do. My name is Paul Penland. It's similar to the preceding  
216 case. It's an existing deck. My wife and I have lived there for twenty years, and it's a  
217 deck that we use less and less, and what we'd simply like to do is convert it into a

218 sunroom. We are the end unit of seven townhouses, and we actually have no direct  
219 neighbor except directly behind us, and we have a row of white pine trees that were  
220 planted intentionally as a privacy barrier, so basically, they pretty much disappear now.  
221 We don't see them, and they don't see us, because they have a privacy fence on their  
222 deck, but we would like to simply add three feet on one side and four feet on another to  
223 create that room. Lexington Village itself, the Board of Directors has approved six  
224 prototype architectural plans that are compatible with the architecture of Lexington  
225 Village for this. As a matter of fact, our direct neighbor did that a couple of years ago.  
226 I've discussed this with the neighbors around me; nobody has any problems at all. In  
227 fact, they would like to see it done, quite frankly, because they would like to do it  
228 themselves, I think.

229  
230 Mr. Wright - There appears to be a common area to the rear of your  
231 property.

232  
233 Mr. Penland - Correct. I'm on the end unit. I'm surrounded with common  
234 area.

235  
236 Mr. Wright - Do you know how wide that is?

237  
238 Mr. Penland - If you go to the side of my house, the side of house, all the  
239 way up to the street is probably 50-70 feet. It's a very large common area. If you go  
240 directly behind me, I think it was measured by the County, between mine and theirs,  
241 and is like 20-some odd feet. Then you can see in the back, it just stretches out for  
242 maybe another 90 feet, out to a row of trees, that's really a common area, that's been  
243 heavily planted with trees and bushes. I'm kind of in a unique position. I just happen to  
244 be at the end; my property line is cut diagonally, so I'm really kind of sandwiched in  
245 there, not much room in the back, but I end up with a lot of privacy.

246  
247 Mr. Blankinship - Mr. Chairman, may I ask a question or two?

248  
249 Mr. Wright - Sure.

250  
251 Mr. Blankinship - Mr. Penland, I apologize for not bringing this up earlier when  
252 we were reviewing the staff reports; someone else on the staff noticed this. You see the  
253 drawing that's on the screen now; it shows the corner of the existing deck as 4.5 feet  
254 from the property line. You apparently intend to build three feet farther out, so you had  
255 written on your application that you needed a variance of 1.5. If that property line were  
256 parallel to that corner, I think that would be accurate, but in addition to going three feet  
257 farther back, you intend to go four feet farther to the right, and at the same time you've  
258 got that property line converging at an angle, so aren't you going to be quite a bit closer  
259 than 1.5 feet? A member of the staff sketched that, and it looked like the corner was  
260 actually going to be off your property, and I'm just wondering, we haven't had an  
261 opportunity to state that.

262  
263 Mr. Penland - .....to the side. We had the folks come out and draw the

264 lines. I've never done this before, so I may have miscalculated. The surveyors came  
265 out, and they put the pegs down, and we put the string down and measured four and a  
266 half feet, just simply from the corner, to the existing deck. It was four and a half feet  
267 exactly, from the corner of the existing deck to that line that was drawn. The Lexington  
268 Village allows us, by the ByLaws, to go four feet out both ways. I didn't want to come  
269 that close, so I said let's do three feet out if I could, and then four feet on the side, if that  
270 were possible.

271  
272 Ms. Dwyer - I guess the question is, if you're expanding four feet to the  
273 side, and then three feet to the rear, you might be at that point, going over the property  
274 line.

275  
276 Mr. Penland - No, the property line does cut diagonally, but I'm a long way  
277 from even intersecting if I go out four feet. I can go out twelve feet, and it still wouldn't  
278 be.

279  
280 Mr. Blankinship - If you're confident of that, then the staff is okay. We just  
281 wanted to make sure that it was on the record that the variance you are receiving is to  
282 be one foot from that property line, and that you won't be able to come any closer than  
283 one foot from the property line if this is approved.

284  
285 Mr. Penland - Correct, but this side, because the common area is so large,  
286 it wouldn't impact on the side.

287  
288 Mr. Blankinship - I just wanted to make sure that was clear on the record.

289  
290 Mr. Wright - We could suggest, if this was approved, that you could have  
291 that as a condition, that it has to be off of that property line that distance, and it would be  
292 up to him to insure that it is.

293  
294 Mr. Penland - The Board of Directors would also be involved in that, at  
295 Lexington. They have an architectural review committee that's going to do it all before  
296 anything gets done.

297  
298 Ms. Dwyer - Mr. Blankinship, it states in the report that it's a thirty-foot  
299 rear yard setback requirement, but it appears from the plat that there's only 12.6 feet  
300 from the edge of the existing dwelling to the property line.

301  
302 Mr. Blankinship - For townhouse developments, and I believe that this only  
303 applies in townhouses, it maybe does for zero lot lines as well, but there's a provision in  
304 the Code that allows, in a case like this, on the end unit of a townhouse, you can move,  
305 if you will, some of the rear yard setback to the side yard. The side yard setback  
306 requirement here is only ten feet, and it allows compensating area in the side yard if you  
307 want to reduce the rear yard. So they had taken advantage of that when they built the  
308 townhouse. In fact, when Mr. Penland first came in, I believe we took quite a bit of time  
309 to discuss whether that compensating area would allow this sunroom without going

310 through the variance process, but no matter how we ran the numbers, it looked like they  
311 had used all the compensating area to build the original construction.

312  
313 Mr. Wright - Any further questions of the Board? Is anyone here in  
314 opposition to this request? Hearing none, that concludes the case.

315  
316 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
317 Kirkland, the Board **granted** application **A-3-2005** for a variance to build a sunroom  
318 over the existing deck at 4025 Bush Lake Place (Lexington Village) (Parcel 751-760-  
319 2157). The Board granted the variance subject to the following conditions:

320  
321 1. [Amended] Only the improvements shown on the plan filed with the application  
322 may be constructed pursuant to this approval. Any additional improvements shall  
323 comply with the applicable regulations of the County Code. The proposed  
324 improvements shall not be closer than 1 foot from the property line.

325  
326 2. The new construction shall match the existing dwelling as nearly as practical in  
327 materials and color.

328  
329 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
330 Negative: 0  
331 Absent: 0

332  
333 The Board granted this request, as it found from the evidence presented that, due to the  
334 unique circumstances of the subject property, strict application of the County Code  
335 would produce undue hardship not generally shared by other properties in the area, and  
336 authorizing this variance will neither cause a substantial detriment to adjacent property  
337 nor materially impair the purpose of the zoning regulations.

338  
339 **A-4-2005** **CHALDEA F. MONTAGUE** requests a variance from Section 24-9  
340 to build a one-family dwelling at 612 Fountain Lane (Parcel 755-  
341 739-0810 (part)), zoned R-3, One-family Residence District  
342 (Tuckahoe). The public street frontage requirement is not met.  
343 The applicant has 0 feet public street frontage, where the Code  
344 requires 50 feet public street frontage. The applicant requests a  
345 variance of 50 feet public street frontage.

346  
347 Mr. Wright - Does anyone else desire to speak with reference to this  
348 case? Would you raise your right hand and be sworn please?

349  
350 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
351 truth, the whole truth, and nothing but the truth, so help you God?

352  
353 Ms. Montague - Yes. My name is Chaldea F. Montague. We would like to  
354 get fifty feet of public street frontage. Right now there is zero feet of public frontage.  
355 We would like to have the lot split so that my sister Brenda Coffey could build a home.



356 This is an area where it's been in our family for many, many years, and we would like to  
357 have her build a house next to the existing house at 608 Fountain Lane. We think it  
358 would be an improvement to the area.  
359  
360 Ms. Coffey - I'm Brenda L. Coffey, and I'm her sister, and I am the one  
361 who would be building the house next to 608 Fountain Lane.  
362  
363 Mr. Wright - How would you access this property?  
364  
365 Ms. Montague - There is a current street, 608 Fountain Lane, off of 8400  
366 Ridge Road.  
367  
368 Mr. Wright - Is that a dedicated easement, or do you have a dedicated  
369 easement?  
370  
371 Ms. Montague - Yes, in fact we submitted a copy of the easement.  
372  
373 Mr. Wright - It's a private road, isn't it?  
374  
375 Ms. Dwyer - What is the width of the easement?  
376  
377 Mr. Blankinship - It shows sixteen feet on the plat that's in the packet.  
378  
379 Ms. Dwyer - It's sixteen feet easement through the Thomas/Fountain  
380 property? My only other concern about so much other property here near your property  
381 that is undeveloped, that we could see in the future a number of other requests to build  
382 houses coming up before this board without it going through the subdivision process,  
383 and if it went through subdivision, then a public street would have to be built there. The  
384 reason we have public streets is because they are wider and fire trucks can get back  
385 there more easily and so can rescue squads, so a lot of it is a safety issue. Just trying  
386 to think ahead in the future – Mr. Blankinship, what is the front yard setback for this  
387 particular lot? R-3. It's an acreage parcel, so I think it would be forty feet.  
388  
389 Ms. Dwyer - Is it different for a subdivision?  
390  
391 Mr. Blankinship - If it were an older subdivision, it would come under the  
392 exception standards, and that's what I was running through my head; that would have  
393 been thirty-five.  
394  
395 Ms. Dwyer - I'm thinking it would be good to allow some extra space  
396 along this lot for a future road if one needed to be built, and we had other houses that  
397 needed to come under that, so it's forty feet?  
398  
399 Mr. Blankinship - Yes ma'am.  
400  
401 Ms. Dwyer - Do you know about how far off the front property line you

402 would like to build your house?  
403  
404 Ms. Montague - No, we haven't gotten that far, because we're trying to figure  
405 out whether it can be split, and then I'm having a survey done, and we just don't know  
406 until we're trying to figure out whether we can split it and then we'll move forward.  
407  
408 Mr. Blankinship - The minimum rear yard setback is also forty feet, and the  
409 depth of the lot looks like it's 141 measured to the center of that right-of-way, so if you  
410 took out a forty-foot rear yard and let's say, a forty-foot depth of the house, and then a  
411 forty-foot front yard setback, that would only allow for twenty feet of right-of-way on that  
412 side, which would be a forty-foot right-of-way altogether.  
413  
414 Ms. Dwyer - When I spoke to someone in Public Works, the typical right-  
415 of-way that they would want to be reserved would be twenty-five feet on each side of  
416 the property line.  
417  
418 Mr. Blankinship - That would leave about thirty-five feet of buildable depth, so  
419 they could still get a house on there.  
420  
421 Mr. Wright - If this is approved, we may have a condition that the house  
422 would have to be built back at least .....  
423  
424 Ms. Montague - Would you repeat; I didn't hear what you said.  
425  
426 Ms. Dwyer - One of the conditions that we might impose if this is  
427 approved, it would be that you would need to allow a 25-foot reserve area for a future  
428 road.  
429  
430 Ms. Harris - Do you know how much acreage you have here?  
431  
432 Ms. Montague - Yes, the acreage is 0.833, and what we were trying to do is  
433 to split it directly in half. I drew a diagram of splitting it in half, and she would end up  
434 with .4165, and the existing house would have .4165 acreage.  
435  
436 Mr. Wright - Any further questions of the Board?  
437  
438 Mr. Kirkland - Do you own 618 too?  
439  
440 Ms. Montague - No.  
441  
442 Mr. Wright - Is anyone here in opposition to this request? Hearing none,  
443 that concludes the case.  
444  
445 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.  
446 Kirkland, the Board **granted** application **A-4-2005** for a variance to build a one-family

447 dwelling at 612 Fountain Lane (Parcel 755-739-0810 (part)). The Board granted the  
448 variance subject to the following conditions:

449  
450 1. This variance applies only to the public street frontage requirement. All other  
451 applicable regulations of the County Code shall remain in force.

452  
453 2. At the time of building permit application the owner shall demonstrate that the  
454 parcel created by this division has been conveyed to members of the immediate family,  
455 and the subdivision ordinance has not been circumvented.

456  
457 3. The applicant shall present proof with the building permit application that a legal  
458 access to the property has been obtained.

459  
460 4. The owners of the property, and their heirs or assigns, shall accept responsibility  
461 for maintaining access to the property until such a time as the access is improved to  
462 County standards and accepted into the County road system for maintenance.

463  
464 5. Connections shall be made to public water and sewer.

465  
466 6. [Added] The applicant shall reserve 25 feet for future widening of Fountain Lane.  
467 The house shall be set back at least 65 feet from the front (western) property line.

468  
469 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
470 Negative: 0  
471 Absent: 0

472  
473 The Board granted this request, as it found from the evidence presented that, due to the  
474 unique circumstances of the subject property, strict application of the County Code  
475 would produce undue hardship not generally shared by other properties in the area, and  
476 authorizing this variance will neither cause a substantial detriment to adjacent property  
477 nor materially impair the purpose of the zoning regulations.

478  
479 **A-5-2005** **TOM AND MARY DOYLE** request a variance from Section 24-  
480 95(q)(5) to build a screened porch on the existing deck at 11433 Ivy  
481 Home Place (Windsor Place West) (Parcel 743-757-5354), zoned  
482 R-3C, One-family Residence District (Conditional) (Three Chopt).  
483 The rear yard setback is not met. The applicants propose 33 feet  
484 rear yard setback, where the Code requires 35 feet rear yard  
485 setback. The applicants request a variance of 2 feet rear yard  
486 setback.

487  
488 Mr. Wright - Does anyone else desire to speak with reference to this  
489 case? Would you raise your right hand and be sworn please?

490  
491 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
492 truth, the whole truth, and nothing but the truth, so help you God?

493  
494 Mr. Parr - I do. My name is Darren S. Parr, with R. C. Matze  
495 Construction, representing Tom and Mary Doyle on this case. The Doyles propose to  
496 build a screened porch on their existing deck, to get more out of their property, and it  
497 encroaches on the setback in the rear yard by two feet. We propose that a request of  
498 two feet on the rear.

499  
500 Mr. Nunnally - Is this going to be the same size as the deck?

501  
502 Mr. Parr - Yes sir.

503  
504 Mr. Wright - What's located to the rear of your property?

505  
506 Mr. Parr - It slopes down to a creek in the back, and it's heavily  
507 wooded with the citrus trees. We feel that it wouldn't cause any undue hardship to any  
508 of the neighbors or be a burden.

509  
510 Mr. Wright - From the plat, it doesn't appear that there are any houses  
511 back behind you.

512  
513 Mr. Parr - It's a very far distance. I believe that you would have to  
514 cross Church Road to get to the next subdivision.

515  
516 Mr. Wright - Any further questions of the Board? Is anyone here in  
517 opposition to this request? Hearing none, that concludes the case.

518  
519 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.  
520 Harris, the Board **granted** application **A-5-2005** for a variance to build a screened porch  
521 on the existing deck at 11433 Ivy Home Place (Windsor Place West) (Parcel 743-757-  
522 5354). The Board granted the variance subject to the following conditions:

523  
524 1. Only the improvements shown on the plan filed with the application may be  
525 constructed pursuant to this approval. Any additional improvements shall comply with  
526 the applicable regulations of the County Code.

527  
528 2. The new construction shall match the existing dwelling as nearly as practical  
529 in materials and color.

530  
531 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

532 Negative: 0

533 Absent: 0

534  
535 The Board granted this request, as it found from the evidence presented that, due to the  
536 unique circumstances of the subject property, strict application of the County Code  
537 would produce undue hardship not generally shared by other properties in the area, and

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

540  
541 **UP-1-2005**                    **GASKINS CENTRE, L. C.** requests a temporary conditional use  
542 permit pursuant to Section 24-116(c)(1) to install a temporary  
543 construction trailer at 711 Old Gaskins Road (Gaskins Centre)  
544 (Parcel 745-741-0907), zoned R-6C, General Residence District  
545 (Conditional) (Tuckahoe).

546  
547 Mr. Wright -                    Does anyone else desire to speak with reference to this  
548 case? Please stand and everyone be sworn at the same time.

549  
550 Mr. Blankinship -            Do you swear that the testimony you are about to give is the  
551 truth, the whole truth, and nothing but the truth, so help you God?

552  
553 Mr. Lewis -                    I do. My name is Monte Lewis; I'm with Lewis and  
554 Associates, representing the applicant. This is for a construction trailer for the Grayson  
555 Hill Townhouse community across the road. The conditions, we're fine with all of them.  
556 Number 2, we spoke with staff about reducing that down to requiring four spaces, based  
557 on the County requirement for office space, we only need 3.1 spaces, but for our  
558 operation, we need four spaces for the superintendents. They'll be working out of this  
559 trailer, but a lot of the time, they'll be at the site, so we anticipate that these spaces will  
560 be vacant, probably only have a couple of cars in them at all times.

561  
562 Ms. Dwyer -                    Did you say staff was fine with the form?

563  
564 Mr. Blankinship -            Yes we took the standard condition for a sales trailer, which  
565 is eight spaces, but the construction trailer really will have a different parking demand,  
566 and looking at the plan Mr. Lewis showed me that they could provide eight spaces, but  
567 they would have to back directly onto the road. If they cut it down to four, they could  
568 make it much safer to back out and turn around and front out onto the road, so we went  
569 along with it.

570  
571 Mr. Lewis -                    We have it wedged into a funny little area there that's Old  
572 Gaskins Road, that was probably vacated six or eight years ago. Right now there's a  
573 gas company that has material and a front-end loader parked in there. They did that  
574 without our permission; they said that somebody at the County said it was okay for them  
575 to stockpile material in trailers there. I have some photos that I brought in that kind of  
576 shows you the site from yesterday. The telephone pole in the middle is the telephone  
577 pole that you see on your plans. Our trailer will be centered up with that pole and will be  
578 located very close to where you see that stockpile of stone that they have to the right. I  
579 brought in about eight. Just wanted to show you what it looks like now. Across from us  
580 are the apartments we're lining up very close to their existing entrance. Down from this  
581 is the construction and maintenance area for the apartments, so we're not completely in  
582 an area that doesn't have such a use as we're proposing. This is only good for two  
583 years, at which time we'll move the trailer on site. The reason we don't want to put it on

584 site now is because we're proposing this in three sections. That's one of mine; I'm  
585 standing up on the trailer taking the picture. You can see they have a white trailer there  
586 now. That's probably closer to you than our trailer is going to be. Our trailer is going to  
587 be pushed further down into the old roadbed. You can see the fellow standing there on  
588 the right of it, in the blue shirt – that's where the end of our trailer is.  
589

590 Mr. Kirkland - Mr. Lewis, are you going to have any exterior storage around  
591 this trailer? It's going to be strictly where the people go in and report and go out on the  
592 field?  
593

594 Mr. Lewis - Correct. We talked with staff yesterday about the  
595 landscaping. All of it's gravel right now. What we plan to do is maybe take some of  
596 these half-cut whiskey barrels, about five of them, and put four-foot Leyland Cypress in  
597 a line on the side of the trailer, so that when you're coming down the road, it blocks that  
598 view, and helps soften the impact. There's a power line in front of us, so we really can't  
599 plan anything, and there's some scrub bushes that you see on the other side of the  
600 power line that gives us some protection, especially in the spring when they leaf up, but  
601 we really can't plant anything under that power line because of Virginia Power's  
602 requirements.  
603

604 Ms. Dwyer - So all these materials that we see in this photo will be  
605 removed?  
606

607 Mr. Lewis - Yes ma'am. We've asked the gas company to remove those  
608 by the end of this week, they said they would have those removed.  
609

610 Ms. Dwyer - So these aren't your items anyway?  
611

612 Mr. Lewis - No ma'am. In fact they put them there and never asked us.  
613

614 Ms. Dwyer - Sounds like you'll improve the space.  
615

616 Mr. Lewis - It will look a little bit better than it does now.  
617

618 Ms. Dwyer - What's the status of this particular parcel?  
619

620 Mr. Lewis - Right now we're studying it because we had a POD  
621 approved on it for the Twin Tower High-rise, which I think you probably approved when  
622 you were on Commission. That POD has expired; we're still in just a study mode right  
623 now. We don't know when we'll have something that we'll be able to show Planning  
624 Commission and staff, but our access into the site will remain about the same as we  
625 had for the Twin Towers. We'll have one access that is very close to where we are  
626 now, and we'll have one that is right off of North Gaskins.  
627

628 Ms. Harris - Are any of the parking spaces handicap accessible?  
629

630 Mr. Lewis - No ma'am. The construction trailer as handicap accessible  
631 is not required.  
632  
633 Ms. Harris - So you don't provide it?  
634  
635 Mr. Lewis - No ma'am.  
636  
637 Ms. Dwyer - You're not having a right in, right out, off of North Gaskins,  
638 for the construction?  
639  
640 Mr. Lewis - No ma'am. We thought that would look a little too intrusive  
641 to have it on that side; that's why we're trying to tuck it in on the backsides.  
642  
643 Ms. Dwyer - Could you point out where the maintenance building is for  
644 the apartment complex?  
645  
646 Mr. Lewis - If you see the number 710, it's right in there. They have a  
647 fairly large complex with a wooden fence around it. There's a brick building in the  
648 middle, and then they have several trailers off to the side.  
649  
650 Ms. Dwyer - You're really not across the street from that?  
651  
652 Mr. Lewis - No, we're across the street, if you see that little indentation  
653 where it looks like it's a gravel area that's across from 908 and 916, right in the middle  
654 of your photo, where that access comes out, is very close to where our trailer is going to  
655 be across the street from that.  
656  
657 Ms. Dwyer - You said it would be a gravel entryway and a gravel parking  
658 area?  
659  
660 Mr. Lewis - Yes ma'am. Right now it's all gravel. We're going to spread  
661 that out and smooth it out. We intend to use that same gravel for our parking, and then  
662 when we leave that area, this area will be with the POD, restored and planted and  
663 landscaped.  
664  
665 Mr. Kirkland - Mr. Lewis, will you have any lights on the outside of this  
666 trailer for security reasons?  
667  
668 Mr. Lewis - I think we have a security light.  
669  
670 Mr. Allen - I'm Roy Allen; I'm with Guminick Properties. We would like  
671 to put one floodlight on the left end of the trailer, facing north, for security reasons. We  
672 will also have security bars on the windows, and we will have a security system as well.  
673  
674 Mr. Wright - Any further questions of the Board? Is anyone here in  
675 opposition to this request? Hearing none, that concludes the case.

676  
677 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.  
678 Kirkland, the Board **granted** application **UP-1-2005** for a temporary conditional use  
679 permit to install a temporary construction trailer at 711 Old Gaskins Road (Gaskins  
680 Centre) (Parcel 745-741-0907). The Board granted the use permit subject to the  
681 following conditions:

682  
683 1. Only the improvements shown on the plan filed with the application may be  
684 constructed pursuant to this approval. No substantial changes or additions to the layout  
685 may be made without the approval of the Board of Zoning Appeals. Any additional  
686 improvements shall comply with the applicable regulations of the County Code.

687  
688 2. [Amended] The trailer shall be served by four parking spaces.

689  
690 3. A detailed landscaping and lighting plan shall be submitted to the Planning  
691 Department with the building permit for review and approval. Approved landscaping  
692 shall be installed during the spring planting season. All landscaping shall be maintained  
693 in a healthy condition at all times. Dead plant materials shall be removed within a  
694 reasonable time and replaced during the normal planting season.

695  
696 4. The trailer shall be skirted on all sides with a durable material as required by the  
697 building code for a permanent installation.

698  
699 5. The trailer shall be removed from the property on or before February 1, 2007, at  
700 which time this permit shall expire. This permit shall not be renewed.

701  
702 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
703 Negative: 0  
704 Absent: 0

705  
706 The Board granted the request because it found the proposed use will be in substantial  
707 accordance with the general purpose and objectives of Chapter 24 of the County Code.

708  
709 **A-6-2005** **DAVID AND CATHERINE BOTH** request a variance from Section  
710 24-94 to build an addition at 413 Westham Parkway (Westham)  
711 (Parcel 758-737-5724), zoned R-1, One-family Residence District  
712 (Tuckahoe). The rear yard setback is not met. The applicants  
713 propose 25 feet rear yard setback, where the Code requires 50 feet  
714 rear yard setback. The applicants request a variance of 25 feet  
715 rear yard

716  
717 Mr. Wright - Does anyone else desire to speak with reference to this  
718 case? Would you raise your right hand and be sworn please?

719  
720 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
721 truth, the whole truth, and nothing but the truth, so help you God?



722  
723 Mr. Shearman - I do. My name is Michael Shearman, with Shearman Myers  
724 Architects. You've seen this piece of property once before. It was presented last  
725 September, and at that time, a larger rear yard setback variance was requested, that  
726 really came very close to the existing property line and to the existing neighbor. The  
727 application was denied. It was suggested at that time that an addition that was a little  
728 more sensitive to the unique shape of the property and to the adjacent neighbor might  
729 be a little more preferable, and at that time, Mr. Both was working with a different  
730 architect. I've been working with Mr. and Mrs. Both for a couple of months, trying to  
731 develop a design that will fit the site a little better than the one that was previously  
732 submitted. As you can see, the site's rather unique. It's quite small for the area, but it's  
733 also trapezoidal in shape, has a very short side yard on one side and is quite deep on  
734 the other. The existing house actually violates the required rear yard setback by a  
735 considerable amount. Our approach to the design was to take an imaginary line parallel  
736 to the rear of the site from the corner of the existing house. The existing house is  
737 approximately 24 feet from the rear yard property line, and what we were attempting to  
738 do is to stay inside of that, so therefore not come any closer than the existing house is  
739 to the property, no closer to the adjacent property. We designed the addition on the  
740 deeper side of the site. It's a two-story addition, one story over where it's closest to the  
741 adjacent property, and we're requesting a setback variance of twenty-five feet, which  
742 would still leave a twenty-five-foot setback from the property line. The addition has  
743 been designed in the manner of the existing house, to fit the neighborhood and the  
744 architecture of the existing house, so that it will blend in.

745  
746 Mr. Wright - Is there any screening behind this house?

747  
748 Mr. Shearman - Yes, there is a fairly thick stand of trees between this house  
749 and the closest piece of property, towards the rear and to the left of this piece of  
750 property. There's quite a thick stand of trees between it and this house.

751  
752 Ms. Dwyer - The new addition is closer to 411 than 415.

753  
754 Mr. Shearman - That's correct, and it kind of steps back along that line, to  
755 follow the rear property line.

756  
757 Mr. Wright - Any further questions of the Board? Is anyone here in  
758 opposition to this request? Hearing none, that concludes the case.

759  
760 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.  
761 Harris, the Board **granted** application **A-6-2005** for a variance to build an addition at  
762 413 Westham Parkway (Westham) (Parcel 758-737-5724). The Board granted the  
763 variance subject to the following conditions:

764  
765 1. Only the improvements shown on the plan filed with the application may be  
766 constructed pursuant to this approval. Any additional improvements shall comply with  
767 the applicable regulations of the County Code.

768  
769 2. The new construction shall match the existing dwelling as nearly as practical in  
770 materials and color.

771  
772 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
773 Negative: 0  
774 Absent: 0  
775

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

781  
782 **UP-2-2005 VULCAN CONSTRUCTION MATERIALS** requests a conditional  
783 use permit pursuant to Sections 24-52(d) and 24-103 to extract  
784 materials from the earth at 4230 New Market Road (Parcels 833-  
785 678-0193, 833-680-7719 and 836-667-5251), zoned A-1,  
786 Agricultural District (Varina).

787  
788 Mr. Wright - Does anyone else desire to speak with reference to this  
789 case? Would you raise your right hand and be sworn please?  
790

791 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
792 truth, the whole truth, and nothing but the truth, so help you God?  
793

794 Mr. Lewis - I do. My name is Monte Lewis; I'm with Lewis & Associates,  
795 representing the applicant. This is for two additional sites. One is on the north side of  
796 New Market Road, in the area that's referred to historically as the Slash; the other is on  
797 the side that we're mining presently. We've met with staff to go over their comments in  
798 regards to the RPA tree save area and the haul road. The proposed conditions we  
799 have no problems with, with the exception of the following, and I think they were added  
800 on because staff thought we might have vehicles coming on to Rt. 5, which we do not.  
801 All of our vehicles will go across a bridge over to the Slash, and then come back across  
802 to the south side of Curles Neck Farm. We will have no vehicles that enter Rt. 5.  
803 Therefore, the condition # 11, which talks about requiring a gate on the access point, is  
804 not really needed. Condition # 14, where we have a sign saying "Trucks Entering  
805 Highway," again we don't have trucks entering the highway. Condition # 15 the stop  
806 sign at Rt. 5, which has to do with the access in and out of Rt. 5, which we do not have.  
807 Condition # 18, where it says "no groups of trucks, no more than 3, can access out to  
808 the road."  
809

810 Ms. Dwyer - Mr. Lewis, you never have trucks leaving the property? It's  
811 all taken to the river, all the way?  
812

813 Mr. Lewis - No ma'am. Yes ma'am.

814  
815 Mr. Wright - That's what you've been doing over the years?  
816  
817 Mr. Lewis - Yes sir, exactly. We're going to be having the exact same  
818 operation. The only difference is, we will have an overhead bridge to go over New  
819 Market Road to get to our site. We've been in contact with VDOT about the specifics of  
820 this bridge. In fact, this same bridge is now in use in an adjacent county for Shirley  
821 Plantation.  
822  
823 Mr. Wright - Is this the first time that you've had any operation north of  
824 New Market Road?  
825  
826 Mr. Lewis - Yes sir. Presently that area is used for hunting; there is a  
827 hunting lodge over there, not in our area, but they have access to Rt. 5. There are other  
828 roads that come off of Rt. 5 into the larger area that's called the Slash. Those are  
829 chained and gated by the owner, but none of those roads have access to our haul road.  
830 All of our traffic will go from the south side across our aerial bridge, to the Slash and  
831 then back again.  
832  
833 Mr. Nunnally - That private bridge is – what's the load limit on it? Capacity?  
834  
835 Mr. Lewis - I'd have to ask somebody from Vulcan to address that. As I  
836 said, it is the same bridge that VDOT has approved for use at Shirley now, and it is  
837 designed so that it has sides, plus a screen up above that, so in case anything does fall  
838 off the trucks, it is maintained on the bridge. You can see that, like a chain link fence  
839 screen across it, that's for safety purposes. As far as the weight limit .....

840  
841 Mr. Nunnally - I just wondered how many trucks you're going to have going  
842 over it each day, but it needs a mighty strong bridge.  
843  
844 Mr. Wells - Yes sir. My name is Robert Wells; I'm a Process Engineer  
845 for Vulcan Materials. I've been involved with the design of the bridge. We hired Hayes  
846 Seay Mattern and Mattern, out of Roanoke, which is a consulting firm that builds a lot of  
847 bridges for VDOT, and they designed this bridge for us, and it's designed to carry off-  
848 road haul trucks, and the gross weight is 116 tons. It's what it's designed for, with the  
849 normal engineering safety factors. It'll be built per VDOT specifications.  
850  
851 Mr. Nunnally - Do you have any idea how many trucks will be going over  
852 that each day?  
853  
854 Mr. Wells - Probably between eight and ten an hour, in an eight-hour  
855 day, say eighty a day. It's one way.  
856  
857 Mr. Kirkland - This is a one-lane bridge. The speed limit's going to be  
858 posted at five miles an hour.  
859

860 Mr. Blankinship - Why did you select a bridge, rather than the other ways you  
861 might have gotten just the material across?  
862

863 Mr. Wells - We feel it's, first of all, safer, than a grade intersection, kind  
864 of like the interstate concept. Due to traffic on New Market Road, we would have to  
865 yield right-of-way to the traffic, and it would be true at the time that due to traffic studies,  
866 we couldn't even get across the road in a timely manner.  
867

868 Mr. Lewis - We also looked at alternatives of putting a pit and conveyor  
869 system to go under New Market and then extract on the other side, dump it out and haul  
870 out, but the bridge seemed to be the most feasible way, and I don't think VDOT wanted  
871 the pits on either side anyway, going under their road. They'd rather go over the top.  
872

873 Mr. Nunnally - Mr. O'Kelly, where you're bounding this property, isn't there  
874 a new subdivision or something proposed across the road there?  
875

876 Mr. O'Kelly - Yes sir, and I was going to ask Mr. Lewis how long this  
877 operation may be taking place across Rt. 5. We do have a 330-lot subdivision that's  
878 been approved by the Planning Commission at Long Bridge Road and Rt. 5, called  
879 Camp Hill.  
880

881 Mr. Brazell - Tom Brazell, I'm Senior Geologist with Vulcan Materials. We  
882 have a very limited amount of drill data, so it's kind of difficult at this time to say exactly  
883 how long we'll be north of Rt. 5. Our information does tell us that there appear to be no  
884 reserves further to the north, so any additional development should be away from the  
885 proposed subdivision. There will be a tree buffer remaining on the west side of the  
886 creek that you see meandering across the property, and the distance between our  
887 operations and any proposed new development should be in excess of 1,000 feet.  
888

889 Mr. O'Kelly - One of the issues with the subdivision review and approval  
890 had to do with the impacts on the Camp Holly and Diamond Springs Aquifer. I know we  
891 have a condition proposed, # 22, pertaining to ground water.  
892

893 Mr. Brazell - Yes sir, we plan to put into place a ground water monitoring  
894 system. We've been in contact with a professional hydrologist in northern Virginia,  
895 named Jim Buss, I believe, and we're going to put monitoring wells to make sure we  
896 have no offsite impact from our activities. The water table where we're going to be  
897 mining is at a level such that we do not have to pump to operate the pit. Obviously,  
898 when you take material out, the water comes in to fill the void. At the end of the day,  
899 we're not going to be extracting a tremendous amount of water from the aquifer. We're  
900 going to have a hydrological barrier between us and the subdivision, and that is the  
901 meandering stream that runs across the property, Bailey Creek.  
902

903 Ms. Dwyer - So you're mining above the water table, is that what you  
904 said?  
905

906 Mr. Brazell - The sand and gravel is not completely below the water table.  
907 We can operate on top of the sand and gravel with our equipment, without pumping the  
908 water table down. We don't have to de-water the mining area.  
909  
910 Ms. Dwyer - But you'll be affecting the water table; you'll be mining down  
911 below the water table?  
912  
913 Mr. Brazell - We'll be affecting it to the point that if you remove a grain of  
914 sand, water comes in to replace where that grain of sand was. At the rate we don't  
915 anticipate any offsite impact, and that's why we're going to put the monitoring wells in  
916 place, to make sure that we have no offsite impact.  
917  
918 Ms. Dwyer - Tell me how the monitoring works.  
919  
920 Mr. Brazell - We will put wells both close to the operation and further  
921 away, so we can model the cone of influence, cone of depression. Obviously, if you put  
922 a well in place, you draw the water down, and the water around it goes into the well.  
923 What we're going to do is model that 3-D area, to make sure that we have no impact  
924 offsite. We'll have a well location adjacent to the pit, which is monitored on a regular  
925 basis, monthly. We'll capture precipitation numbers. Obviously, if the water table drops  
926 and it's drought, it's not necessarily related to the mining. Likewise, if the water table  
927 rises, when you have excess rainfall, it's not necessarily due to the mining either. We'll  
928 also have monitoring wells further offsite, on the west side of our hydrological barrier, to  
929 gauge any potential impact there.  
930  
931 Ms. Dwyer - So you have a monitoring well near the mining site and then  
932 to the west of Four Mile Creek?  
933  
934 Mr. Brazell - Yes ma'am, that was a site that was proposed by our  
935 hydrologist. He is going to help us design that system. We don't have a firm location  
936 for drill holes, our monitoring wells, just an approach.  
937  
938 Mr. Carroll - If I may add, my name is Tom Carroll; I'm Manager of  
939 Business Development for Vulcan. This site's been mined since the '50's, and they've  
940 not had any impacts out here associated with that previous mining activity. It's been  
941 ongoing. Furthermore, we've actually had mining operations that have been located up  
942 in this particular location previously, and have never had impacts there. It's frankly just  
943 an additional safeguard that we've proffered up, since we are going to be on the north  
944 side of Rt. 5, just trying to be a good steward, as something that would give anybody an  
945 additional comfort level that the past forty-fifty years worth of experience out there has  
946 not shown that we've had offside impacts, and we're just doing that to raise the comfort  
947 value.  
948  
949 Ms. Dwyer - Will we hear from a County representative on this?  
950  
951 Mr. Blankinship - We hadn't planned any presentation on that. If you have

952 specific questions, we can defer and do some research.

953

954 Mr. O'Kelly - I'd just like to comment about Rt. 5. Some say it's the  
955 second oldest road in the United States. It's also probably, as far as the County is  
956 concerned, the most studied road in Henrico County. I know of at least five studies that  
957 have been done on the Rt. 5 corridor. The County did its own study to come up with  
958 ways to protect the corridor, and this proposed operation will have some impact on the  
959 character of Rt. 5, and I think the applicant has made some suggestions to minimize the  
960 impact with the bridge, with some additional plantings and screenings, and we would  
961 hope that you could take that to heart and do minimize the impact on scenic and historic  
962 aspects of historic Rt. 5.

963

964 Mr. Carroll - Without a question. As a matter of fact, we've won a number  
965 of reclamation awards for our activities out there and have received quite a bit of  
966 support on the state and national level for those activities, and we don't want to break  
967 with that tradition. I just informed my cohorts last week we received a very good honor  
968 in the state of North Carolina for our operations down there. We won the North Carolina  
969 Business Conservationist of the Year from the North Carolina Wildlife Federation. They  
970 were all companies from the state of North Carolina, so we try to continue that tradition  
971 throughout.

972

973 Mr. Nunnally - Mr. O'Kelly, did you say when you thought the subdivision  
974 might begin, or do you know. Is it in the planning now?

975

976 Mr. O'Kelly - They have tentative approval, and they received that  
977 approval in January of last year. They're still doing a lot of studies on the property; they  
978 haven't submitted anything for final approval at this point, and there has been some talk  
979 about the possibility of perhaps filing a rezoning for a planned community on the  
980 property, so things are somewhat in limbo right now.

981

982 Mr. Nunnally - How long do you people think you'll be there mining in this  
983 particular area?

984

985 Mr. Brazell - It could be a couple of years, three years, in that kind of time  
986 frame.

987

988 Mr. Nunnally - Not more than 3 years?

989

990 Mr. Brazell - At this particular location, yes sir. We're hoping to add more,  
991 obviously. The question is, how much is there, and where is it, and I would say at this  
992 point in time, to the best of my knowledge, any additional deposits would be to the south  
993 and east of this location. Nothing across the creek.

994

995 Ms. Harris - Can you point out on the map exactly where the new bridge  
996 would be on New Market Road?

997

998 Mr. Blankinship - Where the haul road is, it shows it right there.  
999  
1000 Ms. Harris - I'm trying to get my bearings. Where is Strath Road and  
1001 Wilson Road, which way would they be?  
1002  
1003 Mr. Blankinship - She's asking where it is, relative to Willson Road and Strath  
1004 Road.  
1005  
1006 Mr. Brazell - There's Willis Church Road, way off to the right.  
1007  
1008 Mr. Lewis - Strath Road, I believe, is on the other side of I-295.  
1009  
1010 Ms. Harris - You're asking for certain conditions that dealt with trucks to  
1011 be eliminated from what we have here, but then I'm still hearing trucks, so could you  
1012 clarify that?  
1013  
1014 Mr. Lewis - Yes, trucks will not enter Rt. 5. The bridge is so that trucks  
1015 do not have to enter Rt. 5, will go over top of Rt. 5, but all truck traffic goes over the  
1016 bridge to the site, then back over the bridge to the barges on the James, where they will  
1017 unload, process, and down the river. If I may add, I think it's important to understand  
1018 the distinction between on-the-road-trucks that you see traveling up and down the  
1019 highways, and the trucks that we're talking about – these are entirely off-road trucks.  
1020 They are not licensed to be on public roadways. They are basically construction-type  
1021 trucks.  
1022  
1023 Mr. Nunnally - In other words, you are not using Henrico County roads.  
1024  
1025 Mr. Lewis - That's correct.  
1026  
1027 Ms. Harris - At what point do the trucks get on the road though?  
1028  
1029 Mr. Lewis - They don't at all. They go right to the barge. They stay on  
1030 the property.  
1031  
1032 Ms. Harris - They originate from where?  
1033  
1034 Mr. Lewis - They're on the property now, and they stay on the property.  
1035 These are not trucks that are driven off at night. They are parked there; they are  
1036 stationed there; they are maintained there; and they are utilized there.  
1037  
1038 Ms. Harris - What I need to see is that what has happened to Darbytown  
1039 Road won't happen to New Market Road, Charles City Road. What I'd like to see is,  
1040 what happened to that area with the trucks, will not happen, will not happen to New  
1041 Market.  
1042  
1043 Mr. Carroll - This operation will add no new vehicles to that area. The

1044 only thing that comes in and out of there now is our employees, and the farm traffic,  
1045 since it is a working farm.

1046  
1047 Ms. Dwyer - What kind of noise might be generated by this operation; I'm  
1048 thinking about the potential subdivision?

1049  
1050 Mr. Carroll - Actually, we had that studied, and the prevalent noise in the  
1051 area is the traffic on Rt. 5, the airport traffic, and our operation will actually add nothing  
1052 new to the area. In fact, we have mined closer to that area that we showed you  
1053 previously. I think basically, the sound report that we had, essentially that was  
1054 negligible. The noise that would be generated in this area, the prevalent noise is from  
1055 traffic that is on the highway and the airport, and the only sounds that could be picked  
1056 up from our operation would be those that would be associated with back-up alarms or  
1057 something like that, that would be on the equipment. Keep in mind that our operation is  
1058 working down in an excavation, so you've got a natural noise barrier associated with  
1059 working down, and then you also have the noise barrier associated with all the  
1060 vegetation and the greenway that is in between our operation and that particular facility.

1061  
1062 Ms. Dwyer - It's just gravel and sand?

1063  
1064 Mr. Carroll - That's all.

1065  
1066 Ms. Dwyer - There's never an occasion to do any blasting?

1067  
1068 Mr. Carroll - No ma'am. It's all on consolidated material, just backhoes  
1069 and things along those sort.

1070  
1071 Mr. Kirkland - Mr. Blankinship, we haven't had any complaints on this  
1072 operation in the past, have we?

1073  
1074 Mr. Blankinship - Not on the mining operation. Part of the reason Mr.  
1075 Hackett's here this morning is we did have some discussions with the owners in the last  
1076 month or two, where they've been doing some logging on this same property, and they  
1077 appear to not had all the appropriate approvals for erosion and sedimentation control for  
1078 the logging operations. Public Works asked them to submit some plans for how they  
1079 were going to correct that, and they were very prompt in getting that done before this  
1080 meeting so that those issues could be laid to rest before this came up.

1081  
1082 Mr. Carroll - Actually, we have a very good working relationship with  
1083 Varina Elementary School; we're an official corporate Adopt-A-School partner with  
1084 them.

1085  
1086 Mr. Lewis - I want to point out that the logging operation was not Vulcan;  
1087 it was the owner, who had a private contract with the logger.

1088



1089 Mr. Wright - Any further questions of the Board? Is anyone here in  
1090 opposition to this request? Hearing none, that concludes the case.

1091  
1092 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
1093 Kirkland, the Board **granted** application **UP-2-2005** for a conditional use permit to  
1094 extract materials from the earth at 4230 New Market Road (Parcels 833-678-0193, 833-  
1095 680-7719 and 836-667-5251). The Board granted the variance subject to the following  
1096 conditions:

1097  
1098 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of  
1099 the County Code.

1100  
1101 2. Before beginning any work, the applicant shall provide a financial guaranty in an  
1102 amount of \$2,000 per acre for each acre of land to be disturbed, for a total of \$284,220,  
1103 guaranteeing that the land will be restored to a reasonably level and drainable condition.  
1104 This permit does not become valid until the financial guaranty has been approved by the  
1105 County Attorney. The financial guaranty may provide for termination after 90 days  
1106 notice in writing to the County. In the event of termination, this permit shall be void, and  
1107 work incident thereto shall cease. Within the next 90 days the applicant shall restore  
1108 the land as provided for under the conditions of this use permit. Termination of such  
1109 financial guaranty shall not relieve the applicant from its obligation to indemnify the  
1110 County of Henrico for any breach of the conditions of this use permit. If this condition is  
1111 not satisfied within 90 days of approval, the use permit shall be void.

1112  
1113 3. Before beginning any work, the applicant shall submit erosion control plans to the  
1114 Department of Public Works for review and approval. Throughout the life of the  
1115 operation, the applicant shall continuously satisfy the Department of Public Works that  
1116 erosion control procedures are properly maintained, and shall furnish plans and bonds  
1117 that the department deems necessary. The applicant shall provide certification from a  
1118 licensed professional engineer that dams, embankments and sediment control  
1119 structures meet the approved design criteria as set forth by the State. If this condition is  
1120 not satisfied within 90 days of approval, the use permit shall be void.

1121  
1122 4. Before beginning any work, the applicant shall obtain a mine license from the  
1123 Virginia Department of Mines, Minerals and Energy. If this condition is not satisfied  
1124 within 90 days of approval, the use permit shall be void.

1125  
1126 5. Before beginning any work, the areas approved for mining under this permit shall  
1127 be delineated on the ground by five-foot-high metal posts at least five inches in diameter  
1128 and painted in alternate one foot stripes of red and white. These posts shall be so  
1129 located as to clearly define the area in which the mining is permitted. They shall be  
1130 located, and their location certified, by a certified land surveyor. If this condition is not  
1131 satisfied within 90 days of approval, the use permit shall be void.

1132

- 1133 6. In the event that the Board's approval of this use permit is appealed, all  
1134 conditions requiring action within 90 days will be deemed satisfied if the required actions  
1135 are taken within 90 days of final action on the appeal.  
1136
- 1137 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
1138 state and local regulations administered under such act applicable to the property, and  
1139 shall furnish to the Planning Department copies of all reports required by such act or  
1140 regulations.  
1141
- 1142 8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight Savings  
1143 Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.  
1144
- 1145 9. No operations of any kind are to be conducted at the site on Sundays or national  
1146 holidays.  
1147
- 1148 10. Access to the property shall be from the established entrance onto New Market  
1149 Road. Traffic into and out of the property north of New Market Road shall cross New  
1150 Market Road on a private bridge to be built and maintained by the operator. Excavated  
1151 material shall be removed from the property through the operator's established loading  
1152 area on the James River.  
1153
- 1154 11. [Deleted]  
1155
- 1156 12. The applicant shall post and maintain a sign at the entrance to the mining site  
1157 stating the name of the operator, the use permit number, the mine license number, and  
1158 the telephone number of the operator. The sign shall be 12 square feet in area and the  
1159 letters shall be three inches high.  
1160
- 1161 13. The applicant shall post and maintain "No Trespassing" signs every 250 feet  
1162 along the perimeter of the property. The letters shall be three inches high. The  
1163 applicant shall furnish the Chief of Police a letter authorizing the Division of Police to  
1164 enforce the "No Trespassing" regulations, and agreeing to send a representative to  
1165 testify in court as required or requested by the Division of Police.  
1166
- 1167 14. [Deleted]  
1168
- 1169 15. [Deleted]  
1170
- 1171 16. The applicant shall provide a flagman to control traffic from the site onto the  
1172 public road, with the flagman yielding the right of way to the public road traffic at all  
1173 times. This flagman will be required whenever the Division of Police deems necessary.  
1174
- 1175 17. All roads used in connection with this use permit shall be effectively treated with  
1176 calcium chloride or other wetting agents to eliminate any dust nuisance.  
1177
- 1178 18. [Deleted]

- 1179  
1180 19. Trucks shall be loaded in a way to prevent overloading or spilling of materials of  
1181 any kind on any public road.  
1182
- 1183 20. The applicant shall maintain the property, fences, and roads in a safe and secure  
1184 condition indefinitely, or convert the property to some other safe use.  
1185
- 1186 21. If, in the course of its preliminary investigation or operations, the applicant  
1187 discovers evidence of cultural or historical resources, or an endangered species, or a  
1188 significant habitat, it shall notify appropriate authorities and provide them with an  
1189 opportunity to investigate the site. The applicant shall report the results of any such  
1190 investigation to the Planning Department.  
1191
- 1192 22. If water wells located on surrounding properties are adversely affected, and the  
1193 extraction operations on this site are suspected as the cause, the effected property  
1194 owners may present to the Board evidence that the extraction operation is a contributing  
1195 factor. After a hearing by the Board, this use permit may be revoked or suspended, and  
1196 the operator may be required to correct the problem.  
1197
- 1198 23. Open and vertical excavations having a depth of 10 feet or more, for a period of  
1199 more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect the  
1200 public safety.  
1201
- 1202 24. Topsoil shall not be removed from any part of the property outside of the area in  
1203 which mining is authorized. Sufficient topsoil shall be stockpiled on the property for  
1204 respreading in a layer with five inches of minimum depth. All topsoil shall be stockpiled  
1205 within the authorized mining area and provided with adequate erosion control  
1206 protection. If the site does not yield sufficient topsoil, additional topsoil shall be brought  
1207 to the site to provide the required five-inch layer of cover. All topsoil shall be treated  
1208 with a mixture of seed, fertilizer, and lime as recommended by the County after soil  
1209 tests have been provided to the County.  
1210
- 1211 25. No offsite-generated materials shall be deposited on the mining site without prior  
1212 written approval of the Director of Planning. To obtain such approval, the operator shall  
1213 submit a request stating the origin, nature and quantity of material to be deposited, and  
1214 certifying that no contaminated or hazardous material will be included. The material to  
1215 be deposited on the site shall be limited to imperishable materials such as stone, bricks,  
1216 tile, sand, gravel, soil, asphalt, concrete and like materials, and shall not include any  
1217 hazardous materials as defined by the Virginia Hazardous Waste Management  
1218 Regulations.  
1219
- 1220 26. A superintendent, who shall be personally familiar with all the terms and  
1221 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the terms  
1222 and conditions of this use permit, shall be present at the beginning and conclusion of  
1223 operations each work day to see that all the conditions of the Code and this use permit  
1224 are observed.

1225  
1226 27. A progress report shall be submitted to the Board on or about January 27, 2006.  
1227 This progress report must contain information concerning how much property has been  
1228 mined to date of the report, the amount of land left to be mined, how much rehabilitation  
1229 has been performed, when and how the remaining amount of land will be rehabilitated,  
1230 and any other pertinent information about the operation that would be helpful to the  
1231 Board.

1232  
1233 28. Excavation shall be discontinued by January 27, 2007, and restoration  
1234 accomplished by not later than January 27, 2008, unless a new permit is granted by the  
1235 Board of Zoning Appeals.

1236  
1237 29. The rehabilitation of the property shall take place simultaneously with the mining  
1238 process. Rehabilitation shall not be considered completed until the mined area is  
1239 covered completely with permanent vegetation.

1240  
1241 30. Failure to comply with any of the foregoing conditions shall automatically void this  
1242 permit.

1243  
1244 Affirmative: Dwyer, Kirkland, Nunnally, Wright 4  
1245 Negative: Harris 1  
1246 Absent: 0

1247  
1248 The Board granted the request because it found the proposed use will be in substantial  
1249 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1250  
1251 **A-7-2005** **KRISTEN KAHWAJY** requests a variance from Section 24-95(c)(4)  
1252 to build a front porch at 5404 Smith Avenue (Bloomingdale) (Parcel  
1253 782-744-7379), zoned R-4, One-family Residence District  
1254 (Fairfield). The front yard setback is not met. The applicant  
1255 proposes 17 feet front yard setback, where the Code requires 35  
1256 feet front yard setback. The applicant requests a variance of 18  
1257 feet front yard setback.

1258  
1259 Mr. Wright - Does anyone else desire to speak with reference to this  
1260 case? Would you raise your right hand and be sworn please?

1261  
1262 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1263 truth, the whole truth, and nothing but the truth, so help you God?

1264  
1265 Ms. Kahwajy - Yes. Kristen Kahwajy. We would like to build a front porch  
1266 on our property at 5404 Smith Avenue. At this time, our house was built in 1954, and  
1267 our setback of the house right now is 29 feet, which in itself, does not meet the Code of  
1268 a 35-foot front setback. We would like to build a porch that is seven feet deep, and I  
1269 believe you have some pictures of our neighbor's property. We already sit about seven  
1270 to eight feet behind both neighbors on both sides. So a porch would help put us in line

1271 with the rest of the neighbors. In our block, on our side of the street, there are nine  
1272 houses in total, with ours being one of them, and every one has a porch except for us,  
1273 so we think it would help with the aesthetics of the neighborhood to bring it in line with  
1274 the rest of the property in the area. Furthermore, our mail gets wet without having a  
1275 porch, and the brick is discolored from the rain hitting, so we're trying to find some ways  
1276 that we can preserve our home without some more drastic measures.

1277  
1278 Ms. Dwyer - What materials would the porch be made of?

1279  
1280 Ms. Kahwajy - Wood.

1281  
1282 Ms. Dwyer - Painted white to match the .....

1283  
1284 Ms. Kahwajy - Yes, we're actually going to do it similar in style to the porch  
1285 you can see on our neighbor's home, with the white rails, so that it matches theirs, is  
1286 what we're hoping to do.

1287  
1288 Ms. Dwyer - Brick foundation or brick piers?

1289  
1290 Mr. Williams - I'm Robert Williams, Kristen's fiancé. Actually the plan  
1291 proposes four by four salt treated posts, but we can definitely change those to brick  
1292 piers if need be. That's not a problem whatsoever. The rest of the construction will be,  
1293 painted white, and it will have an A roof over the top, and it will match the existing white  
1294 masonite siding on the outside.

1295  
1296 Mr. Kirkland - Are you going to have a shed roof coming off the existing  
1297 roof, or an additional A coming into the main roof.

1298  
1299 Ms. Kahwajy - A roof.

1300  
1301 Mr. Wright - Any further questions of the Board? Is anyone here in  
1302 opposition to this request? Hearing none, that concludes the case.

1303  
1304 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
1305 Kirkland, the Board **granted** application **A-7-2005** for a variance to build a front porch at  
1306 5404 Smith Avenue (Bloomingdale) (Parcel 782-744-7379). The Board granted the  
1307 variance subject to the following conditions:

1308  
1309 1. Only the improvements shown on the plan filed with the application may be  
1310 constructed pursuant to this approval. Any additional improvements shall comply with  
1311 the applicable regulations of the County Code.

1312  
1313 2. The new construction shall match the existing dwelling as nearly as practical in  
1314 materials and color.

1315  
1316 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright

1317 Negative: 0  
1318 Absent: 0

1319  
1320 The Board granted this request, as it found from the evidence presented that, due to the  
1321 unique circumstances of the subject property, strict application of the County Code  
1322 would produce undue hardship not generally shared by other properties in the area, and  
1323 authorizing this variance will neither cause a substantial detriment to adjacent property  
1324 nor materially impair the purpose of the zoning regulations.

1325  
1326 **UP-3-2005**                    **CHAMBERLAYNE RECREATION ASSOCIATION** requests a  
1327 conditional use permit pursuant to Section 24-12(b) to amend  
1328 (subdivide part of the recreation center) the master plan for the  
1329 recreation center at 317 North Wilkinson Road (Parcels 792-753-  
1330 4981 and 9289), zoned R-2A, One-family Residence District  
1331 (Fairfield).

1332  
1333 Mr. Wright -                    Does anyone else desire to speak with reference to this  
1334 case? Would everyone please stand, and we'll swear everyone at the same time.  
1335 Please raise your right hands and be sworn please?

1336  
1337 Mr. Blankinship -            Do you swear that the testimony you are about to give is the  
1338 truth, the whole truth, and nothing but the truth, so help you God?

1339  
1340 Mr. Wright -                    I must disqualify myself from this case.

1341  
1342 Mr. Nunnally -                State your name for the record please.

1343  
1344 Mr. Condlin -                Yes sir, my name is Andy Condlin, from Williams Mullen,  
1345 representing the Chamberlayne Recreation Association, with respect to this application.  
1346 I have with me Rick Boney and Regina Adams from the Association, as well as Ed  
1347 Hoffman, who's an engineer developer for the residential lots. CRA, which owns the  
1348 property which you're looking at, which is about seven acres, has been here for forty-  
1349 plus years, with an original use permit back in 1961. Obviously, this facility has been  
1350 around for some time, but unfortunately with that, it is showing its age. It has a pool  
1351 house and shelter, two pools, tennis courts, a basketball court, but again, being around  
1352 for forty-plus years, it does need some capital improvements, and an influx of cash and  
1353 member participation would help that. Also, with the cash, it would come a long way  
1354 towards helping with the facility itself. The property that we're talking about placing the  
1355 subdivision on, has the tennis courts, but it's primarily an unused area. With that  
1356 unused area, is the cost of maintenance and taxes for the Association, so it has a  
1357 double benefit of not only having an influx of cash, but also of relieving them of some of  
1358 the additional obligations and costs that are associated with maintaining that area.  
1359 Finally, with the sale, and in addition to those two benefits, there is also an obligation  
1360 upon the developer to improve the parking lot, improve the access areas, and provide  
1361 fencing, along with some other improvements. I have some pictures.

1362

1363 Mr. Nunnally - Mr. Blankinship, does this require rezoning or anything?  
1364  
1365 Mr. Blankinship - Not a rezoning, no sir; it's permitted in their residential  
1366 district by conditional use permit, and they have a conditional use permit, a history of  
1367 them. I believe the most recent was in 1992, but because they're making a substantial  
1368 change to the layout of the property, we felt it was necessary for the Board to review it.  
1369  
1370 Mr. Kirkland - Do you think the parking lot will be enough area to cover the  
1371 people who come to the Association?  
1372  
1373 Mr. Condlin - That is actually the existing parking lot; it would just be  
1374 repaved. Experience would say that it certainly would accommodate everyone who's  
1375 used that Association in the past, and would continue in the future. It seems to have  
1376 more than enough space. Actually, this went through yesterday, in order to set the case  
1377 up. Obviously, not knowing which one to go with first, it's a matter of timing, but we  
1378 went before the Planning Commission for the technical subdivision approval for the  
1379 subdivision that you're looking at with the Frostick Court, so that step has already been  
1380 taken to meet the technical requirements of the R-2A subdivision ordinance  
1381 requirements. The one question I had, I guess, while I can get into the standards and  
1382 the quality of the homes that would be built here, and the commitments that have been  
1383 made with respect to the size of the homes and brick fronts and garages, but the  
1384 technical nature of this, I had some question, which is, yes we are technically  
1385 subdividing the property, and this is a recreation association.  
1386  
1387 One of the concerns we had was that there is a condition suggested by the staff report  
1388 that the prior conditions apply to this as well. One of the concerns, and really the main  
1389 concern that we had coming forward, there will be no additional structures per se, as  
1390 they come forward, but as you can see, there's fifty feet between the existing pool and  
1391 the property line. It's my understanding, and unfortunately all of us seem to have either  
1392 misplaced or forgotten the use permit from '92, the conditions required 75 feet. We  
1393 wanted to have that reduced to fifty feet, in order to allow for the enlargement of the  
1394 pool, if necessary, but they would still maintain fifty feet between the pool area and the  
1395 edge, is it the edge of the property, or the edge of the home? It would be the property  
1396 line, so they would maintain the fifty feet from the property line. Right now it's required  
1397 to be 75 feet, and that would be the one condition we would be asking to be changed.  
1398 It's my understanding in the past, that that condition was placed on there to protect the  
1399 surrounding neighbors. Obviously, the developer would be selling these homes and  
1400 developing this property with the knowledge that the recreation association is this close,  
1401 and as you can see, they'd be placing new fencing in as required, along with the  
1402 existing fencing that's around. The neighbors won't be in a position to complain,  
1403 because they're actually benefiting from this point forward.  
1404  
1405 Mr. Kirkland - Mr. Blankinship, will that make their provisional use permit  
1406 void?  
1407  
1408 Mr. Blankinship - No, that's why we're here this morning, to give the Board the

1409 opportunity to address any issues of that nature. I don't see that condition on here  
1410 though. It's not on the '92 approval, and it's not on the '60 approval. Maybe it's just  
1411 something that was a verbal agreement.

1412  
1413 Mr. Condlin - That may very well be the case. Maybe that's why we  
1414 couldn't find it either. We do want to retain back to the fifty feet. The point is too, that  
1415 we are making a substantial change to the property, and everyone felt more comfortable  
1416 coming forward, but the critical point is, I'd like to express to you, is with respect to the  
1417 buildings, and again we have some folks from the Chamberlayne Recreation  
1418 Association, if you need to talk to them, but there is no new structures being placed  
1419 here. It's just a matter of being able to take the excess property that right now is costing  
1420 the Association, gaining a benefit from that, and being able to provide nice homes that  
1421 are consistent with the area, consistent with the neighbors, such that it is very  
1422 consistent with the zoning cases that have occurred in this area in the past.

1423  
1424 Mr. O'Kelly - Mr. Condlin, who is the developer?  
1425

1426 Mr. Condlin - It's Greg Windsor, from Windsor Development, who has  
1427 done a number of lots in this area, consistent with the support of the Recreation and the  
1428 Civic Association. The Civic Association and the Chamberlayne Area Theater is in this  
1429 area here, in their own lot, from this standpoint, and these entranceways will be revised  
1430 to have a larger entrance and to create a straight shot in, as opposed to where it  
1431 currently comes in at an angle, and with this existing parking area in here.

1432  
1433 Ms. Dwyer - What are the plans for this section of the property on the  
1434 corner of North Wilkinson and Wilkinson?  
1435

1436 Mr. Condlin - Right here. There's going to be three lots. That would be  
1437 sold for three lots. It's not in the package; I've got one right here.  
1438

1439 Ms. Dwyer - It shows three lots, but what about the remaining portion on  
1440 Wilkinson?  
1441

1442 Mr. Condlin - That would be remaining open area there for that.  
1443

1444 Ms. Dwyer - There's three lots on North Wilkinson, as well as the Frostick  
1445 cul-de-sac?  
1446

1447 Mr. Condlin - Yes ma'am, and those would access off of North Wilkinson.  
1448 That gives you the subdivision; that was approved as part of the subdivision as well  
1449 yesterday at the Planning Commission POD. Rick, is there any other use that you  
1450 would be making of this excess property?  
1451

1452 Mr. Boney - Hello, my name is Rick Boney. For that additional property,  
1453 we have no plans to make any improvements or changes to that property other than the  
1454 three lots that are on North Wilkerson. The three lots would be here, and obviously we



1455 would have to come forward to the BZA before we did any more building improvements  
1456 on that excess space.

1457  
1458 Ms. Harris - Why did you opt to get rid of the tennis courts? We can see  
1459 that they are in disrepair, but as opposed to the unimproved lots on the other side of the  
1460 2.5 acres of land. Why the choice?

1461  
1462 Mr. Condlin - Why do that versus the other three lots? We're actually  
1463 doing both. I think the question had to do with why we chose to take out the tennis  
1464 courts here and put the homes in this area and remove the tennis courts in essence, as  
1465 opposed to putting homes here. I think the answer is it's just a matter of .....

1466  
1467 Mr. Boney - I can answer that. The Wilkinson Road piece, if we were to  
1468 develop that, because of the impact on Wilkinson Road, it would be much more costly  
1469 and it almost would make it economically, we wouldn't make anything at all off of selling  
1470 that property. It wouldn't make it feasible economically, in order to sell that property at  
1471 this time.

1472  
1473 Mr. Condlin - That's where the ditch is, I think. There's road improvement  
1474 issues off of Public Works, to say that the cost to the developer would have been such  
1475 an increased cost that they couldn't have paid but a little amount for that property, so  
1476 the return would have been very little for the Association, versus this area here, that  
1477 they can place in here the number of lots that they can get, and they can get a better  
1478 return for the landowner. One additional thing is, there is absolutely no upkeep for us at  
1479 this time, in that part of the property that we own. It's pretty much wooded, and there's  
1480 little upkeep. For the lots that we're selling, we have to pay somebody to come in there  
1481 and actually do grounds maintenance on that, which is a burden to us with no  
1482 economical benefit to our organization, since they've fallen into such disrepair. None of  
1483 our members currently use those tennis courts, as you see the status.

1484  
1485 Ms. Harris - Did the developer meet with the neighbors?

1486  
1487 Mr. Condlin - No ma'am. I don't think there was any neighborhood  
1488 meeting with respect to this.

1489  
1490 Ms. Harris - What square footage are we talking about for the homes?

1491  
1492 Mr. Condlin - The homes would be a minimum of 2,000, an average of  
1493 2,200 square feet, with 60% brick, and at least one-car garage, maybe two-car garages.  
1494 Those were commitments that were made, both contractually and as part of  
1495 commitments made for the Planning Commission, although not required for the POD  
1496 process, are very consistent with the zoning cases in the new subdivisions that have  
1497 occurred in this immediate area.

1498  
1499 Ms. Harris - Are you a member of the Association?

1500

1501 Mr. Condlin - No, I'm not personally.  
1502  
1503 Ms. Harris - Do we have any members of the Association?  
1504  
1505 Mr. Condlin - Ms. Adams and Mr. Boney are both members of the  
1506 Association.  
1507  
1508 **(Unidentified female voice from audience)-** Do you wish to address all the members  
1509 that are present here?  
1510  
1511 Ms. Harris - I will ask a generic question, and we can get maybe a  
1512 generic answer, we'll see. Were you living in this area when you joined the  
1513 Chamberlayne Recreation Association?  
1514  
1515 Mr. Boney - How close an area are you talking about, within Henrico  
1516 County?  
1517  
1518 Ms. Harris - Are you members of Chamberlayne Recreation Association?  
1519  
1520 Mr. Boney - Yes ma'am.  
1521  
1522 Mr. Johns - My name is Dennis Johns. I've been a member of the  
1523 Association for 24 years. I bought my home, Lot 19, so my house and my lot are  
1524 probably the most affected of all the properties in the area. So your question is, yes, I  
1525 am a member and have been a member of the Association for 24 years.  
1526  
1527 Ms. Harris - The other gentlemen and ladies, who are members of the  
1528 Association – are you residents of this community, is what I'm asking.  
1529  
1530 Ms. Adams - My name is Regina Adams; I've been a member for seven  
1531 years, and no, I live about three miles up the road.  
1532  
1533 Ms. Harris - Do we have any more residents of this community in this  
1534 Association?  
1535  
1536 Ms. Smuts - My name is Gwendolyn Smuts. I am a resident, member,  
1537 and my property is # 14.  
1538  
1539 Mr. Quigley - I'm Ed Quigley, and I live directly across the street from Mr.  
1540 Johns.  
1541  
1542 Ms. Harris - The reason I asked that question – are we seeing that the  
1543 residents are opposing this idea, but the members of the Association who are not  
1544 residents are for the idea – is this what we're seeing?  
1545  
1546 Mr. Boney - That has not been our experience. We sent out a

1547 newsletter, asking for any input that there may be from members of our Association.  
1548 We received two responses back and addressed both of them. As you see, neither one  
1549 of those two individuals are here today.

1550  
1551 Mr. Nunnally - I understand now from Ms. Harris, that you all are in  
1552 opposition to this case, is that right?

1553  
1554 **(Unidentified female, sworn in)** - I'm not opposed to the subdividing of this  
1555 property. I am concerned about the lot sizes. They should be the same size as the  
1556 adjacent properties.

1557  
1558 Mr. Nunnally - Is there anyone here against this?

1559  
1560 Mr. Johns - I'm not totally against the project, but I do have some  
1561 questions that I'd like answered. One has already been answered; that's the size of the  
1562 homes, and 2,000 square feet is not comparable to the homes that are on North  
1563 Wilkinson currently. In the Lake Colony Subdivision, and also Chamberlayne Hills  
1564 Subdivision, and not too far is the Chickahominy Bluffs Subdivision. Some are familiar  
1565 with that area, and 2,000 square feet is not indicative of the homes in that area. My lot  
1566 size is some 18,000 square feet, lot 19. The lots that I see here look like they're going  
1567 to be somewhere in the neighborhood of 9400 or 9600 square feet, which is less than a  
1568 quarter of an acre. If someone could answer a couple of questions, the size of the lots  
1569 please?

1570  
1571 Mr. Kirkland - If this is an R-2 case, it'll be 18,000 or close to it, won't it Mr.  
1572 Condlin?

1573  
1574 Mr. Blankinship - R-2A.

1575  
1576 Mr. Condlin - I'm going to let Ed Hoffman, who's an engineer, speak to  
1577 that specific.

1578  
1579 Mr. Hoffman - I'm Ed Hoffman, with Windsor Enterprises. Lots are  
1580 designed to meet the zoning, and that is 13,500 square feet minimum.

1581  
1582 Mr. Johns - What is the projected price range of the homes, the  
1583 beginning price range?

1584  
1585 Mr. Condlin - The projected price range they're looking at is probably a  
1586 minimum of \$250,000, but they're expecting closer to \$300,000 to start with. Then  
1587 beyond that as the homes sell, this is not obviously a large subdivision, so there won't  
1588 be a huge range that goes up, again with the brick fronts and the size of the homes.  
1589 That's one of the reasons we went to the subdivision process, to make sure that these  
1590 lots did meet the technical standard requirements of the Code from that standpoint.

1591  
1592 Mr. Johns - \$250,000 is not even anywhere near the minimum starting

1593 price. There's a subdivision called Carlton at Stoneleigh, which is at the corner of  
1594 Fredonia and Parham; those begin at \$270,000. There's a subdivision, which is at the  
1595 old Northfield, Ashbury at Stoneleigh, that is a Ryan subdivision, which is not a custom  
1596 builder; they're beginning at \$290,000. These two subdivisions are adjacent to areas  
1597 that are not comparable to Lake Colony in Chamberlayne Hills.  
1598

1599 Mr. Nunnally - How far are these subdivisions away from Chamberlayne?  
1600 How far are you away from this project that they are proposing?  
1601

1602 Mr. Johns - Ashbury at Stoneleigh is at the corner of Rt. 301 and  
1603 Parham, and we are probably a quarter of a mile from that or less.  
1604

1605 Mr. Condlin - Let me speak real quick to answer each question. I  
1606 misspoke when we said \$250,000. We actually made a contractual obligation with the  
1607 Association to go minimum \$285,000. Both Rolling Hills and the Stoneleigh are Greg  
1608 Windsor developments, and while he hasn't made a contractual commitment to the  
1609 same builders, it actually would be the same type of development that they've got there.  
1610 It's the same developer, the idea being not a stick builder, but custom homes  
1611 potentially, depending on the contracts that come in, but consistent with those  
1612 subdivisions.  
1613

1614 Mr. Nunnally - A minimum of \$285,000?  
1615

1616 Mr. Condlin - That's our contractual again; there's some play in there.  
1617 Quite frankly that's why I said start at \$300,000; this is where they expect a starting  
1618 point, assuming the market and the interest rates don't change.  
1619

1620 Mr. Johns - A couple of more questions and comments. Someone  
1621 mentioned the tennis courts have not been used. That's because they have been  
1622 poorly maintained; it's not because the members of the Association have not chosen to  
1623 use them; they're unusable. The other concern is 2,200 square feet. Mr. Quigley has  
1624 been my neighbor for many, many years; his home is probably in excess of 3,000  
1625 square feet, livable, and there are many other homes on North Wilkinson that are in  
1626 excess of 2,500 square feet. One more question, there's a fence, I think you've taken  
1627 that down, but there's a fence that is being proposed at the rear of lots 9 and 8 and 7. I  
1628 would like, if this is approved, that a condition be placed that a privacy fence be placed  
1629 behind lots 1, 2, 3, 4, and 5, that provide a privacy area for lots 19 and 14. Again, I've  
1630 been at that residence for 24 years; my kids have played in Frostick Field; I played in  
1631 Frostick Field in 1965 as a youngster. We are used to seeing a beautiful, unused and  
1632 open area. My driveway would be adjacent to the back yards of lots 1, 2, and 3, and I  
1633 am not excited about looking into the back yards of the neighbors. It's been a joy to  
1634 have that open area, and I know that if things do proceed forward, but at the same time,  
1635 I do think that a privacy fence along the property lines behind those five homes would  
1636 help soften the new Frostick Court Subdivision.  
1637

1638 Mr. Nunnally - Mr. Blankinship, I'm still not quite sure we're doing the right

1639 thing here. It looks like to me that these people are in opposition. They're requesting  
1640 privacy fences and all this kind of stuff. I think we ought to hear from the applicant and  
1641 then if they want to come back up and speak against it, that's fine.

1642  
1643 Mr. Blankinship - You have the chair.

1644  
1645 Mr. Nunnally - All right. Finish yours, Mr. Condlin, and then they can come  
1646 back. Is that all right with you, Ms. Harris?

1647  
1648 Mr. Condlin - There is rebuttal.

1649  
1650 Ms. Harris - I have one question of Mr. Condlin. Did you build Cedar  
1651 Grove? Would these be similar to Cedar Grove?

1652  
1653 Mr. Condlin - Yes ma'am. Probably a little bit more than that, more closely  
1654 more in line with Rolling Hills and Stoneway, since that's the more recent one.

1655  
1656 Ms. Harris - Rolling Hills, is that the one on Fredonia?

1657  
1658 Mr. Condlin - No Stoneleigh is on Fredonia. One technical, I guess, and  
1659 I'll sit down. Mr. Windsor is known in the area, known throughout the County of  
1660 Henrico, of building quality and exceeding, and I think that's one of the reasons both the  
1661 Civic Association and the Recreation Association wanted to go with Mr. Windsor. He  
1662 makes promises and then exceeds what he's required to do, and fencing, people have  
1663 already commented that he missed a certain fencing and then puts in nicer fencing and  
1664 works with folks; that's not a problem, to put that condition in. We'll commit to that. I'll  
1665 be happy to, if you would like to, to read through the list of commitments that have been  
1666 made with respect to the homes. They read very much like proffers. This wasn't a  
1667 zoning case; they weren't technically made a part of the subdivision, but they're  
1668 technically made a part of the private contractual obligation. If that needs to be made a  
1669 part of this condition, I can say that's okay, but technically, I would say that it may not be  
1670 appropriate because we're not dealing with a conditional use permit or special use  
1671 permit for a subdivision for residential homes. It's a question of the Recreation  
1672 Association and the impact on the neighborhood and the neighboring area. With that in  
1673 mind, obviously there are no new existing buildings. Having said that, the Recreation  
1674 Association and Mr. Windsor don't want to create a situation that is harmful to any of the  
1675 neighbors. They want to make this work. So a fence would certainly be appropriate at  
1676 this point, but the idea too, is that they still need to get the number of lots that they want  
1677 to get a return on this, and the homes that they want to have assurances on getting.  
1678 Again, I'll be happy to read that list of the assurances that were given for the homes.

1679  
1680 Mr. Nunnally - Have you all talked together?

1681  
1682 Mr. Condlin - No, I'd just gotten into the case recently, at the request of the  
1683 Association and Mr. Windsor. At this point, I think the Association had both meetings.

1684

1685 Ms. Adams - I'm Regina Adams, Recording Secretary for the  
1686 Chamberlayne Recreation Association. We had an annual meeting in July, where the  
1687 whole idea was proposed to sell off part of the land to reduce our costs and to also  
1688 upgrade our facilities. Our pools are original. They are 46 and 47 years old, and  
1689 they've never been resurfaced, and they're leaning towards disrepair. We also sent out,  
1690 besides the annual meeting where we invited all the members to come and discuss this  
1691 idea, we also sent out a letter to the people who are affected, and told them that we  
1692 wanted to proceed with this, and why we were proceeding with this. We've also met  
1693 several times with the Civic Association; we're planning to also meet with them next  
1694 Tuesday night. Most of our members are from the area, and we're very aware that this  
1695 is going to change the look of the area, but we also want to be good neighbors and  
1696 include them in the process, and I think we've done that so far.  
1697  
1698 Ms. Harris - Ms. Adams, are you a resident of this community?  
1699  
1700 Ms. Adams - No, I live about three miles up the road, and I've been a  
1701 member of the pool since 1998, and I've been on the Board, this is my second year. I  
1702 also want to say that it's a volunteer Board; we're not getting paid. We're trying to do  
1703 this because we really enjoy and like the pool, and we're doing this for that reason.  
1704  
1705 Mr. Nunnally - Any other questions from the applicant? We're going to call  
1706 for the opposition now. We're going to let you speak now, but they're through.  
1707  
1708 Mr. Kirkland - We'll do a rebuttal at the end, and he will answer any  
1709 questions.  
1710  
1711 Mr. Quigley - I'm Ed Quigley, and I just want to say that I didn't come  
1712 down here to necessarily oppose; I just had a lack of information, and that's my main  
1713 purpose for being here, is to get questions answered. Most of my questions have been  
1714 answered. I just wanted to make that clear, that I did not come down necessarily to  
1715 oppose.  
1716  
1717 Mr. Blankinship - And you live on lot 14?  
1718  
1719 Mr. Quigley - I live right across the street from Mr. Johns, right across from  
1720 lot 19.  
1721  
1722 Ms. Dwyer - Now that your questions have been answered, what are your  
1723 thoughts about this process?  
1724  
1725 Mr. Quigley - Other than losing the ambience of having a nice open view,  
1726 I'm not opposed to the development going in. I do have feelings for the concerns of my  
1727 neighbors, that their wishes to maintain or respect it as much as possible.  
1728  
1729 Ms. Smuts - I also am not opposed to the new subdivision, but it is  
1730 important that the lot not only meet the zoning that is required, but that they be the

1731 same size as the adjacent property.

1732

1733 Mr. Johns - Mr. Nunnally, there is currently a strip of land that runs from  
1734 lot 1 back to the edge and end of lot 5, that is a stand of trees. Will that stand of trees  
1735 remain as somewhat of a buffer, and there are light poles from the old Frostick field; I  
1736 imagine those poles would be removed and not left there, correct? What is going to be  
1737 done with that area that exists from my property that slopes down to the new property.  
1738 Is that area going to be cleaned out in any way, or is it going to be landscaped? How is  
1739 that area going to be treated?

1740

1741 Mr. Nunnally - Okay, Mr. Condlin, do you want to answer those questions  
1742 for those folks?

1743

1744 Mr. Condlin - I can answer with the knowledge and engineering  
1745 experience being only what I hear, I don't have technical training, but it is my  
1746 understanding if you put a fence in, it puts the trees in the area at risk, I assume Mr.  
1747 O'Kelly or Mr. Hoffman could speak to that, but I do know that when you dig into the  
1748 ground, it does put the trees at risk. As I said, we will put in a six-foot wooden fence. I  
1749 would like to have a minimum of six feet fence, so we could work with the neighbors if  
1750 they want something different than a wooden fence. The trees are intended to stay  
1751 there; the homes aren't going there, that's not part of the building area. There's  
1752 certainly no benefit to taking those trees out, but I'd hate to put a condition that required  
1753 both the fence and the trees, when the fence might kill the trees, this is what I'm getting  
1754 at, but we'll certainly make every effort to reclaim those trees, and that will be fine as  
1755 well. With respect to the light poles, they will certainly be taken out; probably some of  
1756 those are where the homes are going to be, and any area will be left in its natural state  
1757 if it's on your property, obviously we can't go in there without your permission to clean it  
1758 up. If it's on our property, it will be cleaned up and will be kept in its natural state from  
1759 that point.

1760

1761 Mr. Nunnally - Thank you sir. That concludes the case.

1762

1763 Upon a motion by Ms. Harris, seconded by Ms. Dwyer the Board **deferred** application  
1764 **UP-3-2005** for a conditional use permit to subdivide part of the recreation center at 317  
1765 North Wilkinson Road (Parcels 792-753-4981 and 9289). The case was deferred from  
1766 the January 27, 2005, until the February 24, 2005, meeting.

1767

1768 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4

1769 Negative: 0

1770 Abstain: Wright 1

1771

1772 The Board deferred the request to allow time for the Chamberlayne Recreation  
1773 Association to meet with the neighbors and address their concerns.

1774

1775 **Beginning at 10:00:**

1776

1777 Mr. Wright - Are there any deferrals or withdrawals?  
1778  
1779 Mr. Blankinship - Case A-11-2005 has been withdrawn. That's Daniel Long,  
1780 request for variance at 11113 Bryans View Court, has been withdrawn.  
1781  
1782 **A-8-2005** **BOUNTHOM RINTHALUKAY** requests a variance from Section  
1783 24-95(c)(2) to build an addition at 6916 Staunton Avenue  
1784 (Crestview) (Parcel 765-743-5059), zoned R-4A, One-family  
1785 Residence District (Three Chopt). The rear yard setback is not  
1786 met. The applicant proposes 23 feet rear yard setback, where the  
1787 Code requires 25 feet rear yard setback. The applicant requests a  
1788 variance of 2 feet rear yard setback.  
1789  
1790 Mr. Wright - Does anyone else desire to speak with reference to this  
1791 case? Would you raise your right hand and be sworn please?  
1792  
1793 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1794 truth, the whole truth, and nothing but the truth, so help you God?  
1795  
1796 Mr. Williams - I do. My name is Bob Williams. I'm representing Add-A-  
1797 Deck Inc. We propose to build a Florida Room on the back of Ms. Rinthalukay's house,  
1798 and it goes over the property line by – this drawing is incorrect. It only protrudes four  
1799 feet from the house, which actually makes it 22 feet, 9 inches, instead of 15 feet, 9.  
1800  
1801 Mr. Blankinship - We had that corrected.  
1802  
1803 Mr. Williams - The property line setback is 23 feet, and we're at 22 feet, 9,  
1804 and because of footings, we're so close to the line, that's the reason we're applying for  
1805 the variance.  
1806  
1807 Mr. Wright - So you're two feet short, is that correct?  
1808  
1809 Mr. Williams - No sir, actually over into the property line, three inches.  
1810  
1811 Mr. Blankinship - The requirement is 25 feet, and they're building at 23.  
1812  
1813 Mr. Williams - Okay, then it's two feet.  
1814  
1815 Mr. Wright - So you've got a two-foot variance here. Tell us how it will  
1816 affect the property adjacent to it.  
1817  
1818 Mr. Williams - It shouldn't affect the property adjacent to it, because it's all  
1819 the back yard. It doesn't protrude beyond the house, and it only comes out from the  
1820 house an additional four feet.  
1821  
1822 Mr. Wright - Are those steps where the .....



1823  
1824 Mr. Williams - That's where the addition would go, and it only comes past  
1825 the house four feet on the back. The adjacent property owner is looking from his house,  
1826 straight back, it doesn't add anything to the profile of the house.  
1827  
1828 Ms. Dwyer - How close will the addition be to the existing shed?  
1829  
1830 Mr. Williams - I don't have the exact measurement, but it's about 25 feet.  
1831 No, it's about ten feet.  
1832  
1833 Mr. Blankinship - The Code requires it to be ten feet.  
1834  
1835 Mr. Wright - This property backs up to 1902 Colgate Street, is that  
1836 correct?  
1837  
1838 Mr. Williams - I think that's correct.  
1839  
1840 Mr. Wright - So from the rear, you would be looking into the side of the  
1841 property that's adjacent on the rear?  
1842  
1843 Mr. Williams - I think so, yes.  
1844  
1845 Mr. Wright - Have you got the picture on the tax map?  
1846  
1847 Ms. Dwyer - You can see that house behind here in this picture, behind  
1848 the shed, you can see how close that house is. Is that the one you're talking about?  
1849 1902. The other picture showed how close it was.  
1850  
1851 Mr. Wright - It only extends beyond the rear of the house four feet, the  
1852 rest of it would be in line with the rear of the house.  
1853  
1854 Mr. Williams - That's right.  
1855  
1856 Ms. Dwyer - You might want to be careful to make sure the shed is a full  
1857 ten feet away from the existing dwelling, if this were approved, because this looks pretty  
1858 close.  
1859  
1860 Mr. Wright - Any further questions of the Board? Is anyone here in  
1861 opposition to this request? Have you been sworn?  
1862  
1863 Mr. Blankinship - I don't believe so. Do you swear that the testimony you are  
1864 about to give is the truth, the whole truth, and nothing but the truth, so help you God?  
1865  
1866 Mr. Kayser - I do. My name is Steven Kayser. I am representing the  
1867 homeowner who's actually here, Gloria Young, who lives at 6918 Staunton. It's on the  
1868 left of the red circle.

1869  
1870 Mr. Wright - That's the house adjacent on the west, the left.  
1871  
1872 Mr. Kayser - It is in fact the principal residence being impacted by the  
1873 proposed addition. Basically, there are three issues we'd like to present. As the  
1874 existing photo shows, there is a substantial view impairment presently with the existing  
1875 ten by fourteen shed. I realize the existing shed on the left of the picture is not part of  
1876 today's proposed addition; however, it's the impact of that shed, which is approximately  
1877 140 square feet, in conjunction with the proposed 11 by 22, 242 square foot addition,  
1878 that impacts Gloria Young's property, the lot line at 6918 Staunton. You've got an  
1879 existing shed and a proposed addition, all impacting her lot line. The existing shed does  
1880 presently block her view out towards Colgate, so you've already got an impairment.  
1881 The proposed addition will literally block 100% of the view of Gloria Young's property  
1882 out towards Colgate Avenue. The homeowners association has a set of rules and  
1883 guidelines for architectural standards and for residential lot owners. I don't believe  
1884 there's been a proper opportunity by Gloria Young to voice her objections to the  
1885 association, to be heard by them. I quote to you the Charles Glenn Architectural  
1886 Guidelines and Standards for exterior alterations, Subset 1. Additions, Article 1.2, "The  
1887 following conditions shall determine the acceptability of new addition locations.  
1888 Subsection A. Additions shall not impair the view of adjacent residences," and I believe  
1889 it does, in conjunction with the existing 10 by 14 shed. There would be no objections, I  
1890 don't believe, to the proposed addition, if the existing shed were moved somewhere  
1891 else on the lot. But right now they present a total 100% blocking of the view of 6918,  
1892 the adjacent property, out to the Colgate Avenue street. Those are the three objections.  
1893  
1894 Mr. Wright - Thank you very much. Anyone else in opposition? Mr.  
1895 Williams, now you have an opportunity to rebut the opposition.  
1896  
1897 Mr. Williams - I've said everything that I need to say. I don't have anything  
1898 additional.  
1899  
1900 Mr. Wright - Is it possible to move the shed?  
1901  
1902 Mr. Williams - Yes sir, it's possible to turn it and bring it forward so it  
1903 doesn't block the view.  
1904  
1905 Mr. Wright - It seems that that's the concern of your neighbor.  
1906  
1907 Mr. Blankinship - This is a reverse corner lot, Mr. Chairman, so the location of  
1908 the accessory structure is pretty severely constrained.  
1909  
1910 Mr. Wright - It looks like to me that it would be pretty difficult to move it  
1911 anywhere to satisfy the Code.  
1912  
1913 Mr. Blankinship - It has to be in the rear yard, so there's really no other place  
1914 on that lot that it could be moved. I don't believe there's any other location on there.

1915  
1916 Ms. Dwyer - Mr. Chairman, I don't see screening or landscaping in  
1917 existence on any of these lots either, which affects them.

1918  
1919 Mr. Wright - No, they're wide open. That concludes the case.

1920  
1921 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
1922 Kirkland, the Board **granted** application **A-8-2005** for a variance to an addition at 6916  
1923 Staunton Avenue (Crestview) (Parcel 765-743-5059). The Board granted the variance  
1924 subject to the following conditions:

1925  
1926 1. Only the improvements shown on the plan filed with the application may be  
1927 constructed pursuant to this approval. Any additional improvements shall comply with  
1928 the applicable regulations of the County Code.

1929  
1930 2. The new construction shall match the existing dwelling as nearly as practical in  
1931 materials and color.

1932  
1933 3. [Added] The existing storage building shall be removed from the property, and  
1934 no accessory buildings shall be erected on the property.

1935  
1936 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

1937 Negative: 0

1938 Absent: 0

1939  
1940 The Board granted this request, as it found from the evidence presented that, due to the  
1941 unique circumstances of the subject property, strict application of the County Code  
1942 would produce undue hardship not generally shared by other properties in the area, and  
1943 authorizing this variance will neither cause a substantial detriment to adjacent property  
1944 nor materially impair the purpose of the zoning regulations.

1945  
1946 **A-9-2005** **THOMAS A. MOSES** requests a variance from Section 24-95(i)(2)b  
1947 to build a detached garage at 11509 Wood Brook Road (Rock  
1948 Spring Estates) (Parcel 766-776-3336), zoned A-1, Agricultural  
1949 District (Brookland). The accessory structure height requirement is  
1950 not met. The applicant proposes a detached garage 18 feet in  
1951 height, where the Code allows accessory structures 15 feet in  
1952 height. The applicant requests a variance of 3 feet accessory  
1953 structure height.

1954  
1955 Mr. Wright - Does anyone else desire to speak with reference to this  
1956 case? Would you raise your right hand and be sworn please?

1957  
1958 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1959 truth, the whole truth, and nothing but the truth, so help you God?

1960

1961 Mr. Moses - Yes I do. Thomas A. Moses. I want to build a garage with a  
1962 matching roof pitch to my house. Building with a matching roof pitch allows for  
1963 architectural blend with my house. Rock Spring Estates, my development, consists of  
1964 quality homes. I would like to build this garage with an architectural correct matching  
1965 roof pitch and continue with the reputation of quality homes in the Rock Springs Estates  
1966 Subdivision and with my surrounding neighbors. Granting of this variance should not be  
1967 of detriment to the adjacent property. The grade of the lot also falls considerably here  
1968 on the back, and I'm building it on the low end of the lot. Finally, I have a letter from my  
1969 surrounding neighbors with their approval. I wasn't going to get this originally here, but I  
1970 thought that since we got the letter saying that all my neighbors were contacted, I wasn't  
1971 going to do this, but I finally just went ahead and did it last Sunday in all the bad  
1972 weather. I can pass you all a copy of that if you need it, or I can read it to you here,  
1973 "I/we, the neighbor behind, beside or across the street from Tom and Debbie Moses,  
1974 residing at 11509 Wood Brook Road in Rock Spring Estates Subdivision in Henrico  
1975 County, I/we have no objections for granting a variance to build a detached garage, as  
1976 noted on their plot plan, taller than the Zoning Ordinance allows. I/we agree with their  
1977 plan to build with a matching roof pitch. A matching roof pitch will give more of an  
1978 architectural blend with their home and with the Rock Spring Estates development."  
1979  
1980 Mr. Kirkland - Mr. Moses, on this, what is the necessity of having a two-  
1981 story garage, even though you could still keep the same pitch with a one-story?  
1982  
1983 Mr. Moses - I've got two boys, 13 and 15 in April, and we all know what  
1984 the next move is there, and the garage we have now is pretty much full. We'd like to  
1985 use the second story of this garage for storage and go back to using the garage we  
1986 have now as a garage and the other garage for future purposes.  
1987  
1988 Mr. Kirkland - Do you think the slope of the lot, you mentioned it sloped off  
1989 rather rapidly. Do you have a dimension of how high this garage would exceed the  
1990 existing garage?  
1991  
1992 Mr. Moses - Actually the existing garage has a thirteen-foot ceiling height  
1993 with a 12/12 pitch, so the existing garage will be much higher than what I'm going to  
1994 build, and it's also on a much lower end of the property on the low end of the slope. I  
1995 think you've got a picture of my house with the dog in the front yard.  
1996  
1997 Mr. Kirkland - What's the big chain link fence there – have you got tennis  
1998 courts?  
1999  
2000 Mr. Moses - Actually it's a fence around the basketball court. We had a  
2001 concrete slab poured there for the boys to play basketball. We're big into sports.  
2002  
2003 Mr. Kirkland - Will that be removed to get to this new garage?  
2004  
2005 Mr. Moses - On the picture, you can see I've already had the fence  
2006 around the basketball court hinged to make a large gate to be able to get behind that to

2007 get to the garage. Also on that plot plan, I noticed it just yesterday, it's 32 by 28, not by  
2008 20. If it was only 20, I wouldn't even have to be here.

2009  
2010 Mr. Wright - Any further questions of the Board? Is anyone here in  
2011 opposition to this request? Hearing none, that concludes the case.

2012  
2013 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
2014 Nunnally, the Board **granted** application **A-9-2005** for a variance to build a detached  
2015 garage at 11509 Wood Brook Road (Rock Spring Estates) (Parcel 766-776-3336). The  
2016 Board granted the variance subject to the following conditions:

2017  
2018 1. This variance applies only to the accessory structure height requirement. All  
2019 other applicable regulations of the County Code shall remain in force.

2020  
2021 2. The garage shall match the existing dwelling as nearly as practical.

2022  
2023 3. The garage shall only be used for storage, and shall not be occupied for any  
2024 business or residential purpose.

2025  
2026 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

2027 Negative: 0

2028 Absent: 0

2029  
2030 The Board granted this request, as it found from the evidence presented that, due to the  
2031 unique circumstances of the subject property, strict application of the County Code  
2032 would produce undue hardship not generally shared by other properties in the area, and  
2033 authorizing this variance will neither cause a substantial detriment to adjacent property  
2034 nor materially impair the purpose of the zoning regulations.

2035  
2036 **A-10-2005** **ALBERTA C. MILES** requests a variance from Sections 24-  
2037 95(b)(5) and 24-95(c)(4) to build a one-family dwelling at 8729  
2038 Midway Road (Westhampton Settlement) (Parcel 751-739-7189),  
2039 zoned R-3, One-family Residence District (Tuckahoe). The lot  
2040 width requirement and total side yard setback are not met. The  
2041 applicant has 50 feet lot width and 18 feet total side yard setback,  
2042 where the Code requires 65 feet lot width and 19.5 feet total side  
2043 yard setback. The applicant requests a variance of 15 feet lot width  
2044 and 1.5 feet total side yard setback.

2045  
2046 Mr. Blankinship - Mr. Chairman, I believe we have done the notification for  
2047 more than what's actually being requested here. They do need a variance in the lot  
2048 width requirement, but not in the total side yard setback.

2049  
2050 Mr. Wright - Does anyone else desire to speak with reference to this  
2051 case? Please everyone stand and raise your right hand and all be sworn at the same  
2052 time please?

2053  
2054 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2055 truth, the whole truth, and nothing but the truth, so help you God?  
2056  
2057 Mr. Wright - All right, if you'll all be seated, we'll give you an opportunity  
2058 to speak. Who will present the case?  
2059  
2060 Ms. Miles - I do. My name is Alberta C. Miles. I'm requesting a variance  
2061 from Section 24-95(b)(5) and 24-95(c)(4) to build a one-family dwelling at 8729 Midway  
2062 Road in Westhampton Settlement, Resident District Tuckahoe. The lot width  
2063 requirement and total side yard setback are not met. The applicant has 50 feet lot width  
2064 and 18 feet total side yard.  
2065  
2066 Ms. Dwyer - Ms. Miles, do you live currently on this street?  
2067  
2068 Ms. Miles - Yes.  
2069  
2070 Ms. Dwyer - Where do you live?  
2071  
2072 Ms. Miles - 8717 Midway Road, and I think they have changed my  
2073 house number, from 8717 to 8725.  
2074  
2075 Ms. Dwyer - But you still have 17 on your mailbox?  
2076  
2077 Ms. Miles - Yes, but I have to change that.  
2078  
2079 Ms. Dwyer - So you live next door – this is your side yard at this point in  
2080 time, and you want to sell it for a buildable lot?  
2081  
2082 Mr. Wright - Where does she live, 8725?  
2083  
2084 Mr. Kirkland - What size home are you going to build on this property?  
2085  
2086 Mr. Marinos - I'm Mike Marinos; I'm a homebuilder. This is a similar  
2087 variance to what we got for the lot on the other side of Ms. Miles house. I'm currently  
2088 building a three-bedroom Cape, about 1800 square feet, and I'm going to build a similar  
2089 house on Ms. Miles lot, provided we get the variance.  
2090  
2091 Mr. Kirkland - You're building this to sell then, like a spec house, right?  
2092  
2093 Mr. Marinos - Yes sir.  
2094  
2095 Mr. Wright - Are there any other fifty-foot lots on this street?  
2096  
2097 Mr., Marinos - I believe there are several. I think they're fifty feet all the  
2098 way down the line.

2099  
2100 Mr. Wright - Well, 8801 is certainly not one, nor 8803.  
2101  
2102 Mr. Marinos - I know that Lot 20 is fifty feet; Lot 19 is fifty feet; Lot 18, this  
2103 lot, is fifty feet.  
2104  
2105 Ms. Dwyer - I don't think we have lot numbers; we have addresses.  
2106  
2107 Mr. Marinos - Lot 20 is 8719; Ms. Miles is 8725; this lot is going to become  
2108 8729.  
2109  
2110 Ms. Dwyer - 8714 is possibly a fifty-foot lot.  
2111  
2112 Mr. Kirkland - How old are the homes in this neighborhood?  
2113  
2114 Mr. Marinos - There's been some new ones down the street further, but I'd  
2115 say most of them are probably built in the '50's or '60's maybe. The newer ones are  
2116 further west of this area down the street, with the exception of the one I'm building now.  
2117 I don't have my plat; at one time I had the County's plat of all the lots with the  
2118 dimensions. I don't have it with me. I have a picture of the Cape; I don't know if you're  
2119 interested in seeing it.  
2120  
2121 Mr. Wright - I think we'd like to take a look at it.  
2122  
2123 Mr. Marinos - This is the one that's going on Lot 20 right now. I'm not quite  
2124 finished, will probably get a final in two or three weeks, depending on the weather.  
2125  
2126 Ms. Dwyer - This is a picture of the actual house you're building?  
2127  
2128 Mr. Marinos - Yes.  
2129  
2130 Ms. Dwyer - Did this originally come in as a request for a two-story  
2131 home?  
2132  
2133 Mr. Marinos - It did originally come in, yes, and you approved it subject to  
2134 building the Cape. I've got a copy of that letter in here too, if you don't see it, for the  
2135 variance approval. That was from Tammy Krantz.  
2136  
2137 Mr. Blankinship - It's part of our record.  
2138  
2139 Mr. Wright - How long has Ms. Miles owned this property?  
2140  
2141 Ms. Miles - My mother bought it, and she's been dead a long time, so I  
2142 really don't know how old this property is.  
2143  
2144 Mr. Wright - How long have you been living there?

2145  
2146 Ms. Miles - I've been living there for about 20-25 years.  
2147  
2148 Mr. Wright - You inherited this from your mother, and this lot?  
2149  
2150 Mr. Wright - Any further questions of the Board? Now I believe we have  
2151 some opposition, so if you would be seated, we'll hear from the opposition, and then  
2152 you'll have a chance to rebut what the opposition says. By the way, Mr. Blankinship,  
2153 has Ms. Miles seen this fax that we got? This is a fax that the Board got, Ms. Miles, and  
2154 it voices objection, and you should be able to look at it so that you can respond to it.  
2155  
2156 Mr. Hall - I'm Ernest Hall, and I own the property at 8801 Midway,  
2157 which is adjacent to this property. My property, with my lot, is 100 feet wide and the  
2158 setback is seventy, as you can see on the screen, and I oppose this because all of the  
2159 lots in this general area except the oldest section, are at least 80 feet wide, and a lot of  
2160 them are 100 feet wide. I did some research with the County records, and I think there  
2161 are only two lots in the older section that I could find that were built on with 50-foot  
2162 widths, and I think they were built in 1941, with the exception of 8719 that the applicant  
2163 just spoke of, which they're building on now. How that got approved, I do not know, with  
2164 50-foot width. I also talked to the Planning Department, and R-3 zoning requires 80-foot  
2165 lot width. Some lots they do allow an exception for 65 feet in width, and now they're  
2166 asking for a variance to 50 feet, so from today's standards, R-3 zoning, 80 feet, you're  
2167 really getting a variance today for 30 feet in lot width. I have pictures of the new house  
2168 that's being built on 8719.  
2169  
2170 Mr. Wright - Let's get that cleared up. Mr. Blankinship tells us that the lot  
2171 width requirement for this lot is 65 feet.  
2172  
2173 Mr. Hall - That's an exception.  
2174  
2175 Mr. Wright - This case is not thirty; it's a fifteen-foot variance request. I  
2176 just want to make sure we understand the facts.  
2177  
2178 Mr. Hall - I just wanted to make sure that everybody realized the  
2179 standard today is eighty feet for R-3 zoning, am I right?  
2180  
2181 Mr. Wright - That may be true, but for this particular lot, it's 65 feet. If this  
2182 lot were 65 feet wide, he could build on it, and he wouldn't be here.  
2183  
2184 Mr. Hall - I understand from the Planning Department that that's an  
2185 exceptional lot, and that's the reason for 65 feet.  
2186  
2187 Mr. Blankinship - Every lot in Westhampton Settlement is subject to the  
2188 exception standards, rather than today's standards, because they were divided and  
2189 developed prior to 1960.  
2190



2191 Mr. Wright - So we can't talk about 65 feet.  
2192  
2193 Mr. Hall - I was just trying to bring to the Board what the current  
2194 standards are, versus what's being asked for. I have pictures of 8719, the house that's  
2195 being built on there, and you can see some of the problems that are being created as a  
2196 result of it. I don't think it could even get a driveway between the property line and the  
2197 house. If you can, it's beyond me. I don't have the dimensions, but looking at it through  
2198 the pictures, so that means you're probably going to have to park on the street, or either  
2199 your driveway, if you have a driveway, is going to have to be right in front of the porch or  
2200 in front of the house. It's certainly not consistent with the neighborhood, a 50-foot width  
2201 is not consistent with the neighborhood, if you look down the street, I don't know if you  
2202 can get it on the maps here or not, but down the street further, and I also have some  
2203 pictures of that, most all of the houses were built in '89, and they're on at least an 80-  
2204 foot width lots. Most of them, or at least some of them, are 100, just like mine is next  
2205 door. Another issue I wanted to bring out, if this house is built as shown on the plat, my  
2206 house sits back 70 feet, and I would be looking into the back yard or the back of this  
2207 house, sitting up against me with a 50-foot lot. Again, I'm opposed because I think it  
2208 would be a detriment to my property, as well as the property across the street, and  
2209 down the street. Can I give these pictures to you?  
2210  
2211 Mr. Wright - All right, sir, thank you very much. Yes, we'll be glad to  
2212 receive them.  
2213  
2214 Ms. Harris - Your home is located at 8801? What is the terrain like  
2215 behind your property? I know the lot goes back 160 feet or more, so what's behind the  
2216 house?  
2217  
2218 Mr. Hall - Just other properties from the next street over. I think  
2219 there's an easement back there.  
2220  
2221 Ms. Harris - No, on your property. I'm not talking about the other  
2222 properties. Is there an easement on your property, that goes across your property?  
2223  
2224 Mr. Hall - On the back, the rear of it, there's a utility easement.  
2225 There's nothing behind mine. You talking about that dark area there or something?  
2226  
2227 Ms. Harris - You mentioned that a person could not build a garage or  
2228 anything back in the back – what's wrong with the back?  
2229  
2230 Mr. Hall - I said mine is sitting back 70 feet, as you can see there. If  
2231 they build this house where they're proposing, my house would be looking right into the  
2232 back yard or the back of that house, with a 45-foot setback.  
2233  
2234 Ms. Harris - I just wondered if the land was level in the back, or what was  
2235 the elevation, or are there flooding problems, or nothing would permit construction  
2236 there?

2237  
2238 Mr. Hall - It's level there.  
2239  
2240 Mr. Wright - I think what he's saying is they couldn't get a driveway back  
2241 there because the house is so close to the line.  
2242  
2243 Mr. Hall - Plus, the one that's being built on 8719 now, that was  
2244 approved back in August, and I didn't receive any notice about it myself. I don't know  
2245 whether the other neighbors did or not, but I didn't realize it was being done until it was  
2246 approved.  
2247  
2248 Mr. Kirkland - Mr. Blankinship, since we keep bringing that up, 8719, what  
2249 was the variance dimension on that one?  
2250  
2251 Mr. Blankinship - The same thing as the lot width requirements.  
2252  
2253 Mr. Kirkland - What was the actual width of that lot?  
2254  
2255 Mr. Blankinship - Fifty feet.  
2256  
2257 Mr. Hall - You can see the pictures that I took of what's created there,  
2258 which is a detriment to the character of the neighborhood and to that street.  
2259  
2260 Mr. Luedecke Good morning. My name is Jeffrey M. Luedecke. I live at  
2261 8802 Midway Road, which is directly adjacent to the subject property. I'm not going to  
2262 rehash everything that Mr. Hall said. I agree with what he said, and I understand what's  
2263 in regard to the 65 feet. My concern is the parking. From what I can tell, with the other  
2264 houses being constructed, there is going to be a definite parking issue. I have pictures  
2265 of where Mr. Marinos crew has created parking problems just initially in building this  
2266 house. As a matter of fact, yesterday, they impeded a school bus being able to go  
2267 down the road for approximately five minutes. Had this been a fire truck, which is far  
2268 wider than a school bus, or an ambulance, this could have been a very serious  
2269 situation. I understand that this is an issue just consistent with construction of the  
2270 house; however, with the parking issue, I feel that if people have family functions, things  
2271 of this nature, this issue is going to recur again and again. I don't feel like it's going to  
2272 add to the value of the neighborhood. Certainly new houses add to our property value;  
2273 I'm glad to see new neighbors come in. The house that he's building, and this house,  
2274 do not.  
2275  
2276 Ms. Dwyer - Sir, would you like us to look at those pictures?  
2277  
2278 Mr. Luedecke - Those pictures were taken before the school bus was  
2279 coming down the street, about 20 minutes before, and Mr. Marinos crew was well aware  
2280 of when the school bus comes down, the same time every day.  
2281  
2282 Ms. Dwyer - Mr. Blankinship, is this the standard road width, or is this

2283 road narrower than what would be required today for a public road?  
2284  
2285 Mr. Blankinship - I don't know that.  
2286  
2287 Mr. Wright - What is the width of Midway Road?  
2288  
2289 Mr. Kirkland - It would have to be fifty feet of right-of-way, but it doesn't  
2290 have to be fifty feet of pavement, right?  
2291  
2292 Ms. Dwyer - Right.  
2293  
2294 Mr. Wright - It must be awfully narrow.  
2295  
2296 Mr. Blankinship - The plat shows thirty-foot wide right-of-way, so if that's  
2297 correct, it's probably a substandard width of street.  
2298  
2299 Mr. Wright - Midway is thirty feet wide?  
2300  
2301 Mr. Blankinship - That's what it shows on this plat, yes sir.  
2302  
2303 Mr. Kearney - I'm James Kearney; I live directly across from it at 8800  
2304 Midway Road. I oppose this building because the parking area is hazardous. I was  
2305 down on the street yesterday and just barely could get through the street. I had about  
2306 six inches on each side of my car to go down between two cars parked directly across  
2307 from each other in that area. We also have a flooding area on 8800 side of the road, a  
2308 severe flooding area, because they're building so fast over there, that all the water from  
2309 those houses are running across the street because they do not have any drain system.  
2310 If they had put a drain system in and widen that street, there wouldn't be any problems.  
2311 Right now it is a serious problem over there with too much traffic, speeders, and  
2312 children playing on the streets, somebody's going to get killed, and there are going to be  
2313 serious problems, so I oppose everything they're trying to pass to get a house built on  
2314 the property.  
2315  
2316 Ms. Dwyer - What is your address sir?  
2317  
2318 Mr. Kearney - 8800 Midway Road.  
2319  
2320 Mr. Wright - Diagonally across the street.  
2321  
2322 Mr. Kiearney - Yes sir.  
2323  
2324 Mr. Wright - Does anyone else desire to speak?  
2325  
2326 Mr. Stone - My name is Dan Stone. I also live at 8800 Midway Road, as  
2327 a co-owner of the property, and I believe a house built directly across the street from us  
2328 would create a safety issue. The house would be so close to Mr. Hall's property, God

2329 forbid that there's a fire. It would certainly spread into Mr. Hall's property, and  
2330 depending on the wind factor, it could also cross the street into the Jeff's property and  
2331 my property. Also the parking issue is going to greatly complicate the area, and it's  
2332 obvious that there's no place for the owners of those two houses, when they get  
2333 completed, to park, other than the street.

2334  
2335 Mr. Wright - Does anyone else desire to speak in opposition? That will  
2336 end the opposition, because our rules say that once you've stated, we can't open it up  
2337 again. You will now have an opportunity to rebut, and that will end the case.

2338  
2339 Mr. Marinos - Yes, I'd like to address the parking issue. During  
2340 construction, the guys are going to park their work vans in front, as opposed to driving  
2341 up in the muddy front yard. We haven't yet got the driveway put in. There will be a  
2342 driveway, and there will be a driveway, and there will be off-street parking for two  
2343 vehicles. It will be the same thing on this lot. There's plenty of lot to facilitate that; I  
2344 don't see causing any extra trouble. It's not a big house; I would imagine that it's  
2345 probably a family with two vehicles that would purchase a house like that.

2346  
2347 Mr. Wright - What is the square footage of the house?

2348  
2349 Mr. Marinos - Just under 1800 square feet; it's 1777 feet; it's three-  
2350 bedroom. I don't think we're building too far above and beyond the neighborhood. The  
2351 neighborhood does have a lot of ranchers that are older, but in this day and age, people  
2352 need 2 ½ bathrooms and three bedrooms and some space. I think it's consistent with  
2353 what will be really sellable there; it's in a very good elementary school district. I think a  
2354 young family will probably be interested in a house like that, probably two drivers, two  
2355 cars maybe. As far as the traffic problem right now during construction, that's  
2356 temporary. I think that will go away.

2357  
2358 Ms. Harris - Ms. Miles, in view of the fact that you have so many  
2359 disgruntled neighbors, have you offered them the purchase of that lot adjacent to your  
2360 property? Have you asked them if they want to buy your lot?

2361  
2362 Ms. Miles - Yes, I told them I wanted to sell it. This fellow asked me; I  
2363 told him I would love to sell my lot. He said, "Would you really," and I said "yes." But I  
2364 haven't had any problems with the buildings going up; I haven't had any problems with  
2365 traffic. They get in my yard. I have a drive, and they come right on up in my yard. The  
2366 others have driveways too.

2367  
2368 Mr. Wright - Did you say you had offered it to someone in the vicinity, the  
2369 sale of it?

2370  
2371 Ms. Miles - No, this is the fellow here, that I talked to.

2372  
2373 Mr. Wright - But you didn't seek to sell this 50 feet to your neighbor?

2374

2375 Mr. Marinos - I'm sure you all know this, but if we can't get the variance,  
2376 and if it's not a buildable lot, it's going to be worth significantly less than what my  
2377 contract to pay Ms. Miles is, unless one of the neighbors is willing to pay a similar  
2378 amount.

2379  
2380 Mr. Wright - What is the lot worth with the variance?

2381  
2382 Mr. Marinos - My contract with Ms. Miles is the same that I paid for the lot  
2383 before, \$45,000.

2384  
2385 Mr. Kirkland - That's if it's a buildable lot.

2386  
2387 Mr. Marinos - That contract is subject to the variance and getting a building  
2388 permit, just like I did before with Tammy Krantz on Lot 20.

2389  
2390 Mr. Kirkland - What is the lot assessed at right now, not being buildable?

2391  
2392 Mr. Marinos - It's low, like \$5,800, something like that.

2393  
2394 Mr. Wright - Thank you very much. That concludes the case.

2395  
2396 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
2397 Kirkland, the Board **granted** application **A-10-2005** for a variance to build a one-family  
2398 dwelling at 8729 Midway Road (Westhampton Settlement) (Parcel 751-739-7189). The  
2399 Board granted the variance subject to the following conditions:

2400  
2401 1. Only the improvements shown on the plan filed with the application may be  
2402 constructed pursuant to this approval. No substantial changes or additions to the layout  
2403 may be made without the approval of the Board of Zoning Appeals. Any additional  
2404 improvements shall comply with the applicable regulations of the County Code.

2405  
2406 2. This approval only applies to a one-story or Cape Cod (1-1/2 story) dwelling.

2407  
2408 3. [Added] The proposed dwelling shall be set back 60 feet from the right-of-way of  
2409 Midway Road.

2410  
2411 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

2412 Negative: 0

2413 Absent: 0

2414  
2415 The Board granted this request, as it found from the evidence presented that, due to the  
2416 unique circumstances of the subject property, strict application of the County Code  
2417 would produce undue hardship not generally shared by other properties in the area, and  
2418 authorizing this variance will neither cause a substantial detriment to adjacent property  
2419 nor materially impair the purpose of the zoning regulations.

2420

2421 **A-11-2005** **DANIEL LONG** requests a variance from Section 24-95(k) to build  
2422 a detached garage at 11113 Bryans View Court (Church Trace)  
2423 (Parcel 744-755-9247), zoned R-3, One-family Residence District  
2424 (Three Chopt). The minimum side yard setback and rear yard  
2425 setback are not met. The applicant proposes 25 feet minimum side  
2426 yard setback and 8 feet rear yard setback, where the Code requires  
2427 65 feet minimum side yard setback and 12 feet rear yard setback.  
2428 The applicant requests a variance of 40 feet minimum side yard  
2429 setback and 4 feet rear yard setback.

2430  
2431 Mr. Blankinship - A-11-2005 has been withdrawn.  
2432

2433 **A-12-2005** **ROBERT J. RAPPOLD, III** appeals a decision of the Director of  
2434 Planning pursuant to Section 24-116(a) regarding the property at  
2435 10307 Gayton Road (Canterbury East) (Parcel 744-745-2078),  
2436 zoned R-2, One-family Residence District (Tuckahoe).  
2437

2438 Mr. Wright - Does anyone else desire to speak with reference to this  
2439 case? Everyone who desires to speak, please stand, and we'll swear everybody at the  
2440 same time.

2441  
2442 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2443 truth, the whole truth, and nothing but the truth, so help you God?  
2444

2445 Mr. Rappold - I do. My name is Robert J. Rappold, III. I'd like to thank the  
2446 Board for redoing my revised plans on this two-car garage. In the packet you have  
2447 several pictures of our garage as it stands today. We have also requested a review of  
2448 our revised plan. This revised plan is, of course, not the current construction, but what it  
2449 does is to blend both the house and the garage seamlessly together. What I mean by  
2450 that, is that this section here, which is the lowest part of the house, next to the garage,  
2451 and that would just go right over here so it would seamlessly merge in with the garage.  
2452 What this will do is provide a house that looks very unified. I believe you have a copy of  
2453 that. It's labeled as Revised Plan # 1 down at the bottom; it's a drawing. You see in  
2454 this particular drawing that this is the way the garage is right now, and then this all  
2455 seamlessly merges together. These are the slight height differentials between the two.  
2456 I have some other information on all these I'd like to present as I go through this. I'd like  
2457 to point out that the view from up the street, which is toward Gaskins Road, which when  
2458 you look at our house with the garage, the roof line of the house next door and this  
2459 particular garage are equal. We're on a slight incline, but they're actually equal, so it  
2460 looks very good from the adjacent property, which is the one that's affected. We have  
2461 some things I'd like to hand out here. These are some views of the garage from the  
2462 inside, which apparently were not included in the packet that you received. In these two  
2463 pictures, there is a 14-inch header over the garage opening.

2464  
2465 Ms. Dwyer - Excuse me, Mr. Blankinship, it might be good to project this  
2466 on the screen, so we can see what he's talking about.

2467  
2468 Mr. Rappold - The picture on the right shows the header, which is over the  
2469 entranceway, and that was required by the building people, and that building permit was  
2470 obtained after the zoning variance was approved. This header was bigger than what we  
2471 had in our original plan. They also indicated that we needed these 12-inch TJ I-beams  
2472 – they're the 12-inch beams that go across the roof of the garage, 14, excuse me. This  
2473 is Mr. Poston, our contractor, who is actually doing the work. That raises the level of the  
2474 garage. Apparently the engineers in the Permit Office, had access to all these technical  
2475 things about load weights, etc., and that's what they indicated was needed.  
2476  
2477 Mr. Kirkland - You said you had to add the beam over the large garage  
2478 door – what is the distance from the bottom of the floor joists or the ceiling joists, in this  
2479 case, to the floor?  
2480  
2481 Mr. Rappold - It's approximately ten inches.  
2482  
2483 Mr. Kirkland - I'm talking about from top to bottom, nine feet, ten feet, eight  
2484 feet? I'm talking about the bottom of the ceiling joists to the floor.  
2485  
2486 Mr. Rappold - From the top of the ceiling joists or the bottom of the ceiling  
2487 joists?  
2488  
2489 Mr. Kirkland - From the bottom of the ceiling joists, where they rest on the  
2490 plate, to the floor, down.  
2491  
2492 Mr. Rappold - It's about 8 ½ to 9 feet. The reason that is, sir, is because of  
2493 that header, and we had to have a little bit of wood here in between the TJ I's and the  
2494 header in order to have something to nail into. That added a little bit. When you added  
2495 the header and the TJ I's, and the reason that is somewhat high, is because I have a  
2496 van, as you see in the pictures, and it requires a good size amount of entrance in order  
2497 to just use the garage.  
2498  
2499 Ms. Dwyer - Did the engineering considerations in this garage require you  
2500 to have a second story on this garage?  
2501  
2502 Mr. Rappold - No, and this is not a second story garage. I'd like to give  
2503 another picture here, if you don't mind helping, Mr. Blankinship. We are not building a  
2504 two-story garage. In this particular picture, which is on Avalon Drive, only about a mile  
2505 or so from our house, this is a two-story garage on a rancher. Ours does not look  
2506 anything like this. This is an example of where the second story starts well above the  
2507 doorway. This is not our intent. We are not building a two-story garage, and our garage  
2508 is much lower; it's only several feet above the current house. That was not our intent.  
2509 We did not require a two-story garage, and we are not in any way trying to build a two-  
2510 story garage. It's a one-story garage with an attic. Have a scale drawing here. This  
2511 particular drawing represents the revised plan, and it shows one foot for each block.  
2512 Where there's four feet between each of the heavier lines; it's not five feet. What you

2513 see here, is this looks very unified between the roof and the roof of the house. It  
2514 basically has three levels of roof now, and basically, we still have three. One of the  
2515 items that you'll notice on this drawing is that there is a decrease in the inclination. The  
2516 ground slopes down to the right, and you can see what happens is that while it's a  
2517 certain height on the left-hand side, it goes down at least 2 ½ feet to go to the right side.  
2518 Currently my house is higher on one side than it is on the other. When adding the  
2519 garage, it actually helps level it up, so that it's closer to the same size on each side. On  
2520 the right-hand side, it's about nineteen feet from the top to the ground, and with the  
2521 garage, it's only about a two-foot difference between the two sizes. Our house is only  
2522 one of two ranchers on the street; the adjoining property is next door to us, and  
2523 everybody else has tri-levels, and what we believe is that this change here will make our  
2524 house more compatible with the other houses, because they have multiple levels, so  
2525 this house would fit better with the roof line, although it would be smaller. In the June  
2526 24<sup>th</sup> meeting in which this was approved, we were given approval to use either brick or  
2527 siding, and I'd indicated at the time that we would probably use siding for cost purposes.  
2528 With this revised plan, what we're planning to do is to take the brick off of the side of the  
2529 house next to the garage, and we would replace all of that with matching brick, so  
2530 everything matches up. That eliminates having ugly lines in between the garage and  
2531 the house, even with what we had proposed earlier. This brick would match the house  
2532 and the adjoining property. We're also using the same color shingles as the property  
2533 next door on our house, and the same height. Most people can't see the garage unless  
2534 they're right in front, and even that is going to be improved. We had lost some trees in  
2535 front, due to the hurricane, and we have replaced all that with new bushes. Right now  
2536 the bushes are a little lower than they will be; if you drive by, you can see the garage.  
2537 But very shortly they will be growing to four feet high. When you're driving by, you won't  
2538 even be able to see the garage. Nobody even parks on our street because it is on  
2539 Gayton Road, so nobody even looks at it. There's not even any parking, so people  
2540 don't even walk by.

2541  
2542 The garage is also shielded by many bushes in the front, and large trees in our  
2543 neighbor's and our yard. We have maple trees and several large ligustrums. There's  
2544 also a large set of cypress trees on the adjoining property. They block the view from  
2545 Gayton Road. It's going to be almost invisible. The other thing we're planning to do is  
2546 put in a privacy fence on the side of the house and in back of it for as much shielding as  
2547 possible. There's also a maple tree right in back of the house.

2548  
2549 We've also gone around our area to the blocks in front and on the side and in back of  
2550 us, and we had a request for people to support the revised plan. Here is a copy of that  
2551 for each member of the Board. The closest person to me wrote "nice addition." Mr. and  
2552 Mrs. Baker, on Cherrywood Drive, directly behind the garage, they approved. Just  
2553 about all those people signed it.

2554  
2555 We have presented an alternative plan, which you also have in your packet. In this  
2556 plan, what we do is to lower the garage by a couple of feet. We're still trying not to  
2557 move those TGI's, because that is extremely expensive, to have to take those down and  
2558 rebuild the entire garage. In this scenario, we tried to cut down the size of the garage



2559 somewhat while not raising the other part of the house, and this was also reviewed with  
2560 our neighbors. They actually liked the revised plan a whole lot better, in fact better than  
2561 what we had submitted back in June that you approved, because it ties in everything  
2562 very well. We have to have a certain amount of height in order to get the van into the  
2563 garage.

2564  
2565 I have a set of medical statements from my doctor, who has been after me to avoid  
2566 straining because of various operations I've had, and he said it would be creating a  
2567 strain for me every time I go up in the small attic that I currently have and try to push  
2568 things around, like Christmas stuff. That's one of the reasons why we wanted a little bit  
2569 of a raised attic area, because it does prevent that problem. By having some steps into  
2570 that attic area, that was also recommended by my doctor.

2571  
2572 I've talked to one of the appraisers of our property, and he said that the marketability of  
2573 the house has improved by having a stand-up storage area. In fact, one of the  
2574 motivations for all the improvements we've made to our house over the years, is  
2575 because we realize that older or disabled people would like to have a house that is a  
2576 little larger than their standard rancher. When we put an addition on in the back, we  
2577 made it larger, 36-inch openings so a man in a wheelchair could get through.

2578  
2579 I'd like to point out several errors in the document that were prepared by the Planning  
2580 Office, and were distributed with the request. In the document, it talks about two  
2581 conditions that were prepared and that were required for me for the garage. The thing  
2582 that was sent out talked about building in substantial conformance, but actually, there  
2583 was another statement. In fact, the drawings for the permit were actually changed in  
2584 the Building Permit Office by the building people, and they were different than what was  
2585 approved, and made it higher. We just didn't go in and try to say we'd like to do  
2586 something different. We actually presented to the Building Permit people exactly what  
2587 was provided, and they said with this TJI and everything, it's going to have to be  
2588 eighteen feet high. So they wrote eighteen feet high on it, and I have a copy of the  
2589 plans here. Another error was that it says that the revision in September was done by  
2590 the contractor; actually, it was done by me, and the contractor accompanied me and  
2591 can back up what I'm saying here. Also, I don't know why it says there was a revision in  
2592 September. Actually, there was no revision in September. As you can see here in the  
2593 plans, the revisions were approved in October and November. If we were trying to pull  
2594 a fast one over on you, obviously what we would do if we were dishonest, would be to  
2595 do one time and try to get away with it. Why would we go twice. Every time there was  
2596 a change that was requested, we went to the Permit Center and requested a change.

2597  
2598 I'd like to talk about the two conditions in the Board's approval. What it said was, "The  
2599 new construction shall match the existing dwelling as nearly as practical." You have to  
2600 use the common dictionary definition of practical. "adapted or designed for actual use."  
2601 What that means is that the construction is going to match what is useful. When the  
2602 people told me I had to put in an eighteen-inch header, it was not useful obviously,  
2603 because how could I even fit my van in there. It was also having issues for me because  
2604 of a medical condition. What I'm trying to do in this revised plan is going to match even

2605 better to the colors and the materials.

2606

2607 Another thing that was a condition of "substantial conformance." It says that "no  
2608 substantial changes or additions to the layout may be made without the approval of the  
2609 Board of Zoning Appeals." In fact, there is no documented way to do that. I talked to  
2610 Mr. Blankinship about how to get a change before the Board. He told me no one had  
2611 ever done that before, so there was no procedure. In Section 144, which outlines the  
2612 Board's duties, it doesn't have anything having to do with your ability to satisfy this  
2613 condition, that says you can hear a suggested change to the plan. It says you can hear  
2614 something after I get a letter, but it does not say anything about how to handle this  
2615 condition. I figured the only way I knew how to do it was to go to the Permit Center.  
2616 That's the only area that has the building and planning people in it. I tried my best to  
2617 meet the requirements. It also says in the document that you can meet the  
2618 requirements within two years by applying for permits or approvals. In fact, when I went  
2619 to the building people, before I got the zoning approval, they said I couldn't even talk to  
2620 them because I didn't have a variance. I had to come in and get a permit after you had  
2621 approved the variance, because they wouldn't even listen to me.

2622

2623 I applied for this building permit after the variance was approved, and I entered exactly  
2624 the same plans as were approved. My contractor went with me at least three times.  
2625 During those times, it did go before the planning and zoning, and they saw the eighteen  
2626 feet put just minutes before by the building people. In fact, it's right there on the first  
2627 page, and they said it's approved July 19. We went back again because we needed a  
2628 higher garage because of the car. We explained that we do have a variance and asked  
2629 if this was a "substantial change." The person said no, this was just a minor change. In  
2630 fact, it is. All it was, was raising it just a little bit. It's not changing the construction of  
2631 the property except for just one little thing, the height. We were thinking since the  
2632 Permit Center handles all that, he was actually checking with zoning. That's not even  
2633 what the condition says. I thought he was checking with the zoning people.

2634

2635 What happened was that we tried to work within the system as well as we could; we  
2636 submitted exactly what was approved in June in our July permit. We went through all  
2637 the steps. Our building was a little higher because of what the building people said. It  
2638 was stamped and approved by the zoning people. They don't stamp these things and  
2639 give you this unless it has gone through zoning for new construction, is that not correct?

2640

2641 Mr. Blankinship - They're not supposed to.

2642

2643 Mr. Rappold - That is correct.

2644

2645 Mr. Blankinship - There appears to have been a mistake made in this case.

2646

2647 Mr. Rappold - Yes it was. In fact it happened several times. As I said,  
2648 there are stamps here that you can see for October and November.

2649

2650 Mr. Blankinship - In July they did come and check with me; in October and

2651 November they did not.  
2652  
2653 Mr. Rappold - It was approved; I guess you've seen it, where it's higher  
2654 than what you approved.  
2655  
2656 Mr. Wright - The staff can't approve something that's not in accordance  
2657 with what the Board has already approved. The staff can't make changes to a Board  
2658 approved matter; they don't have that authority.  
2659  
2660 Mr. Rappold - I understand, so that's why I'm here before you today,  
2661 because what I'd like to do is to ask you to approve the revised plan. This revised plan  
2662 does address lots of points that have been brought up. I have some other detailed  
2663 drawings of what this is going to look like. I gave this to Mr. Blankinship before – have  
2664 you already given this to the Board?  
2665  
2666 Mr. Blankinship - I'm not sure whether they have that one or not.  
2667  
2668 Mr. Rappold - When I talked to Mr. Blankinship before, he said what I'd like  
2669 to do is ask you for a detailed picture of how this looks with the middle part raising up,  
2670 because it's easier to visualize and see the actual construction. As you can see, all  
2671 we're doing is just adding some knee walls, I guess you call it, or boards.  
2672  
2673 Mr. Wright - It looks like to me that we've got the picture in our materials.  
2674 It shows the height distances.  
2675  
2676 Mr. Kirkland - Could I ask one question? The garage doors height, what is  
2677 that?  
2678  
2679 Mr. Rappold - The garage door height is approximately eight feet.  
2680  
2681 Mr. Kirkland - What is the standard garage door height for standard cars?  
2682  
2683 Mr. Rappold - I don't know. In my particular case, I have a Chevy Express  
2684 Van, which is like one of those Savannahs that you see on the road, or a cargo van,  
2685 except that mine is a passenger van.  
2686  
2687 Mr. Kirkland - Do you have a car too?  
2688  
2689 Mr. Rappold - My wife does. I don't have a car. I'm an architect for a  
2690 company, doing computers. Even a standard height would not fit my van, so that's why  
2691 I had to ask for a change, and I tried to follow the procedures.  
2692  
2693 Ms. Dwyer - I just want to ask Mr. Blankinship, what Mr. Rappold has  
2694 begun to construct on the property, does that fit the definition of a two-story addition?  
2695  
2696 Mr. Blankinship - I think I would call it a one-and-a-half story, because the

2697 second story is, it depends on the height of the knee walls, and again, that's been  
2698 amended, so I'm not exactly sure. It's either one-and-a-half or two-story.  
2699

2700 Ms. Dwyer - What is the height of the knee wall now?  
2701

2702 Mr. Blankinship - Two feet.  
2703

2704 Mr. Rappold - By definition of what a story is, a story means in plain  
2705 language something that's mostly .....  
2706

2707 Mr. Blankinship - Story is defined in the Code, so we won't go by plain  
2708 language. We would go by the Code definition.  
2709

2710 Ms. Dwyer - I'm interested in the Code definition.  
2711

2712 Mr. Rappold - And what is the Code definition?  
2713

2714 Mr. Blankinship - A half story counts if the knee walls are not more than two  
2715 feet above the floor, so by going to two feet, he's got a half story. It's a one-and-a-half  
2716 story, with two-foot knee walls.  
2717

2718 Mr. Rappold - One of the reasons it's a little higher, as you see here, is  
2719 because I was trying to match the pitch on the roof, the existing pitch. When you look at  
2720 that, and then you consider it's a thirty-foot depth, it adds some height. Most of the  
2721 height is under the eaves. It's under the rafters. You can go anywhere beyond just a  
2722 small area and actually be able to move. You can go up there, but then you're going to  
2723 hit your head and hit some nails on the shingles if you go much further. It's not  
2724 recommended to walk anywhere beyond three feet from the middle. I guess you could  
2725 call it a little higher than that, but that's what we tried to do.  
2726

2727 Ms. Dwyer - When you came before the Board of Zoning Appeals in April,  
2728 you requested a two-story garage, is that right?  
2729

2730 Mr. Rappold - Yes, and that was more like the garage that I showed you in  
2731 the picture.  
2732

2733 Ms. Dwyer - And that was denied by this Board?  
2734

2735 Mr. Rappold - Yes it was.  
2736

2737 Ms. Dwyer - And then in June, what did you do?  
2738

2739 Mr. Rappold - I applied for a one-story garage.  
2740

2741 Ms. Dwyer - Why did you apply for a one-story garage?  
2742

2743 Mr. Rappold - Because my wife was asking me to park her car somewhere.  
2744  
2745 Ms. Dwyer - But why did you apply for a one-story?  
2746  
2747 Mr. Rappold - Because actually, after reflection on what you all said, I think  
2748 the two-story is too high.  
2749  
2750 Ms. Dwyer - And there were questions asked of you and concerns  
2751 expressed about a two-story garage addition to this house in April; that's why you  
2752 applied for the one-story in June.  
2753  
2754 Mr. Rappold - I should have just applied for what I'm asking now, actually.  
2755 It was kind of stupid for me to go there.  
2756  
2757 Ms. Dwyer - But you did not. In June you applied for a one-story garage,  
2758 correct? And you were under oath at the time, and I'm looking at the transcript from  
2759 June, and you made the representation, I'm quoting here, "the top of the garage would  
2760 be below the roof of the house." So you represented to this Board under oath that the  
2761 roofline of the garage would be below the roofline of the existing house.  
2762  
2763 Mr. Rappold - And that was the picture that we showed.  
2764  
2765 Ms. Dwyer - Exactly, and you submitted a drawing that showed the  
2766 roofline of the garage being below the roofline of the house with that case. I can show  
2767 that to you.  
2768  
2769 Mr. Rappold - I remember. Am I allowed to elaborate on any of these  
2770 answers?  
2771  
2772 Ms. Dwyer - I just want to make sure that I understand, that you  
2773 understood that what was approved in June was a single-story, a one-story garage after  
2774 having been denied the two-story garage.  
2775  
2776 Mr. Rappold - Yes, I understand that I was approved a one-story garage  
2777 after I was denied a two-story garage. We did not understand that it was technically  
2778 classified as almost a one-and-a-half. If I heard Mr. Blankinship correct, he said that  
2779 two feet is almost a borderline, and this is basically right at two feet.  
2780  
2781 Ms. Dwyer - So we may debate whether it's a one-and-a half or a two-  
2782 story, certainly more than a one-story, but you also represented to this Board that the  
2783 roof line of the garage would be below the roof line of the house, in June, when this  
2784 case was approved, which doesn't have anything to do with the stories.  
2785  
2786 Mr. Rappold - I understand, but this revised plan basically makes that a  
2787 moot point because it would be equal to the existing house.  
2788

2789 Ms. Dwyer - But then when you came to the Permit Center and you were  
2790 originally granted a building permit, was that for a one-story?  
2791  
2792 Mr. Rappold - It was exactly for what you see here.  
2793  
2794 Mr. Blankinship - I've got the building permit here in front of me, dated July 19,  
2795 and the drawings are the same as the drawing in the file from June. They're exactly the  
2796 same drawings.  
2797  
2798 Mr. Rappold - Do they say eighteen feet on there?  
2799  
2800 Mr. Blankinship - No, I'm looking at this drawing right here that shows the two  
2801 rooflines. It shows the garage roof lower than the house roof.  
2802  
2803 Ms. Dwyer - That's what was submitted and approved with the first  
2804 building permit?  
2805  
2806 Mr. Blankinship - Yes, another copy of it is in the file in front of you there, the  
2807 approved variance.  
2808  
2809 Ms. Dwyer - I understand there was some concern about header height  
2810 and that sort of thing, so how was it that a request was presented to the County for  
2811 something, a garage that would have a roof line higher than the house? How did that  
2812 come about?  
2813  
2814 Mr. Rappold - We took in what we had, and then as I said, the Building  
2815 Permit people explained to us that the TJI's would make it higher.  
2816  
2817 Ms. Dwyer - Why did you come back to the Permit Center the second  
2818 time?  
2819  
2820 Mr. Rappold - Because I realized after measuring things that the van would  
2821 not fit in the garage any longer because of the header change.  
2822  
2823 Ms. Dwyer - You came back to raise the roof, essentially?  
2824  
2825 Mr. Rappold - To make the entranceway bigger, right.  
2826  
2827 Ms. Dwyer - I may have misunderstood something you said in your  
2828 original statement – did you say that when you realized you needed to raise the roof,  
2829 that you came to the Board of Zoning Appeals staff and asked them how you could get  
2830 the roof raised, and they said they didn't know how you could do that, so then you went  
2831 to the Permit Center?  
2832  
2833 Mr. Rappold - No, I went to the Permit Center and walked through the  
2834 channels. I was doing exactly by what you said – it said contact the BZA, and there's

2835 no way to actually contact you because I'm not allowed to actually call you.  
2836  
2837 Mr. Blankinship - But you made that contact with me after we notified you that  
2838 the garage was being built too tall, after the framing was up and we had received a  
2839 complaint that you had framed it taller than what was approved.  
2840  
2841 Mr. Rappold - In fact, I did ask you, how do you contact the BZA Board?  
2842  
2843 Ms. Dwyer - The timing of that was what I wondered. So you came to the  
2844 Board of Zoning Appeals after the complaint had been registered and after you had  
2845 already built and after you had gotten your permit, all of that?  
2846  
2847 Mr. Rappold - I saw Mr. Blankinship at that time.  
2848  
2849 Mr. Wright - Any further questions? Are you finished with your  
2850 presentation now so we can hear the opposition? Then you'll have an opportunity to  
2851 rebut. Mr. Blankinship, we don't have a height problem, do we?  
2852  
2853 Mr. Blankinship - Because he needed a variance for the side yard, is why the  
2854 height became an issue.  
2855  
2856 Mr. Wright - I understand, but does this exceed the height permitted?  
2857  
2858 Mr. Blankinship - Because it's attached, no sir. There's not a need for an  
2859 additional variance; it's just that he hasn't complied.  
2860  
2861 Mr. Rappold - And it's only seven feet from the neighbor's property; there's  
2862 actually a considerable amount of distance between the property line and that house.  
2863  
2864 Mr. Wright - If you would be seated, we'll hear from the opposition.  
2865  
2866 Mr. Tokarz - Members of the Board, my name is Tom Tokarz. I'm in the  
2867 Henrico County Attorney's Office. I'm here representing the Director of Planning,  
2868 because this is denominated as an appeal of a decision of the Director of Planning. As  
2869 I'll explain in just a moment, I believe that the decision of the Director of Planning is  
2870 correct, that the owner is in violation of the approval granted by the Board of Zoning  
2871 Appeals. Before I address whether this is properly before you as an appeal or as a  
2872 request for an amendment, I will tell you that I disagree completely with the statement of  
2873 facts as have been presented to you, because the evidence that's in the record of the  
2874 County is contrary to what you've just been told. The building approval, and I hope this  
2875 is in your packet, of October 28, 2004, which has two notations on it – one is July 19,  
2876 2004, and October 28, 2004, down at the bottom, shows that what was done was an  
2877 approval of a change. If you look over to the side, the height in the original drawing was  
2878 eight feet, and there is a notation of a change to ten feet. That's the only thing that was  
2879 approved. The building official has never approved anything contrary to what the Board  
2880 of Zoning Appeals has done. The building official was never given a plan for a walk-up

2881 attic, and the building official has never approved a plan for a 23-foot garage, which is  
2882 what has been measured and been constructed. So what the owner has done, in fact,  
2883 he has constructed a garage without any approval by any County official or by this  
2884 Board. And you can make a decision to change your approval, if you wish, but it should  
2885 be clear that the Board and the County have never approved what has occurred on this  
2886 property, and so to suggest anything other than that is not correct. It was never  
2887 requested prior to the time of the notice from December 9, 2004, from Mr. Blankinship  
2888 for the BZA to modify the approval that it gave in June. I suggest to the Board that the  
2889 owner is not telling you the truth when he tells you that he did do what the permit  
2890 required. Your permit required that the new construction shall match the existing  
2891 dwelling as nearly as practical. I think the plain meaning of that is that the roof height  
2892 should be aligned as closely as possible to what the existing roof height is. Yet if you  
2893 look in the pictures that are in front of you, a picture with the gentleman standing in the  
2894 doorway, you can see there's been no effort to make the dwelling match the garage. It  
2895 is substantially higher than that, and substantially higher than the main portion of the  
2896 building.

2897  
2898 In addition, with respect to the second condition, it required that "The property shall be  
2899 developed in substantial conformance with the plan filed with the application. No  
2900 substantial changes or additions to the layout may be made without the approval of the  
2901 Board of Zoning Appeals." There is no evidence that there was ever any application  
2902 made to this Board to change from sixteen feet, which was what was approved by this  
2903 Board in June, to 23 feet, which is what was actually constructed. This is not an  
2904 innocent mistake. This is not a situation where somebody tried to do his best to comply.  
2905 This is a situation where they made a decision to try and build something bigger and  
2906 have done so and now come and ask you to approve it.

2907  
2908 I say all that simply to say that when the Director of Planning made the decision on  
2909 December 9, that this construction was in violation of the BZA's approval, that decision  
2910 was correct. That's my purpose in being here. I'm not here to speak as to the revised  
2911 plan that they submit to you for your approval. I think that goes to your authority to  
2912 grant a revised variance if you want, and you would go through all the issues that are  
2913 involved in granting a variance, but I do want to say that I strongly believe that the  
2914 Director of Planning's decision which is properly before you, in the form that's been filled  
2915 out, that that decision was correct and should be affirmed by the Board, and that the  
2916 Board should then consider whether it's going to approve the 23-foot height garage that  
2917 Mr. Rappold has actually built, as opposed to the 16-foot garage which you approved in  
2918 June.

2919  
2920 Mr. Wright - This plat or drawing that you referred to, approved October  
2921 28, 2004, it says "changed to ten feet," is it your statement that this is the only thing that  
2922 was approved by the Planning Office?

2923  
2924 Mr. Tokarz - This wasn't even approved by the Planning Office; this was  
2925 approved by Building Inspections. What happened, according to the building permit  
2926 records, the original plan that was approved, was then modified on October 28, when



2927 Mr. Rappold came in and said, "I need to have a higher height for the doorway to get my  
2928 van in, and it was changed from eight feet to ten feet, that's what you see in the change.  
2929 I would not call the change to the door a material change.

2930  
2931 Mr. Wright - Over on the side, it says sixteen feet, six inches, from the  
2932 ground to the peak of the roof. That's what we approved.

2933  
2934 Mr. Tokarz - That's correct; that did not change at all. That's what you  
2935 approved, and that's what the Building Inspection Department approved. There was no  
2936 approval of any change in height. Even if there had been a change of two feet, to  
2937 account for the change of eight feet to ten feet, that would only take you up to eighteen  
2938 feet, five inches. Mr. Rappold built 23 feet, so there's no way that there can be any  
2939 contention that there was any approval by anybody of the County to what has actually  
2940 built on that property.

2941  
2942 Ms. Dwyer - So the Building Inspections folks only approved an increase  
2943 in the door height; they did not make any statements about increasing the second story  
2944 or the roofline. In fact, the same roofline that was approved by this Board is noted on  
2945 the October approval as sixteen feet.

2946  
2947 Mr. Tokarz - That is correct. The only thing that was approved was a  
2948 change in the door height. That was certainly fine, to accommodate for the van.

2949  
2950 Ms. Dwyer - So our staff report is in error. Our staff report says, "In  
2951 September, the contractor applied for a revision to the building permit to raise the roof  
2952 approximately four feet higher. The County approved the revision without checking the  
2953 variance file."

2954  
2955 Mr. Blankinship - I appear to have fit three errors into that one sentence. It  
2956 was not September; it was October. According to Mr. Rappold, it was not the  
2957 contractor, but he, the owner, who applied, and those are both simple mistakes on my  
2958 behalf, and I apologize. This "raise the roof approximately four feet higher," it's not clear  
2959 to me, was there a later approval after this October 28? This is the contractor.

2960  
2961 Mr. Poston - I'm Harry Poston. I was with him when he came to do this,  
2962 and I spoke with the people, just like he did. You had said that this was not done. I  
2963 have proof of it here in red writing and a stamp on it, from them. It is approved at 21  
2964 feet plus, and the date is November 8, and it was initialed by Dave Harris.

2965  
2966 Mr. Tokarz - I have not seen that, so I have not tried to misrepresent  
2967 anything to the Board. I've not seen this document before.

2968  
2969 Mr. Blankinship - I was aware of the October revision; I was not aware of a  
2970 November revision.

2971  
2972 Mr. Rappold - The copy that we've got is a copy of exactly what's in the

2973 Building Permits files. It was given to us on exactly that same day, November 8, when  
2974 we applied for that, and it was written in black and white, 21 feet plus, by Mr. Harris. So  
2975 I'm not sure why the County does not have a copy of its own files having to do with the  
2976 case.

2977  
2978 Mr. Blankinship - I looked for those files yesterday and did not see a  
2979 November.

2980  
2981 Mr. Poston - I watched him; he made a copy of it and put it in his files. He  
2982 said he had to have it for his files, and he gave me back the original, which was this,  
2983 and it was stamped on it.

2984  
2985 Ms. Dwyer - So you came to the building officials three times, first for the  
2986 original in July, then October for an increase in door height, and then you came in  
2987 November for an increase in the roof height, is that correct? Were there any other  
2988 approvals that you requested?

2989  
2990 Mr. Poston - No, just the three. If I might add here, when the building  
2991 permit was talked about, they said that they would accept the 14-inch header over the  
2992 door, but it had to be taller than eight feet because eight feet is as tall as you can get  
2993 with two-by-fours. So you couldn't put but a seven-foot door in an eight-foot area,  
2994 because you could not open the door. There was a request for ten-foot studs to be able  
2995 to let the door go over the top. He has a van that has to have seven feet to get inside of  
2996 it, so that leaves a foot over it, or maybe a little less. Then they wanted to put in the  
2997 thirty-foot TJI's, so that in itself, on the ten-foot studs, made it above what the original  
2998 drawing would show. Right here it's clear that it was eight feet from the start. After the  
2999 ten-foot studs, you had your fourteen-inch TJI's over top of that. Then he realized that  
3000 he couldn't get his van in, this was before they put the ten feet in there and everything,  
3001 and he had to come back and tell them about the height on it. We had not done a thing  
3002 yet, but after we had put in the wall, he wanted two-feet height on it, a knee-wall, to  
3003 bring it up, because when he stood up, he's six feet, his head was hitting, and he asked  
3004 could he get that?

3005  
3006 Ms. Dwyer - That was not an engineering requirement for the trusses or  
3007 anything; that was just because he wanted more space upstairs.

3008  
3009 Mr. Poston - He wanted more space so he wouldn't drive nails in his  
3010 head.

3011  
3012 Ms. Dwyer - That was the November request, right?

3013  
3014 Mr. Poston - Yes, that was on the last request.

3015  
3016 Ms. Dwyer - So the height of the roof is now what, 23 feet?

3017  
3018 Mr. Poston - They've put down on this, with his signature, 21 feet, plus.

3019  
3020 Mr. Wright - So this would change your argument, Mr. Tokarz?

3021  
3022 Mr. Tokarz - Yes sir. First of all, I apologize to the Board and to the  
3023 owner, because I was making my statements based on what I was provided in  
3024 preparing. I was basing it on what I was told was the building permit files. It changes it  
3025 to the extent that said that there was nobody in the County who approved it. However,  
3026 it does not change the fact that a change from sixteen feet to 23 feet is a substantial  
3027 difference; it's almost a 50% change. It should have been brought back to the BZA. I  
3028 don't think that there's any way that anyone could say that's not a substantial change,  
3029 and therefore, the owner was in error in not coming back and making the request for  
3030 that in the first place. I think that in the final analysis, where it brings us to is this.  
3031 Whether the owner was correct or not, whether he should have come back or not, in the  
3032 final analysis, he could have come back at any time and requested that you change  
3033 your approval. He could have asked you to make that decision, and you would have to  
3034 make that decision on the merits of the case. You would make a determination based  
3035 on the character of the neighborhood, the surrounding buildings, all the types of things  
3036 that you consider when you consider variances, and ultimately, that's what it's going to  
3037 come back to you at this point. I do believe that because there was not a request to the  
3038 Board of Zoning Appeals, what has been done to this point, has been properly noted by  
3039 the Director of Planning, and that his decision was correct, and that it should only be  
3040 reviewed in terms of whether you want to approve a revision to the variance that was  
3041 previously granted, on the merits of that revised plan.

3042  
3043 Ms. Dwyer - So we have two decisions to make? First of all, the decision  
3044 on the appeal, and secondly whether we want to consider or whether we want to  
3045 approve or disapprove the revision request.

3046  
3047 Mr. Tokarz - That is correct, and my argument is the same on the Director  
3048 of Planning's decision. I think his decision was correct, and that you should uphold that.  
3049 As to whether you should approve the revised plan, I do not express any opinion of the  
3050 Director of Planning on that.

3051  
3052 Mr. Wright - This says 21, +/-, from here to the apex, a little latitude there.  
3053 In other words, Mr. Rappold was in good faith coming back. He may not have  
3054 understood the legality of what he should do. He went back to the Permit Center; he  
3055 got something stamped and goes ahead and does it. Unfortunately, he doesn't  
3056 understand the law. What you're saying is, this building inspector had no authority to  
3057 approve this change.

3058  
3059 Mr. Tokarz - He had no authority to approve this change, and I would  
3060 respectfully argue to you, submit to you, that when you state a condition that any  
3061 changes from the plans have to be approved by the Board of Zoning Appeals, that is  
3062 clear enough statement to indicate to any owner, particularly a person who represents  
3063 himself to be an architect and has hired a contractor, that he needs to come back to the  
3064 Board of Zoning Appeals. Otherwise, I think we'll have chaos because everybody can

3065 simply ignore any of your decisions and simply say they didn't understand.

3066

3067 Mr. Wright - The law is pretty clear that this building inspector can't  
3068 approve something over us, even though the owner relies on it. Are you finished?

3069

3070 Mr. Poston - When things like this happen, there is a mistake, whenever  
3071 you come to a place and they say you will go in here, and they will make a change, and  
3072 if they don't make a change, it's too drastic, they will go back to the Board.

3073

3074 Ms. Tonnell - My name is Ann Tonnell, and I live next door to Mr. Rappold,  
3075 on the west side of his house, at 10309 Gayton Road. I just have some questions for  
3076 the Board so I understand. Can a single-story garage accommodate a van?

3077

3078 Mr. Blankinship - Single story, yes.

3079

3080 Ms. Tonnell - So he doesn't need the half story either, to accommodate  
3081 the van? And he owned the van before any of this started, so it wasn't a surprise. And  
3082 he's an architect, so those two things taken into consideration, he could still build what  
3083 you approved in July as a single-story garage and accommodate this van? My second  
3084 question is, the stairs that you see on the inside of his garage, are going to be  
3085 permanent stairs, for him to get up to the second level, so that when he puts stuff in his  
3086 attic, so what he's asking for now has nothing to do with accommodating a van in a one-  
3087 story garage; it has to do with accommodating a half story, if you want to call it that, so  
3088 that's it's a totally separate issue that he's coming here asking for. That's my concern,  
3089 that he was told one thing, and he's done another. So he didn't even need to come  
3090 back for anything, because he could have built that single-story garage to accommodate  
3091 that van.

3092

3093 Mr. Wright - He had to come back to raise the door two feet, but that's  
3094 not a major thing.

3095

3096 Ms. Tonnell - But it would still be a single-story garage? That's my  
3097 concern. The other thing, the medical condition that he says he has to have permanent  
3098 steps so he can climb up and stand up and not bump his head – he works in his yard all  
3099 the time. I've never seen him not moving and shifting and digging and doing all kinds of  
3100 stuff in his yard, so I'm concerned that he's grasping at straws in order to get you to  
3101 approve something. This picture that I have is a picture with the van sitting in front of it,  
3102 that is what he's already built. Over on this one is what he told us the other night at his  
3103 home is what he wants to build, which is a totally separate construction than he's  
3104 already built.

3105

3106 Mr. Wright - I don't understand that; I think that's the same.

3107

3108 Ms. Tonnell - No sir. I didn't know if you understood that what he's got out  
3109 there today, if you drove out there and looked at it, is not what he's asking you to build  
3110 now. I guess I should say I'd like him to explain what he wants now.

3111  
3112 Mr. Wright - I understand he wants to leave what he's got, is what he's  
3113 asking us to do. He's already built it.  
3114  
3115 Mr. Blankinship - He's put several different options in front of the Board.  
3116  
3117 Ms. Tonnell - He wants to raise part of the house up to that high level also  
3118 now, and that has nothing to do with the single-story garage either. There's a window in  
3119 that plan of yours that is the window in his home.  
3120  
3121 Mr. Blankinship - The idea behind that is just to make the roofline consistent.  
3122  
3123 Ms. Tonnell - So he wants to raise all that up a story and a half that he  
3124 doesn't need.  
3125  
3126 Mr. Blankinship - I think he would prefer to leave it as it is. He had offered that  
3127 as a way to make the roofline consistent as it goes across the house.  
3128  
3129 Ms. Dwyer - You're talking, ma'am, about Garage Plan # 1, his request?  
3130 In that plan he wants to raise the roof level above his house. No, this is an additional  
3131 increase in height. He wants to increase the height of the part of his house that  
3132 connects the garage to the main part of the house, so that the roof lines would step up.  
3133 You'd have the roof line to the main house, and you'd have, he would raise the roof  
3134 .....  
3135  
3136 Ms. Tonnell - .....of another section of his home and the garage,  
3137 right .....  
3138  
3139 Ms. Dwyer - .....so you would continuously step up .....  
3140  
3141 Ms. Tonnell - .....so his request for a single car garage has been  
3142 blown way out of proportion for what he is actually wanting to go, and that is my  
3143 concern.  
3144  
3145 Mr. Wright - We'll ask him this question. Anybody else?  
3146  
3147 Mr. Smith - My name is Ron Smith. I live at 10309 Gayton Road also.  
3148 I'm concerned about my property value; that's why I'm here today. I don't like the looks  
3149 of the garage. It looks out of place and character for the neighborhood. I'm concerned  
3150 with what Mr. Rappold might do in the future also. I don't want to cause any financial  
3151 grief or problems, and it's very difficult to speak out against a neighbor like this, but I'm  
3152 just concerned for my property.  
3153  
3154 Mr. Wright - Anybody else to speak in opposition? Opposition has this  
3155 opportunity, and once finished, you don't have the opportunity to speak again. Mr.  
3156 Rappold, you have a brief time to rebut.

3157  
3158 Mr. Rappold - First, I'd like to respond to the lawyer for the County. He  
3159 said it disagreed with all my facts, and then he had to recant.  
3160  
3161 Mr. Wright - He was operating under false information.  
3162  
3163 Mr. Rappold - It does present a bad image. He also said, erroneously, that  
3164 it's a 23-foot garage, and he said that multiple times. In fact, Mr. Blankinship has used  
3165 that information to go before his boss, Mr. Silber, and other people, and that is  
3166 erroneous information. As you can see from the scale drawing that has been prepared,  
3167 it's only 21 ½.  
3168  
3169 Mr. Blankinship - The building inspector went out and measured it on the  
3170 ground and told us it was approximately 23 feet. I wasn't with him when he did that;  
3171 that's the information we have from the building inspector.  
3172  
3173 Mr. Rappold - One time he told me 17. I personally measured it myself.  
3174  
3175 Mr. Wright - Be that as it may, we only approved 16 ½, so that's  
3176 substantially more than, whether it's 21 or 23.  
3177  
3178 Mr. Rappold - I agree. I'm just trying to state that the 23 feet actually went  
3179 out to my neighbors as an erroneous statement. It shows that they're not actually  
3180 understanding what has been done. He also said erroneously that it was approved for  
3181 16 feet, and it was not approved for 16 feet; it was approved for 16 ½ feet. I'm not  
3182 going to say it's lying, but it's wrong. It's happening not only from the lawyers here, but  
3183 also from our esteemed Mr. Blankinship's office, where they're passing out bad  
3184 information. He said there was no request to the BZA. As it was pointed out, there is  
3185 no documented manner of contacting the BZA except for requesting a appeal of a  
3186 decision from the Director of Planning. I didn't even have anything to appeal. Nobody  
3187 in the Planning Office had written up there was a problem.  
3188  
3189 About the practicality of it, it had to be higher in order to be able to fit the van.  
3190  
3191 Mr. Wright - The roof doesn't have to be that high to fit the van in there.  
3192 Your builder just said that the reason you raised that roof up was so that you wouldn't  
3193 put a nail in your head when you climbed up there.  
3194  
3195 Mr. Rappold - There are two issues. The first is making the entranceway  
3196 opening higher; that's what was talked about in October.  
3197  
3198 Mr. Wright - There's no problem with making the entrance higher; that's a  
3199 minimal thing.  
3200  
3201 Mr. Rappold - In order to make the entrance higher so that you can fit your  
3202 van in, because as I said, it takes about almost 17 ½ feet to get my van in.

3203  
3204 Mr. Wright - We know that.  
3205  
3206 Mr. Rappold - The first question raised by my neighbor, she said is it  
3207 possible to make a one-story garage that would fit my van in. I want to point out that is  
3208 not possible, and I'm going to show you why. The other gentleman, he claims that I  
3209 went ahead and did things without getting approval, and I actually did not do anything  
3210 until I went to the Permit Center, which was the best thing I could do.  
3211  
3212 Mr. Wright - We've heard all that, no need to reiterate all of that. You're  
3213 rebutting what they say, and I'd like to hear some rebuttal, but don't rehash the  
3214 evidence all over again.  
3215  
3216 Mr. Rappold - I'm not actually an architect, but a computer architect, and I  
3217 don't have any special technical knowledge in this area. Yes, the revised plan is  
3218 keeping the garage at this point, and it's just raising the house so that it would match.  
3219 She acted like it's not exactly the same condition. It's not the same, but it is.  
3220  
3221 Mr. Wright - We have some pictures that were submitted, and you're  
3222 saying now that what you're asking for is to raise it even higher than what's in these  
3223 pictures.  
3224  
3225 Mr. Rappold - No, I'm saying I'm not going to raise the garage; I talking  
3226 about raising the house to match it.  
3227  
3228 Mr. Wright - Oh, you're going to raise the house to match it?  
3229  
3230 Mr. Rappold - Yes sir. No, the garage, I'm not going to touch that unless  
3231 you want me to make it a couple feet lower; that's all I'm saying. All I want to do is try  
3232 and make it level.  
3233  
3234 Mr. Wright - Mr. Blankinship, does he have to have our approval to raise  
3235 the roof of the house; that's a separate issue; that's the first time I've heard of that.  
3236  
3237 Mr. Blankinship - The problem is that he wants to keep the garage at the  
3238 height at which he constructed it. Theoretically, he could lower the garage to what you  
3239 approved and raise the other roof without your review, yes. I think what's he's trying to  
3240 do is get the Board's approval of allowing the garage to remain higher, and as part of  
3241 that, he's offering to raise the roof level of the house to make it consistent.  
3242  
3243 Mr. Rappold - I'm trying to go along with the spirit of the zoning committee,  
3244 which doesn't want to have things looking funny.  
3245  
3246 Ms. Dwyer - Revised Plan 2, labeled as Garage Plan # 2 Alternate Plan,  
3247 that would lower the garage roof from 21 ½ feet to 19 ½ feet approximately.  
3248

3249 Mr. Rappold - It basically eliminates the two-foot knee wall, so it's a one-  
3250 story garage.  
3251  
3252 Ms. Dwyer - So in Plan 2 you eliminate the two-foot knee wall, and the  
3253 house stays the same otherwise.  
3254  
3255 Mr. Rappold - It's rather expensive to do that, and I'm not made of money  
3256 to re-do my house entirely. That would make it minimal difference between the house  
3257 and the garage. Ron Smith's concern about property values, I'd like to point out that I  
3258 have consistently tried to improve my property. As you can see, I have added a  
3259 swimming pool, an addition in the back, thousands of dollars of landscaping, trying to  
3260 improve the neighborhood, and I am not going to build any addition on his side. He is  
3261 on the side where he can't even see my garage. I have added a number of bushes  
3262 screening between his property and mine. On that diagram, on the upper left-hand  
3263 corner, if you were to go out the front there, I've added a number of bushes there for  
3264 screening. Adding the privacy fence, for example, is a gesture so that he can't see  
3265 anything.  
3266  
3267 Mr. Wright - We approved a garage that was not higher than the roof of  
3268 your house. 16 ½ feet, whether it's a half story, or a quarter of a story or whatever,  
3269 that's what we approved.  
3270  
3271 Mr. Kirkland - Whether you own a go-cart or a motor home or a tractor-  
3272 trailer, that's all we approved.  
3273  
3274 Mr. Wright - I'm not interested in hearing whether it's a story or a story  
3275 and a half; we approved a one-story, but whatever it was, it was not to exceed the  
3276 height of the house. That was clear.  
3277  
3278 Mr. Rappold - I didn't realize, to be honest, that out of all the different  
3279 particulars about how it could match the house, that was the one major thing that had to  
3280 be exactly that condition.  
3281  
3282 Mr. Wright - That's what we said in the approval. We said the roof was  
3283 not to be higher than the house.  
3284  
3285 Ms. Dwyer - This goes back to my original question to you, Mr. Rappold.  
3286 You made a statement under oath that the "top of the garage would be below the roof of  
3287 the house." That's the representation that you made to this Board, and that's what the  
3288 drawings that you submitted to the Board reflected.  
3289  
3290 Mr. Rappold - That's exactly right, and I don't debate that. All I'm saying to  
3291 the Board is, I would ask, since I was trying to do the best I can, and this actually looks  
3292 good, I would like to remind you that I have signatures from almost all my neighbors, the  
3293 people next door.  
3294



3295 Mr. Wright - We've seen all of that. Let's not rehash that. That  
3296 concludes the case. Thank you for appearing.

3297  
3298 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.  
3299 Kirkland, the Board **denied** appeal **A-12-2005** and voted to uphold the decision of the  
3300 Director of Planning. The Board denied the appeal as it found from the evidence  
3301 presented that the Director of Planning was correct in determining that the garage as  
3302 built is not consistent with the plans approved by the Board on June 24, 2004.

3303  
3304 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
3305 Negative: 0  
3306 Absent: 0

3307  
3308 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.  
3309 Kirkland, the Board also **denied** the request of **A-12-2005** to revise the approved plans,  
3310 on the grounds that a garage taller than the house would be of substantial detriment to  
3311 adjacent property and would materially impair the purpose of the zoning regulations.

3312  
3313 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
3314 Negative: 0  
3315 Absent: 0

3316  
3317 On a motion by Mr. Nunnally, seconded by Mr. Kirkland, the Board **approved, as**  
3318 **amended**, the Minutes of the **October 21, 2004**, Henrico County Board of  
3319 Zoning Appeals meeting.

3320  
3321 On a motion by Ms. Dwyer, seconded by Ms. Harris, the Board **approved** the  
3322 Minutes of the **November 18, 2004**, Henrico County Board of Zoning Appeals  
3323 meeting.

3324  
3325 There being no further business, and on a motion by Mr. Kirkland, seconded by  
3326 Ms. Dwyer, the Board adjourned until **February 24, 2005**, at 9:00 am.

3327  
3328  
3329  
3330  
3331 Russell A. Wright, Esq.

3332 Chairman

3333  
3334

3335 Benjamin Blankinship, AICP

3336 Secretary

3337