

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY HELD IN THE COUNTY ADMINISTRATION**
3 **BUILDING IN THE HENRICO COUNTY GOVERNMENT COMPLEX ON**
4 **THURSDAY, MAY 27, 1999 AT 9:00 A.M. NOTICE HAVING BEEN**
5 **PUBLISHED IN THE RICHMOND TIMES DISPATCH ON MAY 6, 1999, AND**
6 **MAY 13, 1999.**
7

Members Present -

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

Also Present -

Randall R. Silber, Secretary
Susan W. Blackburn, County Planner II
Kay S. Lam, Recording Secretary

8

9 Mr. McKinney - Good morning, ladies and gentlemen. Welcome to
10 the May meeting of the Board of Zoning Appeals. The Secretary will explain the
11 procedure that we follow. Also, at the back of the room, there are conditions that
12 may pertain to your case. If you don't have them, you might want to go back and
13 get a copy of the suggested conditions by the staff.

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

29
30 Just to repeat what the Chairman said, at the back of the room, are conditions for
31 each case that are recommended with each case for requests for variances or
32 use permits. And that concludes the rules for the Board, Mr. Chairman.

33
34 Mr. McKinney - All right, thank you, sir. Do we have any requests for
35 deferrals or withdrawals on the 9 -00 o'clock agenda?

36

A-53-99

Paul B. and Kim D. Tran request for a variance from Section 24-94 of Chapter 24 of the County Code to build a dwelling at 3009 Church Road (Tax Parcel 57-A-42), zoned A-1, Agricultural District (Three Chopt). The lot width and total side yard setbacks are not met. The applicant has 106.45 feet lot width and 44.0 feet total side yard where the Code requires 150.0 feet lot width and 50.0 feet total side yard. The applicant requests variances of 43.55 feet lot width and 6.0 feet total side yard.

37

The Board granted this withdrawal at the request of the applicant.

38

Affirmative	Balfour, Kirkland, McKinney, Nunnally, Wright	5
Negative		
Absent -		

39

UP-19-99

Richmond Airport Hilton Hotel request for a temporary conditional use permit from Section 24-116(c)(1) of Chapter 24 of the County Code to provide overnight parking for recreational vehicles for special events at 5501 Eubank Road (Hilton Hotel) (Sandston) (Tax Parcel 173-2-A-2), zoned M-1, Light Industrial District (Varina).

40

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the Board **denied** the use permit because the applicant failed to appear before the Board to present the case.

43

Affirmative	Balfour, Kirkland, McKinney, Nunnally, Wright	5
Negative		
Absent -		

A-46-99

Kenneth and Michelle Harris request for a variance from Sections 24-95(c)(1) of Chapter 24 of the County Code to build an addition at 2415 Caddie Lane (Glenwood Heights) (Tax Parcel 146-1-B-19A), zoned R-4, One-Family Residence District (Fairfield). The minimum side yard setback is not met. The applicant has 5.43 feet minimum side yard where the Code requires 7.0 feet minimum side yard. The applicant requests a variance of 1.57 feet minimum side yard setback.

44

Mr. McKinney We heard the testimony for this case at the last meeting, correct Mr. Silber?

46

47

Mr. Silber - I wasn't here, I guess Mr. Marlles was here; no sir.

49

50 Mr. McKinney - We don't have any minutes, do we?
51
52 Mr. Silber - No, sir.
53
54 Mr. McKinney - Well, if you briefly go through it again, Ms. Harris.
55
56 Ms. Harris - We are going on to the side and the back building a
57 family room breakfast room and the back of the property we will have a bedroom
58 added on. The size of the breakfast room and family room, according to the
59 architect, will be extremely small. With the space that we have, we are asking for
60 the 1.5 feet just to make a sizable room. The facing will be brick and the sides
61 and the back will be siding. There's a sketch that my husband did. You all should
62 have a copy of that.
63
64 Mr. McKinney - Yes ma'am, we do.
65
66 Ms. Harris - It shows what we are doing. The architect has not
67 been able to finalize this because we are waiting on the decision.
68
69 Mr. McKinney - Any questions of Ms. Harris by the Board members?
70
71 Mr. Kirkland - Ms Harris, what is directly behind your house?
72
73 Ms. Harris - Woods.
74
75 Mr. Kirkland - That's all it is?
76
77 Ms. Harris - That's all it is.
78
79 Mr. Kirkland - Is it flood plain or wetlands or anything? Is it a developed
80 area?
81
82 Ms. Harris - No, it is strictly woods, I think eventually it turns into
83 someone's back yard.
84
85 Mr. Harris - I think about 400 feet.
86
87 Mr. McKinney - And you are Mr. Ken Harris?
88
89 Mr. Harris - Yes, sir.
90
91 Ms. Harris - Because Huntwood is farther down Creighton Road, I
92 think they own a lot of property, but as far as we can see it is nothing but woods
93 there, it's not developed or anything.
94

95 Mr. McKinney - Eventually it will probably be developed into
96 something R-4. Any other questions? Staff have any comments?

97
98 Mr. Silber - No, sir.

99
100 Mr. McKinney - All right, that completes the case. Ms. Harris, thank
101 you for coming. You'll get your answer this afternoon.

102
103 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
104 Mr. Wright, the Board **granted** the variance.

105
Affirmative Balfour, Kirkland, McKinney, Nunnally, Wright 5
Negative
Absent

106

107

108 **REASON** - The Board **granted** this request as it found from the evidence
109 presented that authorizing this variance will not be of substantial detriment to
110 adjacent property and will not materially impair the purpose of the zoning
111 regulations.

112

113 **1.** This approval is only for the side yard setback for the addition that is the
114 subject of this case. Future improvement to the property shall comply with all
115 the applicable regulations and requirements of the County Code.

116

117 Mr. Silber - Mr. Chairman, if I could be allowed the opportunity, I
118 wanted to introduce a new staff person. I forgot to do this at the beginning of the
119 meeting. We do have with us, I am happy to say, a new principal planner, of the
120 Code Administrative Division. This is Ben Blankinship, who is down at the end
121 sitting to your left. Ben does come to us from Albemarle County where he was
122 employed for about 2-1/2 years. Prior to that, he was the Planning Director for
123 Orange County. Ben has his degree from Virginia Tech, he is a certified zoning
124 administrator, and is still the current president of VAZO, Virginia Association of
125 Zoning Officials. We welcome Ben. What we will probably do from an
126 administrative stand point, will continue to serve as the Secretary for a couple
127 more months and see how that goes and then at some point of time turn this over
128 to Ben and go from there.

129

130 Mr. McKinney - Glad to have you Mr. Blankinship.

131

132 Mr. Silber - The next case this morning is A-48-99 Louise
133 Chester. This case was deferred from the April 22 meeting.

134

A-48-99

Louise Chester request for a variance from Section 24-96(b)(1)c. of Chapter 24 of the County Code to build an assisted living facility at 9010 Woodman Road (Tax Parcels 51-A-98 and 99) zoned R-6C, General Residence District (Conditional) (Brookland). The parking requirements are not met. The applicant has 83 parking spaces where the Code requires 123 parking spaces. The applicant requests a variance of 40 parking spaces.

135

136 Mr. McKinney - Is the applicant here? Would you state your name for
137 the record?

138

139 Mr. Strange-Boston - Donald Strange-Boston, architect for the project.

140

141 Mr. McKinney - Is anyone else other than the applicant going to speak
142 in reference to case A-48-99? If you would, please stand and be sworn in along
143 with Mr. Strange-Boston.

144

145 Mr. Silber - Would you please raise your right hand and swear the
146 testimony you are about to give is the truth the whole truth and nothing but the
147 truth so help me God.

148

149 Mr. Strange-Boston - I do.

150

151 Mr. Balfour - I am not participating in this matter.

152

153 Mr. McKinney - Mr. Strange-Boston, have all the adjacent and
154 adjoining property owners been notified of this request?

155

156 Mr. Strange-Boston - Yes, sir they have; here are the receipts.

157

158 Mr. McKinney - Didn't we hear most of this last time?

159

160 Mr. Nunnally - Yes, we heard the whole case last month. I believe.
161 Didn't we need to hear it all again.

162

163 Mr. Strange-Boston - We have some more information that we have
164 developed since that time and we would like to cover that ground if we may,
165 please. Off-street parking ordinances relate the required spaces to the intended
166 building use rather than the property zoning. There is no specific requirement for
167 assisted living in the Henrico off-street parking ordinance. Though zoned R-6,
168 which is normally multi-family, our use is restricted by proffer R-6C to assisted
169 living for residents 62 years and older. Conventional multi-family apartments
170 cannot be built on this site with the present conditional zoning. Our contract
171 management company and national operator of assisted living facilities informs
172 us that the average resident age in a facility such as we propose is 86 and that

173 15% or less drive cars. [lacking parking requirements significantly beyond
174 normal for this type of facility] We wish to avoid unnecessary parking spaces in
175 favor of green spaces. For successful operation, we certainly don't want to have
176 less parking than is required by the residents, the staff, visitors and service
177 personnel. This would impact upon the operation of the project. The problem is
178 to determine where the point of unnecessary parking begins. Our research on
179 assisted living parking involves off-site inspection on live facilities over the last
180 month, periodic counting of cars and review of national average parking as
181 surveyed last year. We found in Henrico County, as an example, among the new
182 projects Brighton Gardens, which is the Marriott project on Gaskins Road, they
183 have 58 spaces and 106 units or 0.55 spaces per units - a little over half a space
184 a unit. Sunrise Assisted Living, Parham Road and Michaels, has 44 spaces per
185 70 units - or about 0.63 about 2/3 of a space per unit. Manor House assisted
186 living on Skipwith Road has 66 spaces for 87 units or 0.75 spaces per unit with
187 the provision for additional parking if experience indicates the need. We took a
188 look at a couple of stabilized, existing, stand-alone assisted living facilities which
189 we could monitor over in Chesterfield. One was Heritage Oaks which is over
190 behind Chippenham Hospital. They have 64 spaces for 121 units or 0.53 spaces
191 per unit - a little over half - and we checked the parking three (3) times a day for
192 a week.

193
194 Mr. McKinney - Are you talking about Chesterfield?

195
196 Mr. Strange-Boston - This is an example of an assisted living facility, which
197 is stabilized and happens to be in Chesterfield.

198
199 Mr. McKinney - We really don't have anything to do with Chesterfield
200 or Fairfax. We are interested in Henrico County.

201
202 Mr. Strange-Boston - The purpose of bringing this up is to establish a
203 correlation between the actually number of parking spaces used. The reason for
204 bring this up is because we observed that their peak load was 57 spaces or 0.47
205 spaces per unit. The Bon Secours on Ironbridge Parkway had a peak load of 38
206 out of 69 spaces or 0.44 spaces per unit. So these stabilized, actual in operation
207 units of similar character, stand-alone assisted living facilities indicate about 0.5
208 space per unit is being used. And these have been up and operating for some
209 time. American Senior Housing Association national parking survey, conducted
210 last year, indicates the average spaces provided throughout the country for this
211 type of facility is 0.56, a little over half. Since there is not listing for assisted living
212 in the county parking ordinance, our research shows that the need for about one
213 half space per unit seems to be the largest we can find. The county zoning
214 enforcement authority is requiring three (3) times that amount based on the
215 needs of a building type that we are prohibited from constructing. We are
216 proposing to provide what research shows is twice the peak need or one (1)
217 space per unit with the added possible of expansion if needed. We are not
218 actually asking for a variance in the zoning requirements, since there is no

219 specific zoning requirement for this use, but from the interpretation of the zoning
220 to apply multi-family parking requirements to an assisted living facility. And I
221 have here a site plan sketch which shows what we are proposing, and the way in
222 which we can increase that, if need is established, to the 133 spaces that would
223 be multi-family. Is there a way I can project that on your screen? There we go.
224 The 133 would include the strip down here if needed and the parking over here
225 behind if needed. There are 83 spaces from here around to here and that is a
226 little over one (1) space per unit and if we add this as needed we can go up to
227 the 133 spaces that would qualify for multi-family apartments. These can never
228 be multi-family apartments, so we feel like this will never be used but it is there
229 and we can do it if the need is demonstrated. What we would like to do is to not
230 have to do it now and let it sit empty.

231

232 Mr. McKinney - Anything else?

233

234 Mr. Strange-Boston - We had two objections that were raised by the
235 neighbors through a misunderstanding the last time it was presented. Both of
236 those have been formally withdrawn. Letters have been filed with the County
237 indicating that.

238

239 Mr. McKinney - Any questions of Mr. Strange-Boston by Board
240 Members?

241

242 Mr. Kirkland - I have a question of Randy. In a letter I have in my
243 packet, from, I believe, the attorneys, Mr. Marles, it states here in the first
244 paragraph about a hardship being created. Who created the hardship? I mean,
245 the land was zoned. You proffered conditions in the case. The County didn't
246 make you proffer the conditions.

247

248 Mr. Strange-Boston - That is true; our point is because we did accept that
249 restriction we shouldn't have to provide the parking for a different type of building
250 that we're prohibited from building. It doesn't apply, it isn't needed, according to
251 our research, and we think that that is a hardship to cause us to build that.

252

253 Mr. Kirkland - In all your driving around, did you all happen to go to
254 Elizabeth Crump Manor, which is not an assisted living center on all of it, just part
255 of it is.

256

257 Mr. Strange-Boston - That's the problem with that one, because it's merged
258 with another nursing home, and it's pretty hard to tell where one starts and stops.

259

260 Mr. Kirkland - It's pretty hard to find a parking space, too.

261

262 Mr. Strange-Boston - I don't know what their parking ratio is, Stratford Hall
263 is an example. All the staff from Stratford Hall Nursing Home are parking at the
264 assisted living facility right next door, which is owned by the same entity. You

265 have a lot of other parkers - staff, visitors and so forth for the nursing home are
266 parking over there. It's very difficult to get a handle on it when there is a merged
267 facility. Our problem is to try to find stand-alone jobs. That's why we ended up
268 with two stables in Chesterfield, to have an observation of what the actual peak
269 load was.

270

271 Mr. Kirkland - So you are asking for one per each unit and one per
272 each employee. Is that correct?

273

274 Mr. Strange-Boston - No sir, we are asking for one for each unit total.

275

276 Mr. Kirkland - None for the employees?

277

278 Mr. Strange-Boston - That includes the employees the visitors and
279 everybody, which we have found to be twice what is needed for all of those. But
280 we do have provisions and land and the possibility of extending to 1-1/2 spaces
281 per unit if the need should arise. We thought the idea of that proffer on the
282 Skipwith Assisted Living was probably a good one; that's where they had a
283 limited number and said alright we will agree if it's demonstrated that we need to
284 improve it we will agree to increase it. And we have the land to do it and a plan
285 to do it and would be certainly willing to do it. We don't want to under-park, that's
286 going hurt the facility operations.

287

288 Mr. Silber - Mr. Strange-Boston, how many units are proposed in
289 this project?

290

291 Mr. Strange-Boston - Seventy-seven units.

292

293 Mr. Silber - Seventy-seven units and this plan that you presented
294 shows 83.

295

296 Mr. Strange-Boston - Which is just a little better than one per unit.

297

298 Mr. Silber - Now at one point in time you were requesting a
299 proffer amendment to allow you to have an adult day care facility. This is no
300 longer being contemplated.

301

302 Mr. Strange-Boston - That's correct. We were denied the amendment so
303 that is out of the picture. It is just the 77 units and that's it. We left the parking
304 that we had planned for that in there. It is still the same 83 units we had at that
305 time.

306

307 Mr. Silber - Okay.

308

309 Mr. McKinney - Mr. Strange-Boston in the design criteria for your
310 retention is that predicated on 123 parking spaces?

311
312 Mr. Strange-Boston - Yes sir, 33 and 83.
313
314 Mr. Silber - I think that the 33 would take it up to 116.
315
316 Mr. Strange-Boston - One hundred and sixteen (116), that would be 1½
317 spaces per unit.
318
319 Mr. McKinney - The code requires 123. How is that going to affect the
320 Chesapeake Bay Act? If this facility doesn't work and goes to something else
321 and these 123 spaces have to be put in. Has that been taken into consideration?
322
323 Mr. Silber - I don't know if it has; that is a very good point, Mr.
324 McKinney. If they had to build additional parking, is there adequate room for the
325 BMP and storm drainage?
326
327 Mr. Strange-Boston - The BMP's are going underground.
328
329 Mr. Silber - Are they sized to handle the 116 or the 123 parking
330 spaces?
331
332 Mr. Strange-Boston - They will and we will incrementalize those if we add
333 parking. We're going to put the underground water retention and treatment
334 facility underneath that as we go, so each one is self-supporting.
335
336 Mr. McKinney - I bring up the question because if down the road the
337 building may be purchased and used for something different. That being the
338 case, under the same criteria the 123 spaces is required, you are not going to be
339 able to go back in and change the BMP on it. I think that needs to be designed
340 at this point to take care of the county code requirements for this impervious
341 pavement that you are going to do or possibly will do in the future.
342
343 Mr. Strange-Boston - Two questions on that one, first it is stated that 123
344 spaces are needed under the ordinance. I was under the impression that it was
345 1-1/2 spaces per unit, and we have 77 units and that would be 116. I am not
346 sure how it got from 116 to 123, but we do have the land to be able to add that
347 many more in the back should we do that. The other thing is we are zoned R-6C.
348 I don't see how it could be put to another use without being rezoned.
349
350 Mr. McKinney - Conditions can be changed.
351
352 Mr. Strange-Boston - But they have to come before the county to be
353 changed.
354
355 Mr. McKinney - Down the road the building may change for some
356 reason or another and the Board may see fit in its wisdom to change these

357 conditions for a different use. If that is the case, you have a BMP in there that is
358 going to take care of the requirement for what can be put in that building.

359

360 Mr. Strange-Boston - Let me go back again and say there would have to be
361 due process to change the use of the building and I would presume consideration
362 of any change required in the BMP would be factored in. You certainly couldn't
363 change it to a much, much higher density use that required a whole lot more
364 parking without providing the necessary things that go with it. Right now it is
365 limited to R-6C, to this type of facility, and this type of facility demonstrably does
366 not require all of those parking spaces. We'd like not to increase the runoff. We'd
367 like to have the green space increased and leave this to an as-needed basis. If it
368 really is demonstrated that we need to get up that high, fine, we have the space
369 and the plan to do it.

370

371 Mr. McKinney - Mr. Silber, should this be 116 or 123?

372

373 Mr. Silber - Mr. McKinney, when the request was made by the
374 applicant it was 123 because they wanted to do the adult day care facility. The
375 adult day care facility kicked it up to 123 parking spaces. If they are amending
376 their application and not doing the adult day care facility, then the parking
377 requirement is 116 parking spaces with a variance of 33 spaces.

378

379 Mr. McKinney - OK, fine. Any other questions of Mr. Strange-Boston
380 by Board members of staff?

381

382 Mr. Wright - I have one question. Based on what you said, would
383 you have objection to us adding a condition if this approved that if the parking
384 were deemed not to be sufficient by the staff that the applicant would increase
385 the parking, which you said you would do.

386

387 Mr. Strange-Boston - No problem.

388

389 Mr. Wright - And we could put a condition on that?

390

391 Mr. McKinney - All right fine, anything else? Any one else to speak in
392 reference to A-48-99? That concludes the case. Thank you for coming. You'll
393 get your answer this afternoon.

394

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

397

Affirmative - Balfour, Kirkland, McKinney, Nunnally, Wright 5
Negative
Absent -

398

- 399 1. This approval is only for the purpose of reducing the required number of
400 parking spaces and resultant site paving. The development must comply with
401 all other applicable County Code regulations.
- 402 2. This approval is subject to all conditions that may be placed on the proposed
403 development by the Planning Commission in its approval of a Plan of
404 Development.
- 405 3. To alleviate any parking shortages, the 33 parking spaces that are the
406 subject of the variance will be constructed on the site if deemed necessary
407 by the Planning Office. Such parking must be provided within 120 days of
408 written request of the County.
- 409 4. The storm water runoff management facilities will be designed and
410 constructed to accommodate the site development including the potential
411 build-out of 116 parking spaces instead of the 83 parking spaces.

412
413 Mr. Silber - A-53-99 was withdrawn. The next case is UP-19-99.
414 This case was deferred from the April 22 meeting.

415
416 Mr. McKinney - Is the applicant here for UP-19-99? We'll pass that
417 by.

418

A-63-99 **Adele E. Branch** request for a variance from Section 24-30.1(a) of Chapter 24 of the County Code to build an addition at 933 Wynfield Terrace (Wynfield) (Tax Parcel 147-16-A-25), zoned R-5, General Residence District (Fairfield). The rear yard setback is not met. The applicant has 25.0 feet rear yard where the Code requires 35.0 feet rear yard setback. The applicant requests a variance of 10.0 rear yard setback.

419

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

421

422 Ms. Branch - Adele E. Branch.

423

424 Mr. McKinney - Have all the adjacent and adjoining property owners
425 been notified of this request?

426

427 Ms. Branch - Yes they have.

428

429 Mr. Silber - Please raise your right hand and swear that testimony
430 you are about to give is the truth, the whole truth, and nothing but the truth, so
431 help me God?

432

433 Ms. Branch - I do.

434

435 Mr. McKinney - Would you present your case.

436

437 Ms. Branch - I am here to request a variance to have a screened
438 porch added to the rear of the house. The zoning requirements are not met and I
439 am requesting 10 feet.
440
441 Mr. McKinney - What type of screened porch are you putting on?
442
443 Ms. Branch - It's just an aluminum and screen.
444
445 Mr. Nunnally - You going to put that on an existing pad of concrete?
446
447 Ms. Branch - Yes.
448
449 Mr. Nunnally - You're not going to build it up any way. It is going to
450 be right there on the pad?
451
452 Mr. Branch - It will be right on the patio that's there.
453
454 Mr. McKinney - Any other questions of Ms. Branch?
455
456 Mr. Wright - What's located to the rear of your home?
457
458 Ms. Branch - There is an easement and property behind me.
459
460 Mr. Wright - Do you have any screening across the rear of your
461 yard, any tress or bushes?
462
463 Ms. Branch - No.
464
465 Mr. Wright - It's open?
466
467 Ms. Branch - One yard does have a fence around it.
468
469 Mr. McKinney - It that directly behind you?
470
471 Ms. Branch - Yes.
472
473 Mr. Wright - Will this have a shed roof on it - what type of roof?
474
475 Ms. Branch - It going to be aluminum type roof, a shed roof.
476
477 Mr. McKinney - Any other questions of Ms. Branch by Board
478 Members or comments from staff
479
480 Mr. Silber - No, sir.
481

482 Mr. McKinney - That concludes your case. Thank you for coming.
483 You'll get your answer this afternoon.

484
485 After an advertised public hearing and on a motion by Mr. Balfour, seconded by
486 Mr. Kirkland, the Board **granted** this case.

487
488 Affirmative - Balfour, Kirkland, McKinney, Nunnally, Wright 5
489 Negative - 0
490 Absent - 0

491
492 **REASON** - The Board **granted** this request as it found from the evidence
493 presented that authorizing this variance will not be of substantial detriment to
494 adjacent property and will not materially impair the purpose of the zoning
495 regulations.

496
497 1. The approval is only for the addition included in this case. Any future
498 improvements on the property must comply with applicable regulations of the
499 County Code.

500
501
A-64-99 *Walter A. Brown, Jr.* request for a variance from
Section 24-30.1(a) of Chapter 24 of the County
Code to build a two-story garage addition at 9400
Hungary Ridge Drive (Hungary Ridge) (Tax Parcel
50-18-A-39), zoned R-5C, General Residence
District (Conditional) and C-1C, Conservation
District (Brookland). The total side yard is not met.
The applicant has 17.0 feet total side yard where
the Code requires 20.0 feet total side yard. The
applicant requests a variance of 3.0 feet total side
yard.

502
503
504 Mr. Harrison - Good morning, my name is Horace Harrison.

505
506 Mr. McKinney - Is any one else going to speak in reference to A-64-
507 99 other than the applicant? Mr. Harrison, be sworn in by Mr. Silber.

508
509 Mr. Silber - Please raise your right hand and swear that testimony
510 you are about to give is the truth, the whole truth, and nothing but the truth, so
511 help me God?

512
513 Mr. Harrison - I do.

514
515 Mr. McKinney - Have all the adjacent and adjoining property owners
516 been notified of this request?

517

518 Mr. Harrison - Yes, they have. The home owner notified the
519 adjacent property owners. He sent this letter from the County to them. I do not
520 have those receipts back because the owner works out of Richmond.

521
522 Mr. McKinney - Mr. Harrison, we cannot hear your case without those
523 receipts. What we will do is defer it until June 24, and you'll be the first case on
524 the agenda. Is there a motion to defer the case?

525
526 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by
527 Mr. Balfour, the Board **deferred** the case to the June 24, 1999 meeting because
528 the applicant failed to satisfy the requirement of notifying the adjacent and
529 adjoining property owners of this case.

530
Affirmative Balfour, Kirkland, McKinney, Nunnally, Wright 5
Negative 0
Absent - 0

531
A-65-99 **Rhea D. McCaffrey** request for a variance from
Section 24-94 of Chapter 24 of the County Code to
build screened porch on existing deck at 12201
Collinstone Place (Wyndham)(Tax Parcel 4-20-A-4),
zoned R-4C, One-Family Residence District
(Conditional) (Three Chopt). The rear yard setback is
not met. The applicant has 28.0 feet rear yard setback
where the Code 35.0 rear yard setback. The applicant
requests a variance of 7.0 feet rear yard setback.

532
533 Mr. McKinney - Is any one else going to testify on behalf of A-65-99?

534
535 Mr. Silber - Please raise your right hand and swear that testimony
536 you are about to give is the truth, the whole truth, and nothing but the truth, so
537 help me God?

538
539 Ms. McCaffrey - It is.

540
541 Mr. McKinney - Have all the adjacent and adjoining property owners
542 been notified of this request according to the county code? Will you turn them
543 into the secretary. Please present your case.

544
545 Ms. McCaffrey - We request to build a screened-in porch over the
546 existing deck and request a variance of 7.0 feet of the rear yard setback.

547
548 Mr. McKinney - Are you going to build it according to the siding? Oh,
549 it's going to be a screened porch. What type of roof?

550

551 Ms. McCaffrey - The same as the current house I have approval from
552 the Wyndham Foundation. The guidelines have been met for the neighborhood.
553

554 Mr. McKinney - If you give that to the secretary, he has to keep that
555 for 30 days.
556

557 Mr. Wright - Ms. McCaffrey, what shaped lot do you have?
558

559 Ms. McCaffrey - It's a cul-de-sac.
560

561 Mr. Wright - The lot looks like a pie shaped lot is that correct?
562

563 Ms. McCaffrey - I am not familiar with that term.
564

565 Mr. Wright - Its not a rectangular-type lot, it has converging lines.
566 It looks like the rear line of the property is askew; it comes in and causes your
567 problem. If it were straight across you would have enough area to do it without
568 the variance?
569

570 Ms. McCaffrey - That's correct.
571

572 Mr. Wright - What is located behind your lot?
573

574 Ms. McCaffrey - Behind our lot is another cul-de-sac with two (2)
575 homes and neither home, when the owners walk out their back door, face our
576 property. They are both looking in different directions and also the houses
577 beside ours are not facing our yard when the owners walk out their back door or
578 use their back yard. We have also notified one home across the street. They
579 only view our property from their side garage. There are bayberry trees and
580 maple trees planted along old Wyndham Drive to screen. There is one maple
581 tree between our house and the house across the street that you can see. Then
582 the bayberry bushes come up about 10 feet along the road. We have also
583 planted additional screening even since this picture was taken. I have a plan of
584 all the trees that have been planted in the back yard. They are either established
585 and healthy, as you can see, or they are under warranty from the nursery center
586 and will be replaced if they should happen to become diseased due to
587 transplanting. The mature height of all these trees will screen the deck from
588 neighbors and they are all fast growing trees.
589

590 Mr. Wright - Your testimony is that the screen porch will occupy
591 the same area that your deck now is located?
592

593 Ms. McCaffrey - Correct.
594

595 Mr. Wright - OK, thank you.
596

597 Mr. McKinney - Any other questions of Ms. McCaffery from Board
598 Members? Any comments from staff? All right that concludes your case Ms.
599 McCaffrey. You can get your answer this afternoon.

600
601 After an advertised public hearing and on a motion by Mr. Wright, seconded by
602 Mr. Balfour, the Board **granted** the case.

603
Affirmative Balfour, Kirkland, McKinney, Nunnally, Wright 5
Negative 0
Absent - 0

604
605
606 **REASON** - The Board **granted** this request as it found from the evidence
607 presented that authorizing this variance will not be of substantial detriment to
608 adjacent property and will not materially impair the purpose of the zoning
609 regulations.

610
611 1. The approval is only for the addition included in this case. Any future
612 improvements on the property must comply with applicable regulations of the
613 County Code.

A-66-99 **Yuhyen and Tze-chen Hsieh** request for a variance from Sections 24-94 and 24-95(l)(1) of Chapter 24 of the County Code to add an addition and deck at 13305 Teasdale Court (Bremerton at Wellesley) (Tax Parcel 45-4-B-13), zoned R-3AC, One-Family Residence District (Conditional) (Three Chopt). The rear yard setbacks for an addition and deck are not met. The applicant has 23.0 feet rear yard for an addition and 23.0 feet for a deck where the Code requires 35.0 feet rear yard setback for an addition and 25.0 feet for a deck. The applicant requests variances of 12.0 feet rear yard setback for an addition and 2.0 feet rear yard setback for a deck

614
615 Mr. McKinney - Is anyone else going to speak in reference to A-66-99
616 other than the applicant? All right if you would state your name for the record.

617
618 Mr. and Mrs. Hsieh - Yuhyen and Tze-chen Hsieh

619
620 Mr. McKinney - All right, Mr. and Mrs. Hsieh, would you be sworn in
621 by our Secretary, Mr. Silber.

622
623 Mr. Silber - Please raise your right hand and swear that testimony
624 you are about to give is the truth, the whole truth, and nothing but the truth, so
625 help me God?

626

627 Mr. McKinney - Have all the adjoining and adjacent property owners
628 been notified of this request according to the County Code?
629
630 Mr. Hsieh Yes.
631
632 Mr. McKinney - Would you turn your notices in to Mr. Silber and
633 present your case.
634
635 Ms. Hsieh - What we plan on doing is onto our existing deck, we
636 are going to build a 2 story house. It will be a sunroom and study room. We
637 have got the approval from adjacent neighbors.
638
639 Mr. Hsieh - This is copy of Wellesley Homeowners Associations.
640 According to Wellesley Homeowners, all the neighbors need to approve any
641 addition.
642
643 Mr. Wright - This will be a 2 story addition?
644
645 Mr. Hsieh Yes.
646
647 Mr. Wright - How will the addition match the house?
648
649 Mr. Hsieh - It will be the same siding and the same roof.
650
651 Mr. Wright - It will be just like the rest of the house? And then you
652 would extend you deck from the side of the addition along the rear of the house?
653
654 Mr. Hsieh - Yes.
655
656 Mr. Wright - For the record, describe your lot, the size of your lot
657 and how it is configured.
658
659 Ms. Hsieh - Our lot is a pie shaped, narrow at the front so the
660 house needs to set back 10 feet farther than the normal requirement. That is
661 why our rear back yard is not as deep as we would like it to be.
662
663 Mr. Wright - The size of the lot and the fact that the cul-de-sac
664 requires the house to be farther back on the lot and that is what cuts down on the
665 rear yard what is located to the rear of the property?
666
667 Ms. Hsieh - A neighbor, we already talked to them.
668
669 Mr. Wright - Is there any screening, bushes, trees, etc?
670
671 Mr. Hsieh - There are going to be Red Tips planted on the other
672 side of the house. They are already 15 feet tall.

673
674
675
676
677
678
679
680
681
682

683
684
685
686
687
688
689
690
691
692

693
694
695
696
697
698
699
700
701
702
703
704
705
706

Mr. Wright - And the addition would occupy what is now the deck?

Mr. McKinney - Any other questions by Board members? Staff have any comments? That concludes your case. Thank you for coming. You can get your answers this afternoon by calling the planning office.

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

Affirmative	Balfour, Kirkland, McKinney, Nunnally, Wright	5
Negative		0
Absent -		0

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

1. This approval is only for the rear yard setback for the addition and deck, which is the subject of this case. Any future improvements on the property shall comply with the applicable regulations of the County Code.

A-67-99 **John and Ida Hart** request for a variance from Section 24-41(e) of Chapter 24 of the County Code to enclose covered porch over an existing deck at 9814 Camberwell Court (Victorian West) (Tax Parcel 58-10-B-3), zoned Residential Townhouse District (Conditional) (Three Chopt). The rear yard setback is not met. The applicant has 20.0 feet rear yard setback where the Code requires 30.0 feet rear yard setback. The applicant requests a variance of 10.0 feet rear yard setback.

Mr. McKinney - Is anyone going to speak in reference to A-67-99 other than the applicant, or against? Would you state your name for the record.

Ms. Hart - Ida Hart.

Mr. Hart - John Hart.

Mr. McKinney - Mr. and Mrs. Hart would you raise your hand and be sworn in by our Secretary.

Mr. Silber - Please raise your right hand and swear that testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help me God?

707
708 Mr. McKinney - Have all the adjoining and adjacent property owners
709 been notified of this request according to the county Code?
710
711 Mr. Hart - Yes, sir.
712
713 Mr. McKinney - Would you turn those over to Mr. Silber.
714
715 Mr. Hart - In addition to the adjoining property owners, we have
716 notified the property owners behind two sets of common areas, just so that they
717 would be notified as well. In addition we have notified the homeowners
718 association for them as well. I was not sure if that was required or not so we did
719 it anyway.
720
721 Mr. McKinney - All right, you can present your case.
722
723 Mr. Hart - We request a 10 foot variance from the setback.
724 What we would like to do is build a patio room enclosure on the existing deck as
725 you see it there. The roof will be basically the same configuration. It will not be
726 the same material but it will be the same configuration. It is a manufactured roof
727 by Champion. There are some pictures in here, which will help anyone to see
728 what it looks like.
729
730 Mr. Wright - What is the size of your deck now, sir?
731
732 Mr. Hart - The size of the deck is 12 feet by 14 feet. We did get
733 a permit to build the deck. That fence that you see there on the right hand side
734 would come down. That is a moveable fence.
735
736 Mr. McKinney - Any thing else?
737
738 Mr. Wright - What is located to the rear of your property?
739
740 Mr. Hart - Common Area of the Victorian West Townhouse
741 Association.
742
743 Mr. Wright - How wide is that Common Area?
744
745 Mr. Hart - About 20 feet wide and then we have a line of
746 Leyland Cypress trees that are a year old, and then more common area from
747 there to the next person's house.
748
749 Mr. Wright - So you have plenty of open area there between this
750 and the next neighbor?
751

752 Mr. Hart - In fact right now, you cannot see the next person
753 house because of the trees.

754
755 Mr. McKinney - Any other questions by Board Members? Staff? That
756 concludes your case. You will get your answer this afternoon by calling the
757 planning office.

758
759 Mr. Hart - Thank you sir.

760
761 After an advertised public hearing and on a motion by Mr. Wright, seconded by
762 Mr. Kirkland, the Board **granted** the case.

763
Affirmative Balfour, Kirkland, McKinney, Nunnally, Wright 5
Negative 0
Absent - 0

764
765 **REASON** - The Board **granted** this request as it found from the evidence
766 presented that authorizing this variance will not be of substantial detriment to
767 adjacent property and will not materially impair the purpose of the zoning
768 regulations.

769
770 1. The approval is only for the addition included in this case. Any future
771 improvements on the property must comply with applicable regulations of the
772 County Code.

773
A-68-99 **Wiley Martin** request variance from Section 24-94 of
Chapter 24 of the County Code to build a dwelling at
12225 Kain Road (Tax Parcel 26-A-44D and part of parcel
26-A-44C) (Three Chopt), zoned A-1, Agricultural District.
The lot width is not met. The applicant has 50.0 feet lot
width where the Code requires a lot width of 150.0. The
applicant requests a variance of 100.0 lot width.

774
775 Mr. McKinney - Is anyone going to speak in reference to A-68-99
776 other than the applicant? Or against? If you would state your name.

777
778 Ms. Rochkind - Charlene Rochkind.

779
780 Mr. McKinney - If you raise your hand and be sworn in by the
781 Secretary.

782
783 Mr. Silber - Please raise your right hand and swear that testimony
784 you are about to give is the truth, the whole truth, and nothing but the truth, so
785 help me God?

786
787 Ms. Rochkind - I do.

788
789 Mr. McKinney - Have all the adjoining and adjacent property owners
790 been notified of this request in accordance with the County Code?
791
792 Ms. Rochkind - Yes.
793
794 Mr. McKinney - If you would turn your notices in to Mr. Silber, you
795 may present your case.
796
797 Ms. Rochkind - My father owns some property on Kain Road, the
798 house that we are living in now. I take care of it because he is disabled. The
799 house we are living in now is on one acre and the 3 acres is behind that. We
800 have 50 feet to the side to get through and it is approximately 352 feet before it
801 spreads out to 166 feet. We just need permission to build approximately 800 feet
802 in the back from the road.
803
804 Mr. Wright - Ms. Rochkind what is this building that is shown on
805 the plat?
806
807 Ms. Rochkind - It is an old garage that my grandfather built and it is
808 already down.
809
810 Mr. Wright - It has been removed?
811
812 Ms Rochkind - There is just a little bit of the wood left that we are
813 hauling off.
814
815 Mr. Wright - Have you seen the conditions that were proposed? If
816 this is to be approved?
817
818 Ms Rochkind - Yes, sir. The wetland people have already been
819 called and the area has been marked off. They didn't think it was a problem at
820 all.
821
822 Mr. Wright - Just wanted to make sure you understood that these
823 conditions would be part of the case.
824
825 Mr. McKinney - Any other questions of Ms. Rochkind by the Board
826 member? Staff? That concludes the case. Thank you for coming. You'll get
827 your answer this afternoon.
828
829 Ms. Rochkind - Thank you.
830
831 After an advertised public hearing and on a motion by Mr. Wright, seconded by
832 Mr. Kirkland, the Board **granted** the case.
833

Affirmative	Balfour, Kirkland, McKinney, Nunnally, Wright	5
Negative		0
Absent -		0

834

835 **REASON** - The Board **granted** this request as it found from the evidence
 836 presented that authorizing this variance will not be of substantial detriment to
 837 adjacent property and will not materially impair the purpose of the zoning
 838 regulations.

839

- 840 1. A septic system approval by the Health Department must be obtained.
- 841 2. The applicant must submit the necessary information to the Department of
 842 Public Works to ensure compliance with the requirements of the
 843 Chesapeake Bay Preservation Act and the code requirements for water
 844 quality standards.

845

846 Mr. McKinney - Is the applicant here for UP-19-99? That concludes
 847 the 9 -00 am agenda, we will reconvene at 10 -00 am.

848

849 Mr. McKinney - The meeting will reconvene for the 10:00 a.m.
 850 agenda. Welcome to the BZA meeting. Mr. Silber will review the rules and
 851 regulations.

852

853 Mr. Silber - Thank you, Mr. Chairman. Good morning, Mr.
 854 Chairman, members of the Board, ladies and gentlemen. The BZA does have a
 855 set of rules that they'd like to have followed when conducting business. They are
 856 as follows - The Secretary, myself, will call the case. The applicant will come
 857 forward to present this case. All those speaking in favor of or in opposition to the
 858 request will be sworn in at that time. The applicant will present his notices to
 859 indicate that adjacent property owners have been notified. The applicant will be
 860 given an opportunity to present testimony. Any one in opposition will be given an
 861 opportunity to speak. The applicant is given an opportunity to rebut any
 862 testimony given. Only the applicant will be given that opportunity to rebut. After
 863 all questioning is finished, the Board will take the information under advisement.
 864 They will render a decision at the end of the meeting. Any one wishing to stay
 865 until the end of the meeting may do so, or if they wish, they may call the Planning
 866 Office at the end of the day to find out the decision of the Board.

867

868 Mr. McKinney - Mr. Silber do we have any requests for withdrawals or
 869 deferrals on the 10:00 a.m. agenda?

870

A-77-99

Robert P. Bain request for a variance from Section 24-95(b)(5) of Chapter 24 of the County Code to build a dwelling at 8990 Midway Road (Westhampton Settlement) (Tax Parcel 100-10-1-24), zoned R-3, One-Family Residence District (Tuckahoe). The lot width is not met. The applicant has 61.64 feet lot width where the Code requires 65.0 feet lot width. The applicant requests a variance of 3.36 feet lot with.

871

872 Mr. Silber - Yes, Mr. McKinney, we have a request for a deferral,
873 A-77-99, Robert B. Bain. This would be deferred for one month to the June 24,
874 1999 meeting.

875

876 Mr. McKinney - Anyone in opposition to A-77-99?
877 After an advertised public hearing and on a motion by Mr. Balfour, seconded by
878 Mr. Kirkland, the Board **deferred** the case to the June 24, 1999 meeting because
879 the applicant failed to satisfy the requirement of notifying the adjacent and
880 adjoining property owners of this case.

881

Affirmative	Balfour, Kirkland, McKinney, Nunnally, Wright	5
Negative		0
Absent -		0

882

883 Mr. McKinney - Any other requests, Mr. Silber?

884

885 Mr. Silber - None that I am aware of.

886

887 Mr. McKinney - We have a request on the 10:00 a.m. agenda for A-
888 73-99. Because there was a scheduled appointment in the Tidewater area, it was
889 asked if it could be heard first.

890

891 Mr. Silber - If there are no problems we can go ahead with that.

892

893 Mr. Balfour - I move we amend the agenda to hear A-73-99 at this
894 time.

895

896 Mr. Wright - Second

897

A-73-99

Becky Hartt Minor request for a variance from Section 24-94 of Chapter 24 of the County Code to build attached addition to side of house at 9601 Wildbriar Lane (Pinedale Hills) (Tax Parcel 68-17-A-8), zoned R-2A, One-Family Residence District (Tuckahoe). The minimum and total side yards are not met. The applicant has 11.25 feet minimum side yard and 23.95 feet total side yard where the Code requires 12.0 feet minimum side yard and 30.0 feet total side yard. The applicant requests a variance of 0.75 feet minimum side yard and 6.05 feet total side yard.

898

899 Mr. McKinney - Is any one other than the applicant going to speak in
900 reference to A-73-99? Would you state your name for the record?

901

902 Ms. Minor - Becky Hartt Minor.

903

904 Mr. McKinney - Have all the adjacent and adjoining property owners
905 been notified of this request in accordance with the county code?

906

907 Ms. Minor - Yes, sir.

908

909 Mr. McKinney - Would you be sworn in by Mr. Silber.

910

911 Mr. Silber - Please raise your right hand and swear that testimony
912 you are about to give is the truth, the whole truth, and nothing but the truth, so
913 help me God?

914

915 Ms. Minor - I do.

916

917 Mr. McKinney - You may present your case.

918

919 MS. Minor - First I want to thank the Board for taking into
920 consideration my request to be moved up on the agenda. I appreciate that. We
921 are seeking a variance to add an addition onto our Florida room. It is a cul-de-
922 sac area and the back of our property is adjacent to a property that sits on Three
923 Chopt Road. As you can see from the diagram, our lot is pie shaped. The back
924 of our yard is lined to run diagonally with Three Chopt Road. If you look at that,
925 that is how it runs. Our house is in Pinedale Hills and in the cul-de-sac area. I
926 have lived in this house for about 8.5 years. Two years ago I was remarried and
927 my husband, William Minor, brought with him a daughter which increased our
928 family up to 3 children. What we wanted to do was to add on to the existing
929 family room to make another living space that would accommodate the growing
930 family and their needs. To look into buying another house in the Tuckahoe
931 School system, we would have to increase our purchase price of a house to
932 approximately 100,000 to 150,000. We have talked to all of our neighbors and

933 everyone is in agreement this is not a problem. We are lacking the minimum
934 side yard requirements - .75 feet or 9 inches. The total side yard is lacking
935 approximately 6 feet. As you can see, it is all down in that one corner of the
936 property or the one corner that is directly behind the garage. We want to extend
937 the Florida room all the way so it is flush with the end of the garage. If we did it
938 on the other side of the house, it really is not appropriate according to the floor
939 plan of our home. We would then have to go out of the dining room and tear
940 down the deck in order to make it flush with the existing Florida room. Which if
941 you then built the deck anywhere else, you would run into this same problem. I
942 have had the area assessed for public utilities and right now the addition will
943 cause us to move our Virginia Power line at our expense. We have interviewed
944 contractors for a number of months. I have refinanced my house and was not
945 aware of this problem until the building permit was requested. Is there any
946 questions that you have at this time? The roof will be consistent with the rest of
947 the house. You can see from the pictures that it is very wooded. This is the end
948 of the existing Florida room and we want to extend it flush over to the end of the
949 garage.

950

951 Mr. McKinney - Any thing else to add? Any questions by Board
952 members? Staff have any comments?

953

954 Ms. Minor - The property owner behind us has his house
955 approximately 200 feet from the my back yard. So there is a lot of space there
956 and because we want to build the addition flush with the existing house, it would
957 not project any farther into the yard.

958

959 Mr. McKinney - That concludes your case. You'll get your answer this
960 afternoon. Thank you for coming.

961

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

964

Affirmative	Balfour, Kirkland, McKinney, Nunnally, Wright	5
Negative		0
Absent -		0

965

966 **REASON** - The Board **granted** this request as it found from the evidence
967 presented that authorizing this variance will not be of substantial detriment to
968 adjacent property and will not materially impair the purpose of the zoning
969 regulations.

970

971 1. This approval is only for the minimum and total side yard setbacks deviations
972 created by the addition that is the subject of this request. Any future
973 improvements to the property shall comply with the applicable regulations of
974 the County Code.

975

A-69-99

Eric and Margaret Theile request for a variance from Sections 24-95(2)c. and 24-41(e) of Chapter 24 of the County Code to build a sunroom at 1819 Random Winds Court (Townes of Quail Woods) (Tax Parcel 77-18-0-4), zoned RTHC, Residential Townhouse (Conditional) (Tuckahoe). The distance from accessory structures and rear yard setback are not met. The applicant has 20.0 feet rear yard setback and 3.5 feet from the proposed structure to the accessory structure where the Code requires 30.0 feet rear yard setback and 10.0 feet from accessory structure. The applicant requests variances of 10.0 rear yard setback and 6.5 feet from accessory structure.

976

977 Mr. McKinney - Is any one other than the applicant going to speak in
978 reference to A-69-99? Will you raise your hand, sir, and be sworn in by the
979 Secretary.

980

981 Mr. Silber - Please raise your right hand and swear that testimony
982 you are about to give is the truth, the whole truth, and nothing but the truth, so
983 help me God?

984

985 Mr. Lindsey - I do.

986

987 Mr. McKinney - Would you state your name for the record

988

989 Mr. Lindsey - Warren Lindsey, I am the representative for the contractor,
990 Melani Brothers.

991

992 Mr. McKinney - Have adjoining and adjacent property owners been
993 notified of this request according to the County Code?

994

995 Mr. Lindsey - Yes, sir.

996

997 Mr. McKinney - Please turn them in to Mr. Silber. All right, Mr.
998 Lindsey, you can present your case.

999

1000 Mr. Lindsay - Mr. and Mrs. Thiels are requesting a variance in order
1001 to install a 10 x10 foot sun room on their existing patio. This enclosure would fit
1002 flush up against the rear of their property. Behind their home there are some
1003 trees. There is also an alley. I have a magazine of what our rooms look like.

1004

1005 Mr. McKinney - Any questions of Mr. Lindsey by Board Members?
1006 Staff have any comments? That concludes your case. Thank you for coming.
1007 You can get your answers this afternoon from the Planning Office.

1008

1009 After an advertised public hearing and on a motion by Mr. Balfour, seconded by
1010 Mr. Wright, the Board **granted** the case.

1011

1012

Affirmative	Balfour, Kirkland, McKinney, Nunnally, Wright	5
Negative		0
Absent -		0

1013

1014 **REASON** - The Board **granted** this request as it found from the evidence
1015 presented that authorizing this variance will not be of substantial detriment to
1016 adjacent property and will not materially impair the purpose of the zoning
1017 regulations.

1018

1019 1. This approval is only for the rear yard setback and distance from an
1020 accessory structure variance for the sunroom, which is the subject of this
1021 case. Any future improvements to the property shall comply with the
1022 applicable regulations of the County Code.

1023

A-70-99 **Donald Massey/ E. T. Comer, Jr.** request for a variance from Section 24-95(b)6. of Chapter 24 of the County Code to build a dwelling at 5105 Lockhaven Avenue (Overhill Park) (Tax Parcel 171-3-A-29), zoned R-4, One-Family Residence District (Varina). The total area is not met. The applicant has 5,950 square feet of total area where the Code requires 6,000 square feet of total area. The applicant requests a variance of 50 square feet total area.

1024

1025 Mr. McKinney - Is any one other than the applicant going to speak in
1026 reference to A-70-99? Will you raise your hand, sir, and be sworn in by the
1027 Secretary.

1028

1029 Mr. Silber - Please raise your right hand and swear that testimony
1030 you are about to give is the truth, the whole truth, and nothing but the truth, so
1031 help me God?

1032

1033 Mr. Massey - I do.

1034

1035 Mr. Massey - Donald Massey.

1036

1037 Mr. McKinney - Have all the adjacent and adjoining property owners
1038 been notified of this request in accordance with the County Code?

1039

1040 Mr. Massey - Yes, sir.

1041

1042 Mr. McKinney - Would you turn those into our Secretary and present
 1043 your case.
 1044
 1045 Mr. Massey - I have requested this variance in September of 1997
 1046 and you granted that variance. I am now re-requesting so I can build a home on
 1047 the Property. The variance is only for 50 square feet in area. The lot is 50 feet x
 1048 119 feet. It needs to be 50 feet x 120 feet by Code. It is the only lot left in the
 1049 area that has not been built on. All the others are the same size.
 1050
 1051 Mr. Nunnally - Are you ready to start building on this now?
 1052
 1053 Mr. Massey - Pretty close.
 1054
 1055 Mr. McKinney - What type of home are you building?
 1056
 1057 Mr. Massey - I will probably be selling the property to a builder who
 1058 is ready to build.
 1059
 1060 Mr. McKinney - What are the priced range homes in this area?
 1061
 1062 Mr. Massey - I own the house next door and it sold in the low 60's.
 1063 Any new home will probably run in the mid 70's.
 1064
 1065 Mr. Nunnally - You don't have a contract on this lot now to a builder?
 1066
 1067 Mr. Massey - Yes, sir. We are waiting for this meeting.
 1068
 1069 Mr. McKinney - Any other questions of Mr. Massey by Board
 1070 Members? Staff have any comments?
 1071
 1072 Mr. McKinney - That concludes your case. Thank you for coming and
 1073 you can get your answer from the Planning Office this afternoon.
 1074
 1075 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
 1076 Mr. Wright, the Board **granted** the variance.
 1077

Affirmative	Balfour, Kirkland, McKinney, Nunnally, Wright	5
Negative		0
Absent -		0

1078
 1079 **REASON** - The Board **granted** this request as it found from the evidence
 1080 presented that authorizing this variance will not be of substantial detriment to
 1081 adjacent property and will not materially impair the purpose of the zoning
 1082 regulations.
 1083

1084 1. This approval is for lot area only, all other county regulations, including the
1085 zoning regulations, must be complied with in order for this lot to be
1086 developed.
1087

A-71-99

Barbara O. Zayer request for a variance from Sections 24-9 and 24-94 of Chapter 24 of the County Code to build a dwelling at 8435 Buffin Road (Part of Tax Parcel 249-A-30), zoned A-1, Agricultural District (Varina). The lot width and public road frontage is not met. The applicant has 48.53 feet lot width and 48.53 feet public road frontage where the Code requires 150.0 feet lot width and 50.0 feet public road frontage. The applicant requests variances of 101.47 feet lot width and 1.47 feet public road frontage.

1088
1089 Mr. McKinney - Is any one other than the applicant going to speak in
1090 reference to A-71-99? Will you raise your hand, sir, and be sworn in by the
1091 Secretary.
1092

1093 Mr. Silber - Please raise your right hand and swear that testimony
1094 you are about to give is the truth, the whole truth, and nothing but the truth, so
1095 help me God?
1096

1097 Ms. Zayer - I do.
1098

1099 Mr. McKinney - Would you state your name for the record?
1100

1101 Ms. Zayer - Barbara O. Zayer.
1102

1103 Mr. McKinney - Have all the adjacent and adjoining property owners
1104 been notified of this request according to the County Code?
1105

1106 Ms. Zayer - Yes sir, I have the cards right here. I wanted to point
1107 out something.
1108

1109 Mr. McKinney - Would you turn those over to Mr. Silber and present
1110 your case.
1111

1112 Ms. Zayer - Currently, if you look at the property, the piece we are
1113 asking the variance for is marked with the dotted lines, but initially before the total
1114 acreage is 3.5 acres. What we are proposing to do is divide that parcel up so the
1115 front parcel we have divided into 1.5 acres so we can build a house on that so
1116 therefore we are requesting the variance on Parcel A that already has a house
1117 on it. And request a variance of 1.147 feet to the lot width and 1.147 feet of
1118 public road frontage.
1119

1120 Mr. McKinney - Mr. Silber, why is it that A-71-99 has no conditions on
1121 it?

1122
1123 Mr. Silber - Mr. McKinney, I don't know the answer to that
1124 question.
1125

1126 Mr. Wright - I assume that they already have a septic tank. Do
1127 you all have a septic system for the house that is already there?

1128
1129 Ms. Zayer - Yes, sir. There is a septic tank and well.

1130
1131 Mr. Wright - They're are not going to build anything more?

1132
1133 Ms. Zayer - Not on the back parcel, that will be as it is.
1134

1135 Mr. McKinney - Do you have anything else to add Ms. Zayer? Any
1136 questions by Board Members, Staff have any comments? That concludes your
1137 case. Thank you for coming. You can get your answer from the Planning office
1138 this afternoon.

1139
1140 Ms. Zayer - Thank you.
1141

1142 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
1143 Mr. Wright, the Board **granted** the case.

1144	Affirmative	Balfour, Kirkland, McKinney, Nunnally, Wright	5
	Negative		0
	Absent -		0

1145
1146 **REASON** - The Board **granted** this request as it found from the evidence
1147 presented that authorizing this variance will not be of substantial detriment to
1148 adjacent property and will not materially impair the purpose of the zoning
1149 regulations.

- 1150
- 1151 1. This approval is only for the lot width and public street frontage variance
- 1152 requested in this case. Any future improvements on the property shall comply
- 1153 with the applicable regulations of the County Code.
- 1154

A-72-99

Richard Hausler request for a variance from Section 24-41(e) of Chapter 24 of the County Code to convert portion of existing deck to a sun room at 2305 Rocky Point Parkway (Stoney Run) (Tax Parcel 67-5-0-1), zoned RTHC, Residential Townhouse District (Conditional) (Tuckahoe). The rear yard setback is not met. The applicant has 26.0 feet rear yard setback where the Code requires 30.0 feet rear yard setback. The applicant requests a variance of 4.0 feet rear yard setback.

1155

1156 Mr. McKinney - Anyone in the audience going to speak in reference to
1157 case A-72-99 other than the applicant? Gentlemen, if you would raise your hand
1158 and be sworn in by Mr. Silber

1159

1160 Mr. Silber - Please raise your right hand and swear that testimony
1161 you are about to give is the truth, the whole truth, and nothing but the truth, so
1162 help me God?

1163

1164 Mr. Hausler - I do.

1165

1166 Mr. McKinney - Would you identify yourself for the record?

1167

1168 Mr. Hausler - Richard James Hausler Sr.

1169

1170 Mr. McKinney - Have all adjacent and adjoining property owners been
1171 notified of this request in accordance with the County code?

1172

1173 Mr. Hausler - Yes, sir.

1174

1175 Mr. McKinney - Please turn those into Mr. Silber, and you may
1176 present your case.

1177

1178 Mr. Hausler - I am seeking a 4 foot variance to put a 12 x 12 foot Florida
1179 Room onto the back of my townhouse.

1180

1181 Mr. Wright - Would this be in place of the deck? Or would it be
1182 larger than the deck?

1183

1184 Mr Hausler - No, the deck is 20 feet. There would still be 8 feet of
1185 deck left there.

1186

1187 Mr. Wright - So you would just replace part of the deck?

1188

1189 Mr. Hausler - Yes, sir.

1190

1191 Mr. Wright - What is located to the rear of your property?
 1192
 1193 Mr Hausler - An easement. I don't know how many yards it is.
 1194 Maybe 100 yards. It is all wooded. All the townhouses back up to the wooded
 1195 area.
 1196
 1197 Mr. McKinney - Do you have anything else to add Mr. Hausler?
 1198
 1199 Mr. Hausler - The association has been notified. They said as long as we
 1200 have a building permit and that the building matches the existing townhouse.
 1201
 1202 Mr. McKinney - Any other questions by Board Members? Staff have
 1203 any comments? Mr. Hausler, that concludes your case. You may get your
 1204 answer this afternoon from the Planning Office.
 1205
 1206 After an advertised public hearing and on a motion by Mr. Balfour, seconded by
 1207 Mr. Wright, the Board **granted** the case.
 1208

Affirmative	Balfour, Kirkland, McKinney, Nunnally, Wright	5
Negative		0
Absent -		0

1209
 1210 **REASON** - The Board **granted** this request as it found from the evidence
 1211 presented that authorizing this variance will not be of substantial detriment to
 1212 adjacent property and will not materially impair the purpose of the zoning
 1213 regulations.
 1214

- 1215 1. Only the addition shown on the plan filed with the case may be constructed
 1216 pursuant to this approval.
 1217

A-74-99 **Martin Shane** request for a variance from Section 24-
 30.1(a) of Chapter 24 of the County Code to build attached
 garage at 3207 Lockport Way (Lockport) (Tax Parcel 46-5-
 A-26), zoned R-5C, General Residence District
 (Conditional) (Three Chopt). The rear yard setback is not
 met. The applicant has 8.0 rear yard setback where the
 Code requires 35.0 feet rear yard setback. The applicant
 requests a variance of 27.0 feet rear yard setback.

1218
 1219 Mr. McKinney - Is anyone in the audience going to speak to A-74-99
 1220 other than the applicant? Please raise you hands to be sworn in by the
 1221 Secretary.
 1222
 1223 Mr. Silber - Please raise your right hand and swear that testimony
 1224 you are about to give is the truth, the whole truth, and nothing but the truth, so
 1225 help me God?

1226
1227 Mr. and Mrs. Shane - I do.
1228
1229 Mr. McKinney - Would you please identify yourself for the Record.
1230
1231 Mr. and Mrs. Shane - Jean Shane, Martin Shane.
1232
1233 Mr. McKinney - Have all the adjoining and adjacent property owners
1234 been notified of this request in accordance with the County Code?
1235
1236 Mr. Shane - Yes, sir, and they have all agreed to it.
1237
1238 Mr. McKinney - Would you please present your case.
1239
1240 Mr. Shane - The Homeowners Association of Wellesley have also
1241 been notified and have agreed to the change, and the architech committee at
1242 Wellesley has been notified and agreed to the change. The variance that we are
1243 asking for relates to the back and side yard. The rear yard actually faces the
1244 woods of the back of the property that is behind us. And it adjoins the easement
1245 that is there. This is a reverse corner lot so it is for the back corner of the
1246 garage.
1247
1248 Ms. Shane - What we are trying to accomplish is to turn an existing
1249 two-car garage into a mother-in-law suite. We are moving parents down from
1250 New York and we need a first-floor suite for them to live in. So if we changed the
1251 garage into a suite, and built an attached garage where that paved area is
1252 located, that is what we would like to do. But because we are a reverse corner
1253 lot, the side yard becomes our rear yard. So we are not meeting the setbacks. If
1254 you were to look at our house, that is definitely the side of our house. But in this
1255 case, it is not. When we went to get a permit, we were told that was our rear
1256 yard. If it were in fact the side yard, we would be meeting the county setback of
1257 the combined 15 feet. So we would not be impacting our neighbor's space.
1258 There is a group of trees that would remain. The trees will keep it private.
1259
1260 Mr. Balfour - I understand that both mother-in-laws are coming?
1261
1262 Ms. Shane - Could possibly be, we are losing teenagers and
1263 getting parents.
1264
1265 Mr. Wright - Where does your house face?
1266
1267 Ms. Shane - Our house faces the cul-de-sac, Lockport Way.
1268
1269 Mr. Shane - You would think it would face the corner of the cul-de-
1270 sac, but it actually faces the center of the cul-de-sac. Because the house is not

1271 square to the corner, it is turned. The driveway is the s-shaped, so the garage is
1272 mostly hidden.

1273
1274 Mr. Wright - That causes you to have a peculiar shape to your lot.

1275
1276 Mr. Shane - Yes, sir.

1277
1278 Mr. Wright - (Looking at that diagram), it that a garage on your
1279 neighbors house right across from the new addition?

1280
1281 Mr. Shane - Yes, sir.

1282
1283 Mr. Wright - So that garage is about the same distance from the
1284 line as your garage?

1285
1286 Mr. Shane - It is actually closer.

1287
1288 Mr. Silber - That is considered to be a side yard, so the building
1289 can be closer to the property line, where yours is considered to be a rear yard
1290 and must be farther away.

1291
1292 Mr. Wright - This addition will not impact your neighbor, which is
1293 the house on the other side of you, to the north.

1294
1295 Mr. Shane - Yes, sir.

1296
1297 Mr. McKinney - Any other questions by the Board Members? Staff
1298 have any comments? Anyone else wish to speak in reference to A-74-99? Mr.
1299 and Mrs. Shane that concludes your case. You can get your answers this
1300 afternoon from the Planning Office.

1301
1302 After an advertised public hearing and on a motion by Mr. Wright, seconded by
1303 Mr. Kirkland, the Board **granted** the case.

1304
Affirmative Balfour, Kirkland, McKinney, Nunnally, Wright 5
Negative 0
Absent - 0

1305
1306 **REASON** - The Board **granted** this request as it found from the evidence
1307 presented that authorizing this variance will not be of substantial detriment to
1308 adjacent property and will not materially impair the purpose of the zoning
1309 regulations.

1310
1311 1. The approval is only for the addition included in this case. Any future
1312 improvements on the property must comply with applicable regulations of the
1313 County Code.

1314

A-75-99

Janet Heckman request for a variance from Section 24-95(c)(1) of Chapter 24 of the County Code to bring existing dwelling to Code at 1517 Bexhill Road (Westbury Estates), (Tax Parcel 91-1-C-15), zoned R-3, One-Family Residence District (Three Chopt). The minimum and total side yards are not met. The applicant has 6.94 feet minimum side yard and 20.67 feet total side yard where the Code requires 7.0 feet minimum side yard and 20.85 feet total side yard. The applicant requests variances of 0.06 feet minimum side yard and 0.18 feet total side yard.

1315

1316 Mr. McKinney - Is any one other than the applicant going to speak in
1317 reference to A-75-99? Will you raise your hand, sir, and be sworn in by the
1318 Secretary.

1319

1320 Mr. Silber - Please raise your right hand and swear that testimony
1321 you are about to give is the truth, the whole truth, and nothing but the truth, so
1322 help me God?

1323

1324 Mr. Sonny Hughes - I do.

1325

1326 Mr. McKinney - Would you state your name for the record?

1327

1328 Mr. Hughes - My name is Sonny Hughes. I'm the representative for
1329 Mrs. Heckman.

1330

1331 Mr. McKinney - All right, Mr. Hughes, I see all the notices in the files
1332 here. Have adjoining and adjacent property owners been notified?

1333

1334 Mr. Hughes - Yes, sir.

1335

1336 Mr. McKinney - You may present your case.

1337

1338 Mr. Hughes; Mrs. Heckman is asking that she be allowed to
1339 convey three feet of her property to her next door neighbor. Mrs. Heckman owns
1340 Lot 15, Block C, Section 1, of Westbury Estates and she also owns three feet of
1341 Lot 16, Block C, Section 1, Westbury. She now desires to convey the three feet
1342 back to Lot 16 so the lots will be consistent.

1343

1344 She received the three-foot strip back in 1985. And it is my understanding she
1345 got it under the belief that she needed to have 10 feet side yard requirement to
1346 meet the restrictive covenants at the time. My research has indicated that was
1347 erroneous. Those restrictive covenants had expired way before 1985.

1348

1349 Even though she had received the three feet, the property owners had treated
1350 the fence line as the division of the property through the years. A prior owner
1351 had erected, a prior owner of Lot 16, not the current owner, the prior owner of Lot
1352 16 had erected an elaborate large frame shed with a permanent foundation on
1353 the property, and now she's requesting to be allowed to deed the three feet back
1354 to the current owner of Lot 16, so the property line can be re-established to its
1355 original position.

1356

1357 Mr. McKinney - All right, do you have anything else to add, Mr.
1358 Hughes?

1359

1360 Mr. Hughes - No, sir.

1361

1362 Mr. Wright - Which lot does the applicant own, 16?

1363

1364 Mr. Hughes - The applicant owns Lot 15.

1365

1366 Mr. Wright - Lot 15?

1367

1368 Mr. Hughes - Yes, sir.

1369

1370 Mr. Wright - So, she would be conveying the three feet to the
1371 owner of Lot 16?

1372

1373 Mr. Hughes - Yes, sir.

1374

1375 Mr. Silber - That's a very good question. The variance is for Lot
1376 15.

1377

1378 Mr. Wright - The variance is for Lot 15. Who is the applicant?

1379

1380 Mr. Hughes - The owner of Lot 15, Mrs. Heckman.

1381

1382 Mr. McKinney - All right, any other questions by Board members?
1383 Does the staff have any comments?

1384

1385 Mr. Silber - No, sir.

1386

1387 Mr. McKinney - I will ask, any one else in the audience to speak in
1388 reference to A-75-99? All right, Mr. Hughes, that concludes your case. You'll get
1389 your answer this afternoon. Thank you for coming.

1390

1391 Mr. Hughes - Thank you.

1392

1393 After an advertised public hearing and on a motion by Mr. Wright, seconded by
1394 Mr. Kirkland, the Board **granted** the case.

1395

Affirmative	Balfour, Kirkland, McKinney, Nunnally, Wright	5
Negative		0
Absent -		0

1396

1397

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

1398

1399

1400

1401

1402

1. This approval is only for the side-yard setbacks for the lot that is the subject of this case. All future improvements to the property shall comply with the applicable regulations of the County Code.

1403

1404

1405

A-76-99

Ronald and Evelyn Morse request for a variance from Section 24-94 of Chapter 24 of the County Code to build a dwelling at 5130 Springfield Road (Part of Tax Parcel 29-A-4), zoned A-1, Agricultural District (Three Chopt). The lot width is not met. The applicant has 118.0 feet lot width where the Code required 150.0 feet lot width. The applicant requests a variance of 32.0 feet lot width.

1406

1407

Mr. McKinney - Is any one other than the applicant going to speak in reference to A-76-99? Will you state your name for the record?

1408

1409

1410

Mr. Spud Mistr - Spud Mistr, with Foster & Miller, representing Mr. and Mrs. Morse.

1411

1412

1413

Mr. McKinney - Would you be sworn in by our Secretary, Mr. Silber?

1414

1415

Mr. Silber - Please raise your right hand and swear that testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help me God?

1416

1417

1418

1419

Mr. Mistr - I do.

1420

1421

Mr. Wright - I didn't catch your name.

1422

1423

Mr. Mistr - Spud Mistr.

1424

1425

Mr. McKinney - All right, Mr. Mistr, have all the adjoining and adjacent property owners been notified according to the County Code? Will you turn them into Mr. Silber?

1426

1427

1428

1429

Mr. Mistr - Yes, sir.

1430

1431 Mr. Silber - Thank you.
1432
1433 Mr. McKinney - Present your case, sir.
1434
1435 Mr. Mistr - Mr. and Mrs. Morse are requesting a variance. They
1436 have a 2.10 acre lot on Springfield Road. Their daughter wants to build a house
1437 on that lot, which is legal in A-1 zoning, because each lot will have an acre. But
1438 because the way their house is situated, they do not have 150 feet of road
1439 frontage as required. They have 131 feet and we need a variance – we have
1440 118 feet. We need a variance of 32 feet in order to meet the Code. On the plat I
1441 submitted, we put the buildable area on. The house will fit in the buildable area,
1442 if the front line of the proposed house is the same as the front line of the existing
1443 house. They build a 46-foot wide by 30-foot deep house, which will 1,350 square
1444 feet approximately.
1445
1446 They have tried to acquire a strip of land next to them to get 150 feet, but at this
1447 time, the owner of that is not ready to sell it because it is in the process of being
1448 in a feasibility study for another development.
1449
1450 Mr. McKinney - All right, do you have anything else to add, Mr. Mistr?
1451
1452 Mr. Mistr - No. Other than this is just for the purpose of building
1453 a house for their daughter on the same lot.
1454
1455 Mr. Wright - Where would this house front?
1456
1457 Mr. Mistr - On Springfield Road. We show it going over to
1458 Wintergreen Drive. There is a common area there. There is no access to
1459 Wintergreen. Access will have to be to Springfield, but there's a sewer manhole
1460 in there, and an easement through that common area to allow the Morse's to
1461 connect up. So, they would have to extend the sewer into that area and then
1462 provide connections to both houses to be on the County sewer system. Now,
1463 water is in Springfield Road, so they would hook up the water from Springfield.
1464
1465 Mr. Wright - Is that frontage, it looks like to me, is that 57.86 feet
1466 frontage on Springfield Road? Is that what that...
1467
1468 Mr. Mistr - That is part of the frontage, but if you look at Curve 5,
1469 if you go up to the top of that plat and see in 5, you see the length, "L" is 74.22.
1470
1471 Mr. Wright - So, that's just straight line?
1472
1473 Mr. Mistr - The straight line part is 57 and the curve is 74.
1474
1475 Mr. Wright - I got you. They just didn't put it on there—the curve.
1476

1477 Mr. Mistr - Well, it gets too bulky to put all of that data right on
1478 the curve.
1479
1480 Mr. Wright - You've got 74.22 feet, plus 57.85 feet?
1481
1482 Mr. Mistr - That's correct.
1483
1484 Mr. Wright - And that's going to be enough for you to build a house
1485 on?
1486
1487 Mr. Mistr - Yes, sir. If you look at that dashed line, that's the
1488 buildable area. So, the house could go anywhere in that area.
1489
1490 Mr. Wright - They have a nice area for a garden in the back.
1491
1492 Mr. Mistr - Yes. They do.
1493
1494 Mr. Silber - Mr. Mistr, at the front yard setback, you'd have what,
1495 118 feet?
1496
1497 Mr. Mistr - That's correct. Yes. We have more, actually, at the
1498 road.
1499
1500 Mr. Wright - The problem is, they don't have it at the building line.
1501
1502 Mr. Silber - Right.
1503
1504 Mr. Wright - That's the problem.
1505
1506 Mr. Silber - Right.
1507
1508 Mr. McKinney - All right. Any other questions by Board members?
1509 Does the staff have any comments?
1510
1511 Mr. Silber - No, sir.
1512
1513 Mr. McKinney - Any one else to speak in reference to A-76-99? All
1514 right, Mr. Mistr, that concludes your case. Thank you for coming. You know how
1515 to get your answer.
1516
1517 Mr. Mistr - Yes, sir.
1518
1519 After an advertised public hearing and on a motion by Mr. Wright, seconded by
1520 Mr. Kirkland, the Board **granted** the case.
1521

Affirmative Balfour, Kirkland, McKinney, Nunnally, Wright 5

Negative 0
Absent - 0

1522

1523

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

1524

1525

1526

1527

1528

1529

1530

1. This approval is only for the lot width requirement for the proposed lot that is the subject of this case. Any future improvements to the property shall comply with the applicable regulations of the County Code.

1531

1532

1533

1534

Mr. Silber - A-77-99 was deferred previously. Moving on to A-78-99

A-78-99

Meade A. Spotts request for a variance from Section 24-94 of Chapter 24 of the County Code to elevate residence above the 100 year floodplain at 6061 River Road (Tax Parcel 127-A-7B), zoned R-1, One-Family Residence District and A-1, Agricultural District (Tuckahoe). The height requirements are not met. The applicant has 40.0 height where the Code requires 35.0 feet height. The applicant requests a variance 5.0 feet height.

1535

1536

1537

1538

1539

Mr. McKinney - All right, is there any one else in the audience to speak in reference to A-78-99 other than the applicant? Would you identify yourself for the record, sir?

1540

1541

Mr. Spotts - I'm Meade A. Spotts, the applicant.

1542

1543

1544

Mr. McKinney - All right, Mr. Spotts, if you will you raise your hand, and be sworn in by the Secretary.

1545

1546

1547

1548

Mr. Silber - Please raise your right hand and swear that testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help me God?

1549

1550

Mr. Spotts - I do.

1551

1552

1553

Mr. McKinney - All right, Mr. Spotts, has all the adjoining and adjacent property owners been notified of the request?

1554

1555

Mr. Spotts - Yes, sir.

1556 Mr. McKinney - If you'll turn those in. All right, sir, if you'll present
1557 your case.
1558
1559 Mr. Spotts - Briefly, Mr. Chairman, this case involves elevating my
1560 home out of the flood plain. The house is subject to frequent floodings and gets
1561 inside the house. This would take me out of the flood plain, we've experienced
1562 over the past 30 years. This house is one of two left that are not elevated in
1563 some form or fashion. I decided to go ahead and elevate it, not move it; elevate it
1564 out of the flood plain.
1565
1566 Mr. McKinney - Are you just going to raise it up, or what are you
1567 doing, Mr. Spotts?
1568
1569 Mr. Spotts - We're going to raise it up directly. The area down
1570 there is so flat that it's not of any use to move it away from the river. We're
1571 taking it straight up, much similar to the house from Huguenot Bridge. The house
1572 you can see the next house down. Because it's a two-story house, that's why we
1573 were in violation of the height restriction.
1574
1575 Mr. McKinney - Does the flood wall hurt you or help you?
1576
1577 Mr. Spotts - Mr. Chairman, they tell us it does not hurt.
1578
1579 Mr. McKinney - They tell you.
1580
1581 Mr. Spotts - I have a hard time believing that, but that's what they
1582 tell us. No where else for the water to go.
1583
1584 Mr. Wright - Basically, you just going to put this house on stilts? Is
1585 that what you're going to do?
1586
1587 Mr. Spotts - Right. Yes sir.
1588
1589 Mr. Wright - Sort of like they do down in Sandbridge.
1590
1591 Mr. Spotts - Very similar, except a little stronger than the wooden
1592 timbers that you see down there.
1593
1594 Mr. Wright - You could just put them on whatever holds.
1595
1596 Mr. Spotts - We're about 30 feet from the edge of the river, so
1597 we'll have some substantial supports, but very similar.
1598
1599 Mr. Wright - As a matter of interest, how often does this flood?
1600

1601 Mr. Spotts - It depends on what you refer to as a flood. As far as
1602 the 100-year flood plain, I would be about 2,000 years old. It floods, the 100-year
1603 flood plain, probably every other year.

1604
1605 Mr. Wright - That's what I'm saying. You get water in there.

1606
1607 Mr. Spotts - We do. We got water in the house twice in 1996.

1608
1609 Mr. Wright - It came in twice in 1996?

1610
1611 Mr. Spotts - Twice in 1996, and probably 10 times over the last 30
1612 years.

1613
1614 None in 1997 or 1998. We've had two grace periods. The property has flooded,
1615 but has not gotten into the house.

1616
1617 Mr. McKinney - All right, do you have anything else to add, Mr.
1618 Spotts?

1619
1620 Mr. Spotts - No, sir.

1621
1622 Mr. McKinney - Any other questions from the Board members of Mr.
1623 Spotts? Does the staff have any comments?

1624
1625 Mr. Silber - No, sir.

1626
1627 Mr. McKinney - Any one else to speak in reference to A-78-99? All
1628 right, Mr. Spotts, that concludes your case. Thank you for coming. You'll get
1629 your answer shortly, or this afternoon.

1630
1631 Mr. Spotts - Thank you.

1632
1633 After an advertised public hearing and on a motion by Mr. Balfour, seconded by
1634 Mr. Wright, the Board **granted** the case.

1635
1636

Affirmative	Balfour, Kirkland, McKinney, Nunnally, Wright	5
Negative		0
Absent -		0

1637
1638 **REASON** - The Board **granted** this request as it found from the evidence
1639 presented that authorizing this variance will not be of substantial detriment to
1640 adjacent property and will not materially impair the purpose of the zoning
1641 regulations.

1642

1643 1. This approval is only of the height requirement of the zoning ordinance. All
1644 other improvements on the property will be subject to the applicable
1645 requirements of the County Code.
1646

UP-20-99

W. C. English, Inc. request for a conditional use permit pursuant to Sections 24-52(d) and 24-103 of Chapter 24 of the County Code to extract materials from the earth at 7800 Osborne Turnpike (Tax Parcel 235-A-16), zoned A-1, Agricultural District (Varina).

1647
1648 Mr. McKinney - Sir, you need to get to the mike. We record all of this.
1649

1650 Mr. Higginbotham - Sir, my name is J. Higginbotham representing W. C.
1651 English.

1652
1653 Mr. McKinney - Before you go any further, please raise your hand and
1654 be sworn in by Mr. Silber.

1655
1656 Mr. Silber - Please raise your right hand and swear that testimony
1657 you are about to give is the truth, the whole truth, and nothing but the truth, so
1658 help me God?

1659
1660 Mr. Higginbotham - Yes, sir.

1661
1662 Mr. McKinney - All right, Mr. Higginbotham, what's your request?

1663
1664 Mr. Higginbotham - That this be postponed until the last one today.

1665
1666 Mr. McKinney - Sure.

1667
1668 Mr. Higginbotham - Thank you.

1669
1670 Mr. McKinney - Does anyone have a problem with that?

1671
1672 The Board indicated they had no problem.

1673
1674 Mr. McKinney - We'll pass it by.
1675

UP-21-99

Broad Street Seafood Co. request for a temporary conditional use permit pursuant to Section 24-116(c)(1) of Chapter 24 of the County Code to conduct outdoor concerts at 7408 W. Broad Street (Tax Parcels 81-A-34 and 35), zoned B-3, Business District and R-6, General Residence District (Brookland).

1676 Mr. McKinney - All right, is there any one to speak other than the
1677 applicant in reference to UP-21-99? All right, gentlemen, if you'll you raise your
1678 hand, sir, and be sworn in by Mr. Silber, our Secretary.

1679
1680 Mr. Silber - Please raise your right hand and swear that testimony
1681 you are about to give is the truth, the whole truth, and nothing but the truth, so
1682 help me God?

1683
1684 People in Unison - I do.

1685
1686 Mr. McKinney - Would you state your name for the record?

1687
1688 Mr. Rick Gregory - My name is Rick Gregory. I'm with McAllen, Ryan.
1689 I'm here representing the applicant. We have with us El Burns, who is one of the
1690 owners of the property.

1691
1692 Mr. McKinney - All right, Mr. Gregory, have all the adjoining and
1693 adjacent property owners been notified?

1694
1695 Mr. Gregory - Yes, sir.

1696
1697 Mr. McKinney - If you'll turn those in to Mr. Silber.

1698
1699 Mr. Gregory - Yes, sir.

1700
1701 Mr. McKinney - All right. If you will present your case.

1702
1703 Mr. Gregory - The applicant is proposing to conduct outdoor
1704 concerts at their restaurant on Broad Street. This property, as you can see from
1705 the plat that we have up here, (referring to slide), is situated where it
1706 accommodates this type of outdoor facility.

1707
1708 What we're talking about, if you're familiar with that property, it's Awful Arthur's
1709 on Broad Street, which used to be the Red River Rib Company in the past. And
1710 what you've got there is that - there is a parking lot in the back. That, I believe, is
1711 a picture – that's your parking lot.

1712

1713 You see, there is a board fence along the back of the line with a wooded area
1714 behind it. That, also, is owned by the applicant. And, so there is a clear buffer
1715 between the applicant and the residential land behind it.

1716
1717 What they're proposing is to conduct, during the summer months, four outdoor
1718 events, which would consist, they would set up a band in the back there near the
1719 board fence. And there would be food and beverages served. These outdoor
1720 events would happen on Sundays, after 1:00 p.m. The music would stop by
1721 dark.

1722
1723 Well, the proceeds from the gate sales would be donated to charity. And it's
1724 something that the applicant has done in the past in the City of Richmond. And,
1725 now that they have a restaurant in Henrico, they would like to open this up to
1726 Henrico residents.

1727
1728 Here, again, the characteristics about the property are that, on the west side, is
1729 the VEPCO Division Headquarters, with their parking lot and so forth. There is a
1730 letter in your file they obtained from VEPCO last year agreeing to allow them to
1731 use the parking lot. They were very generous allowing that, because they
1732 understood the proceeds would go to charity.

1733
1734 They did not have the events last year because they found out about the need for
1735 this permit, so they weren't able to have it at all last year.

1736
1737 They have been in contact with VEPCO and have received a verbal OK to allow
1738 the same thing, and we're expecting a letter from them anytime to allow the
1739 parking.

1740
1741 That's pretty much it.

1742
1743 Mr. Silber - Mr. McKinney, the staff report didn't contain the
1744 suggested conditions. They have been provided to you separately, this morning.

1745
1746 Mr. Gregory - We are in complete agreement with those conditions.

1747
1748 Mr. Wright - Mr. Gregory, have you seen these conditions?

1749
1750 Mr. Gregory - Yes, sir. We're in agreement with those.

1751
1752 Mr. Kirkland - When you say, Mr. Gregory, until dark, what time is
1753 "until dark?" "From 1:00 p.m. until dark?"

1754
1755 Mr. Gregory - 7:00 p.m.

1756
1757 Mr. Kirkland - 7:00 p.m.

1758

1759 Mr. Gregory - Which, hopefully, is before dark in the summer.
1760
1761 Mr. Wright - It would be 9:00 p.m. now.
1762
1763 Mr. Kirkland - It's gives you time to clean up at night before it gets
1764 real dark.
1765
1766 Mr. Gregory - Right. So, 7:00 p.m. would be – I think one of the
1767 conditions was going through the music festival permit, which has a requirement
1768 that the festivities not occur earlier than 12:30 on Sundays. So, it would definitely
1769 not be starting any earlier than 12:30 p.m., as he said, ending at 7:00 p.m.
1770
1771 Mr. Kirkland - So, you wouldn't have any problem with Condition No.
1772 4 saying 1:00 p.m. to 7:00 p.m.?
1773
1774 Mr. Gregory - That would be correct.
1775
1776 Mr. Kirkland - OK.
1777
1778 Mr. McKinney - Mr. Silber, how about the sound on this? I noticed
1779 they're within 200 feet of a residence.
1780
1781 Mr. Silber - Yes, sir.
1782
1783 Mr. McKinney - And these residents were not contacted, were they?
1784
1785 Mr. Silber - No sir. Not all of them. The ones...
1786
1787 Mr. McKinney - I'm talking about Bull? Street, Erskine?
1788
1789 Mr. Silber - No. Just the ones that would be immediately adjacent
1790 would have been contacted.
1791
1792 Mr. McKinney - That's right. Mr. Gregory, how loud are these
1793 concerts going to be?
1794
1795 Mr. Gregory - We're not aware of decibels or that sort of thing, if
1796 that's what you're asking. What we were anticipating is that, I think there's also a
1797 diagram in your package that shows where the stage would be set up and how
1798 the amplifiers, so forth, would be facing towards Broad Street, so that the sound
1799 would be going that way. Here again, we do have the board fence and the
1800 wooded buffer separating where the stage would be and where the residents are.
1801 And, we're hoping that would prevent there from being any problems with sound.
1802
1803 Mr. Kirkland - You'll have a temporary fence between the Fairfield
1804 Inn and this concert area?

1805
1806 Mr. Gregory - Yes.
1807
1808 Mr. Kirkland - Telling from this little sketch here. To keep people
1809 from wandering back and forth.
1810
1811 Mr. Gregory - Yes, sir. And what they're going to do is set up the
1812 access. Parking would be in the VEPCO parking lot, and the control point in and
1813 out would be through that.
1814
1815 Mr. Kirkland - How many people do you anticipate arriving at this
1816 event?
1817
1818 Mr. Gregory - What we would anticipate would be around 500.
1819
1820 Mr. Kirkland - And the restaurant would be open at the same time?
1821
1822 Mr. Gregory - The restaurant has parking in front. So, that would
1823 not be impacted by this.
1824
1825 Mr. Balfour - How many parking spaces are available there at the
1826 VEPCO lot if you're going to use that lot for 500 people?
1827
1828 Mr. Gregory - Parking spaces in the VEPCO lot?
1829
1830 Mr. Balfour - How many are there in VEPCO?
1831
1832 Mr. Gregory - In the VEPCO lot?
1833
1834 Mr. Balfour - Did I understand that's where you wanted to park the
1835 cars?
1836
1837 Mr. McKinney - You're going to have to get up to the mike and identify
1838 yourself.
1839
1840 Mr. Burns - I'm Mel Burns, the owner of Awful Arthur's and the
1841 property. I don't know the exact number in VEPCO. There has to be at least 300
1842 spaces over there.
1843
1844 Mr. Gregory - I mean, you're talking about a several story building
1845 and whatever the County's parking requirements would be for VEPCO. I'm sure
1846 they have met those with gracious plenty.
1847
1848 Mr. Kirkland - They use some of those spaces on the weekends
1849 because they run crews.
1850

1851 Mr. Gregory - Very few. I mean that's really the administrative
1852 office, is my understanding.
1853
1854 Mr. Balfour - Check the people who come in so you know what
1855 your limit is? That is, if 700 show up, you're only going to let 500 in.
1856
1857 Mr. Burns - Right.
1858
1859 Mr. Kirkland - And they'll also use, I assume, where the old
1860 Blockbuster used to be, parking area, too?
1861
1862 Mr. Burns - Not for the event.
1863
1864 Mr. Kirkland - For the restaurant?
1865
1866 Mr. Burns - For staff and restaurant, yes.
1867
1868 Mr. Kirkland - Because you're giving up the whole back lot of the
1869 restaurant?
1870
1871 Mr. Burns - Right.
1872
1873 Mr. McKinney - You all have what in front, 20 spaces?
1874
1875 Mr. Burns - There's 25 spaces in front.
1876
1877 Mr. McKinney - Twenty-five spaces.
1878
1879 Mr. Gregory - With all the attraction going on in the back, I doubt
1880 there'll be much activity in the front, but...
1881
1882 Mr. McKinney - All right, any other questions by Board members?
1883 Does the staff have any comments?
1884
1885 Mr. Silber - No, sir.
1886
1887 Mr. McKinney - Is there any one else in the audience to speak in
1888 reference to UP-21-99? All right, Mr. Burns and Mr. Gregory, that concludes
1889 your case. You can get your answer this afternoon.
1890
1891 Mr. Gregory - Thank you, sir.
1892
1893 Mr. Burns - Thank you, sir.
1894
1895 Mr. McKinney - Thank you for coming.
1896

1897 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by
1898 Mr. Nunnally, the Board **denied** the case.

1899

Affirmative	Balfour, Kirkland, McKinney, Nunnally, Wright	5
Negative		0
Absent -		0

1900
1901 **REASON** - The Board **denied** this request as it found from the evidence
1902 presented that authorizing this use permit will be of substantial detriment to
1903 adjacent property and will materially impair the purpose of the zoning regulations.

1904

A-79-99 **Sam Lapkin** request for a variance from Section 24-95(c)(1) of Chapter 24 of the County Code to build an addition at 6705 Edmonstone Avenue (Duntreath) (Tax Parcel 102-3-18-3), zoned R-3, One-Family Residence District (Three Chopt). The minimum and total side yard setbacks are not met. The applicant has 7.66 feet minimum side yard and 21.96 feet total side yard where the Code requires 8.81 feet minimum side yard and 26.4 feet total side yard. The applicant requests variances of 1.15 feet minimum side yard and 4.44 feet total side yard.

1905
1906 Mr. McKinney - Is any one other than the applicant going to speak in
1907 reference to A-79-99? Would you state your name for the record, please?

1908
1909 Mr. Sam Lapkin - My name is Sam Lapkin.

1910
1911 Mrs. Harriet Lapkin - My name is Harriet Lapkin.

1912
1913 Mr. McKinney - All right, Mr. and Mrs. Lapkin, if you would raise your
1914 hand, and be sworn in by the Secretary, please.

1915
1916 Mr. Silber - Please raise your right hand and swear that testimony
1917 you are about to give is the truth, the whole truth, and nothing but the truth, so
1918 help me God?

1919
1920 Mr. Lapkin - I do.

1921
1922 Mr. McKinney - All right, Mr. and Mrs. Lapkin, have all the adjoining
1923 and adjacent property owners been notified of this request, according to the
1924 County Code.

1925
1926 Mr. Lapkin - Yes. They have.

1927
1928 Mr. McKinney - If you'll turn those in to Mr. Silber, please.

1929

1930 Mr. Silber - Very good.

1931

1932 Mr. McKinney - If you would present your case.

1933

1934 Mr. Lapkin - Because of the design of our house, we need an
1935 additional little bath, and cannot add it to the back of the building, where it would
1936 not violate the building code. We can only afford to add it to the bedroom side,
1937 which is shown on the corner of the building (referring to slide). And that requires
1938 that we request a variance of 1.15 feet minimum side yard, and 4.44 feet total
1939 side yard.

1940

1941 Mr. McKinney - Is that going to be done out of brick just exactly like
1942 your home?

1943

1944 Mr. Lapkin - We intend to do it out of siding, sir.

1945

1946 Mr. McKinney - It will be different from your existing house now?

1947

1948 Mr. Lapkin - The siding will be identical to the wood in the gables
1949 that's already in existence on three sides of the house.

1950

1951 Mr. Wright - Mr. Lampkin, it appears that your house is sort of is
1952 on the lot turned a little bit?

1953

1954 Mr. Lapkin - I don't know how they decided where that was to go.

1955

1956 Mr. Wright - If it were straight on the lot, parallel to the lot lines, I
1957 don't think you'd need a variance.

1958

1959 Mr. Lapkin - I think that's correct. And, as a matter of fact, we
1960 were required to obtain a survey to make a determination as to what somebody's
1961 estimation of the width was at that point.

1962

1963 Mr. Wright - It's pretty close.

1964

1965 Mr. McKinney - All right, do you have anything else to add, Mr.
1966 Lapkin, Mrs. Lapkin?

1967

1968 Mr. Lapkin - I am requesting it for health reasons.

1969

1970 Mr. McKinney - All right, any questions of Mr. and Mrs. Lampkin by
1971 Board members? Does the staff have any comments?

1972

1973 Mr. Silber - No, sir.

1974

1975 Mr. McKinney - Any one in the audience would like to speak in
1976 reference to A-79-99? That concludes your case. Thank you for coming.

1977
1978 Mr. Lapkin - Thank you, sir.

1979
1980 After an advertised public hearing and on a motion by Mr. Wright, seconded by
1981 Mr. Nunnally, the Board **granted** the case.

1982
Affirmative Balfour, Kirkland, McKinney, Nunnally, Wright 5
Negative
Absent -

1983
1984 **REASON** - The Board **granted** this request as it found from the evidence
1985 presented that authorizing this variance will not be of substantial detriment to
1986 adjacent property and will not materially impair the purpose of the zoning
1987 regulations.

1988
1989 1. The approval is only for the addition included in this case. Any future
1990 improvements on the property must comply with applicable regulations of the
1991 County Code.

1992
A-80-99 **Diane J. Harvey** request for a variance from Section 24-9
of Chapter 24 of the County Code to build a dwelling at
8915 Old Rebel Trail (Tax Parcel 257-A-47C), zoned A-1,
Agricultural District (Varina). The public road frontage is
not met. The applicant has 0.0 feet public road frontage
where the Code requires 50.0 feet public road frontage.
The applicant requests a variance of 50.0 feet public road
frontage.

1993 Mr. McKinney - All right, is anyone other than the applicant going to
1994 speak in reference to A-80-99?

1995
1996 Mr. McKinney - All right, whoever intends to speak, raise your right
1997 hand and be sworn in by Mr. Silber, our Secretary.

1998
1999 Mr. Silber - Please raise your right hand and swear that testimony
2000 you are about to give is the truth, the whole truth, and nothing but the truth, so
2001 help me God?

2002
2003 People in Unison - I do.

2004
2005 Mr. McKinney - All right, whoever is going to be the spokesman,
2006 would you identify yourself for the record?

2007

2008 Mr. Melvin Harvey - I'm Melvin Harvey. Diane is the applicant and I'm her
2009 husband.
2010
2011 Mr. McKinney - What's your name, sir?
2012
2013 Mr. Harvey - Melvin Harvey.
2014
2015 Mr. McKinney - All right, Mr. Harvey, have all the adjacent and
2016 adjoining property owners been notified of this request according to the County
2017 Code.
2018
2019 Mr. Harvey - Yes. They have.
2020
2021 Mr. McKinney - Would you turn those into Mr. Silber. All right, you
2022 can present your case, Mr. Harvey.
2023
2024 Mr. Harvey - We're requesting a variance for road frontage. We
2025 have no road frontage, and I thought the code required 50 feet, but I heard
2026 somebody say 150 feet awhile ago, but I think its 50 feet. And, if its granted, the
2027 parcel would be served by a deeded 50-foot right of way, and a 20-foot wide
2028 existing roadway extending to Osborne Turnpike.
2029
2030 Mr. McKinney - What type of home are you building, sir?
2031
2032 Mr. Harvey - Could I let Mr. Motley answer that? He's my son-in-
2033 law.
2034
2035 Mr. McKinney - What's your name for the record, sir?
2036
2037 Mr. William Motley - William Motley.
2038
2039 Mr. McKinney - William what?
2040
2041 Mr. Motley - Motley.
2042
2043 Mr. McKinney - Motley?
2044
2045 Mr. Motley - Right.
2046
2047 Mr. McKinney - All right, Mr. Motley.
2048
2049 Mr. Motley - We're trying to get the plans drawn up. It's going to
2050 be roughly 2,200 square feet. It will be a brick home.
2051
2052 Mr. McKinney - All right, any other questions?
2053

2054 Mr. Nunnally - Have you read the conditions on your case?
 2055
 2056 Mr. Motley - Yes, sir.
 2057
 2058 Mr. Nunnally - And you agree with them?
 2059
 2060 Mr. Motley - Yes, sir. We've had the perk test approved. And
 2061 there's an application for a plumbing permit.
 2062
 2063 Mr. McKinney - All right, any other questions of Mr. and Mrs. Harvey
 2064 or Mr. Motley? Does the staff have any comments?
 2065
 2066 Mr. Silber - No, sir.
 2067
 2068 Mr. McKinney - That concludes your case. If you want to hang
 2069 around a little bit, you can get your answer probably shortly.
 2070
 2071 Mr. & Mrs. Harvey - Thank you.
 2072
 2073 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
 2074 Mr. Wright, the Board **granted** the case.
 2075

Affirmative	Balfour, Kirkland, McKinney, Nunnally, Wright	5
Negative		0
Absent -		0

2076
 2077 **REASON** - The Board **granted** this request as it found from the evidence
 2078 presented that authorizing this variance will not be of substantial detriment to
 2079 adjacent property and will not materially impair the purpose of the zoning
 2080 regulations.
 2081

- 2082 1. A well and septic system approval by the Health Department must be obtained
- 2083 2. The owners of the property, their heirs or assigns, must accept responsibility for
 2084 maintaining access to the property until such a time as the access is improved
 2085 to County standards and accepted County road system for maintenance.
- 2086 3. The applicant must present proof with the building permit application that a
 2087 legal access to the property has been obtained
- 2088 4. The applicant must submit the necessary information to the Department of
 2089 Public Works to ensure compliance with the requirements of the Chesapeake
 2090 Bay Preservation Act and the code requirements for water quality standards
 2091

2092 At this time, testimony was resumed on UP-20-99.

2093
 2094 Mr. McKinney - All right, you want to go back to UP-20-99, Mr.
 2095 Secretary?
 2096

2097 Mr. Silber - Yes, sir. Moving back to the top of Page 7, UP-20-99.
2098
2099 UP-20-99
2100
2101 It is Mr. Higginbotham, is that correct?
2102
2103 Mr. Higginbotham - Higginbotham. Yes, sir.
2104
2105 Mr. McKinney - You've already been sworn in. Have all the adjoining
2106 and adjacent property owners...
2107
2108 Mr. Higginbotham - Mr. Hackett is with the Environmental Section. I'm
2109 wondering if we could have him sworn in to, and maybe it's not necessary right
2110 now, but I'd like to make a legal argument?
2111
2112 Mr. McKinney - Well, sir, if you'll hold on one second. Has all the
2113 adjoining and adjacent property owners been notified of this request, according
2114 to the County Code?
2115
2116 Mr. Higginbotham - No, sir.
2117
2118 Mr. McKinney - Therefore, if they have not been, we cannot hear your
2119 case. Now, you go ahead and speak.
2120
2121 Mr. Higginbotham - Thank you. And I was hoping you wouldn't ask the
2122 question. I've heard everybody else here. We're under a significant time
2123 constraint. We're building one-third of the I-895 project. There are other
2124 contractors involved, which is across the James River over to I-295; a \$300
2125 million project; a very significant project. And, under the Code Section, "Sand
2126 and Gravel Pits," it talks about Virginia's Mineral and Mining Laws which this
2127 barrow pit is not a mine. And there's case law, Commonwealth Department of
2128 Mines, Minerals, Energy versus May Brothers, which, basically, states that the
2129 simple removal of dirt from a construction site without more does not constitute
2130 mining, as contemplated by the legislature in this section.
2131
2132 The Henrico County Code says, "...All mineral mining operations shall strictly
2133 comply with these requirements, which are hereby incorporated by reference into
2134 the section...." It also goes on to state that, "...the following shall apply to all
2135 sand, gravel, clay pits, quarries, mines, or other operations for the extraction of
2136 any materials." And I think probably your jurisdiction would come under the
2137 assumption this is an extraction of other materials.
2138
2139 Mr. McKinney - Let me interrupt you for just a minute.
2140
2141 Mr. Higginbotham - Yes, sir.
2142

2143 Mr. McKinney - Save a lot of time. Mr. Silber, with all your learned
2144 knowledge, this request, in your opinion, you, acting as our Planning Director
2145 also, is required for what they want to do?
2146
2147 Mr. Silber - Yes, sir, Mr. McKinney. We believe it is required. If
2148 they were extracting materials only within the right-of-way of where this road was
2149 being constructed, they would not need a use permit. But because they're going
2150 outside of the boundaries of the right-of-way, they're extracting on property
2151 outside of the right of way, and, therefore, yes, sir, it needs a use permit.
2152
2153 Mr. McKinney - Your argument is fine and dandy, but there's nothing
2154 we can do about it. Our hands are tied. If you have not notified the adjoining
2155 property owners, there's absolutely nothing we can do about it.
2156
2157 Mr. Higginbotham - All right, I'm in the process of doing it as a backup
2158 plan.
2159
2160 Mr. McKinney - Well, I wish we could help you, but we can't.
2161
2162 Mr. Higginbotham - Yes, sir. Can I ask that this be deferred until next
2163 month?
2164
2165 Mr. McKinney - Yes, sir. The 24th.
2166
2167 Mr. Higginbotham - Is there any way I can get before you earlier to get the
2168 process going?
2169
2170 Mr. McKinney - You'll be the second one on the agenda on the 24th.
2171
2172 Mr. Higginbotham - Earlier than June 24th.
2173
2174 Mr. McKinney - No, sir. We meet once a month.
2175
2176 Mr. Balfour - What you might want to do, it probably won't work. If
2177 you have some concern about jurisdiction, maybe you don't need to be here in
2178 the first place. Talk with Randy, and then maybe talk with the County Attorney.
2179 If you're good enough to convince the County Attorney, he may agree, and tell
2180 Randy, that he has a different opinion. That's your only shot, as I said.
2181
2182 Mr. McKinney - You can go to the County Manager, Virgil Hazelett.
2183
2184 Mr. Higginbotham - Right. We have no intention of circumventing any law
2185 or anything.
2186
2187 Mr. Balfour - I'm just trying to give you an avenue to approach.
2188

2189 Mr. Higginbotham - And I appreciate it, sir. I'll take that approach.
2190
2191 Mr. McKinney - There are glitches in the code everywhere.
2192
2193 Mr. Higginbotham - Yes, sir. I think we got caught by a glitch, possibly,
2194 but I think it is an argument that we're not a part of the glitch. So, I do appreciate
2195 it, and I appreciate your time. In the meantime, I will talk to the County Attorney.
2196 If you will...
2197
2198 Mr. McKinney - If it doesn't work, be sure you get all your adjoining
2199 and adjacent property owners notified.
2200
2201 Mr. Higginbotham - Sir, are you aware of any other requirements? I
2202 mean, I think we've done everything else. But, if we get that done, then we
2203 should be on go for the...Okay.
2204
2205 Mr. Nunnally - I move we defer it to June 24th.
2206
2207 Mr. McKinney - There's a motion to defer? Is there a second?
2208
2209 Mr. Kirkland - Second.
2210
2211 Mr. McKinney - All those in favor say aye—all those opposed by
2212 saying nay.
2213
2214 Mr. Higginbotham - Thank you.
2215
2216 Mr. McKinney - All right, it has been granted.
2217
2218 Mr. Wright - How about the minutes? We don't have any minutes?
2219
2220 Mr. Silber - No minutes.
2221
2222 Mr. McKinney - All right, anything else to come before this Board?
2223
2224 There being no further business and on a motion by Mr. Balfour, seconded by
2225 Mr. Wright, the Board adjourned until June 24, 1999.
2226
2227 All of the aforementioned decisions have been filed in the Office of the Board of
2228 Zoning Appeals as of May 27, 1999.
2229
2230
2231
2232
2233
2234

Gene W. McKinney, C.P.C., C.B.Z.A., Chairman

2235
2236
2237
2238

Randall R. Silber, Secretary