

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**  
2 **HENRICO COUNTY, HELD IN THE BOARD ROOM OF THE COUNTY**  
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**  
4 **COMPLEX, ON THURSDAY, NOVEMBER 16, 2006, AT 9:00 A.M., NOTICE HAVING**  
5 **BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH ON OCTOBER 26 AND**  
6 **NOVEMBER 2, 2006.**

7

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

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

8

9 Mr. Nunnally -                         Good morning, Ladies and Gentlemen. We welcome you to  
10 the November meeting of the County of Henrico Board of Zoning Appeals. We ask you  
11 to please stand and join us for the **Pledge of Allegiance to the Flag of Our Country.**

12

13 Mr. Nunnally -                         Thank you. Mr. Blankinship, before I ask you to read the  
14 rules of procedure, I would like to just take a minute to welcome Ms. Parker back with  
15 us. We sure missed you Ms. Parker, and we’re glad to have you back. Okay, sir, if  
16 you’ll read the rules of the Board, sir.

17

18 Mr. Blankinship -                     Good morning, Mr. Chairman, Members of the Board, ladies  
19 and gentlemen. The rules for this meeting are as follows. Acting as Secretary, I will call  
20 each case, and while I’m announcing it, the applicant should come to the podium. I will  
21 ask everyone who intends to speak on that case, in favor or in opposition, to stand and  
22 be sworn in. The applicants will then present their testimony. After the applicant has  
23 spoken, the Board will ask them questions, and then anyone else who wishes to speak  
24 will be given the opportunity. After everyone has spoken, the applicant, and only the  
25 applicant, will be given the opportunity for rebuttal.

26

27 After hearing the case, and asking questions, the Board will take the matter under  
28 advisement. They will render all of their decisions at the end of the meeting. If you wish  
29 to know their decision on a specific case, you can either stay until the end of the  
30 meeting, or you can call the Planning Office later this afternoon, or you can check the  
31 website (we usually update it within about half an hour of the end of the meeting). This  
32 meeting is being tape recorded, so we will ask everyone who speaks, to speak directly  
33 into the microphone on the podium, to state your name, and to spell your last name  
34 please. And finally, out in the foyer, there are two binders, containing the staff report for

35 each case, including the conditions that have been recommended by the staff. It's very  
36 important that you be familiar with the conditions that have been recommended for your  
37 case. Mr. Chairman, we do not have any deferrals or withdrawals for this morning.  
38

39 **A-45-2006**                    **GREENLEAF PROPERTIES, INC** requests a variance from  
40 Sections 24-28(e) and 24-94 to build eight townhouses at 4201  
41 Glenside Drive (Parcel 770-748-7625), zoned R-5, General  
42 Residential District (Brookland). The maximum density allowed and  
43 total lot area requirement are not met. The applicant requests  
44 modification of a condition of approval of the previous variance, A-  
45 137-64. The condition requires that the subject property be  
46 obligated to the parcel across Glenside Drive.  
47

48 Mr. Nunnally -                    Is anyone else here interested in this case? If so, would you  
49 please stand and raise your right hand?  
50

51 Mr. Blankinship -                    Do you swear that the testimony you are about to give is the  
52 truth, and nothing but the truth, so help you God?  
53

54 Mr. Condlin -                    I do. Mr. Chairman, Members of the Board, Mr. Tokarz, my  
55 name is Andy Condlin, from Williams and Mullen, here on behalf of Greenleaf  
56 Properties with Bill Curnow, on behalf of Greenleaf Properties, to answer any specific  
57 questions that you might have from a factual standpoint. It is a complicated case from a  
58 history standpoint, and the previous argument that we had before this Board, quite  
59 frankly today is going to be a lot cleaner and quicker from a factual standpoint because  
60 there really are just a few facts that are pertinent with respect to the request that we are  
61 making. The specific request is an amendment of the conditions of a previously granted  
62 variance. I don't think there's any issue that the Board of Zoning Appeals may amend  
63 their own condition; if there is, I've got a couple of examples of which this very Board  
64 has already done so. I believe Mr. Tokarz has already admitted in the last hearing, and  
65 I think this Board has the authority to amend conditions of a variance that was  
66 previously granted. Again, if you would like me to provide you with any of the back-up  
67 on that, I'd be happy to.  
68

69 Going over some of the quick facts on this case, in February 1964, 22.3 acres was  
70 rezoned, on both sides of Glenside Drive, for the Hunt Club Apartments, and included  
71 this entire property. Glenside Drive was not actually in or dedicated at that time. In  
72 August of 1964, pursuant to the proffers that were required as part of that zoning, the  
73 actual dedication was accepted by the County, and thus created what I call the  
74 apartment parcel, consisting of 18.09 acres, and then the property in question which  
75 we're applying for, the 2.73 acres, which I'll refer to as "the property." This date is  
76 important, of August 1964, because at that point, the two lots were created. In 1965 the  
77 variance was granted which created the condition, in which we're appealing and asking  
78 for an amendment. At the time of that government regulation condition, there were  
79 already two lots existing, split by a public road, and the very fact that they couldn't  
80 create the number **(unintelligible)** density when they came in for their plan of

81 development, by bringing in both parcels and using the acreage from both parcels, is in  
82 fact the very reason they had to ask for a variance because there were two lots at the  
83 time of the variance request in 1965.

84

85 As you know, the 297 dwelling units, which encompassed the density calculations for  
86 the entire 20-some acres, were permitted to be built solely on the 18.09 acres on the  
87 apartment parcel, and the only condition that is relevant here that we talked about in the  
88 last case, was that the property in question was to be obligated to the apartment parcel.  
89 Again, as you know, in 1974, for reasons that no one could quite figure out, the  
90 apartment parcel owner sold the 2.37 acre parcel, and in 2005, the applicant actually  
91 purchased this property, just the 2.37 acre parcel, as part of a larger package of  
92 property from the estate of Judge Mehridge, who actually often represented the property  
93 in the case, and again, no one is really familiar with why this property was sold off.  
94 There is some correspondence from the County acknowledging in 1974 that the  
95 apartment parcel must take care of, and asking for a conclusion as to how they were  
96 going to deal with that, and again, there was no conclusion in the case file that we could  
97 find.

98

99 I'm not going to get too hyper technical today, but I do have to cover the Cochran case  
100 and some of the other standards that we're dealing with in this situation, to cover the  
101 legal issues. The first question that I'm going to cover, is the question as to whether this  
102 property is taken as a whole. Mr. Tokarz, on behalf of the County, has quoted  
103 Cherrystone with respect to the case out of the Virginia Supreme Court that was  
104 decided, or that opinion was granted, on April 21 of this year. To say that the property  
105 as a whole should include the 18.09 acre parcel, the apartment parcel and our parcel. I  
106 read that completely different, and I think you missed the point in that case, and I'll say  
107 why, because specifically in that case, they quote that because they couldn't establish  
108 but five lots in that case, were created before the Chesapeake Bay Act Ordinance was  
109 passed, and I'll be happy to quote the specific language out of there. The whole crux of  
110 that case dealing with the parcel as a whole was because, at the time, the six acres in  
111 the Cherrystone case existed, the Chesapeake Bay Act came in and created the  
112 setback requirements, and then the property was subdivided.

113

114 Here, clearly, there were two lots at the time of the condition. The property taken as a  
115 whole cannot be the twenty acres; it's only the 2 acre lot in this case, because that was  
116 the whole reason for the variance. They weren't allowed to get the density benefit for  
117 the entire twenty acres, because the Planning Office in 1964 deemed it to be two lots.  
118 In this case the two lots precluded the actual condition, the government regulation that  
119 we're actually asking for an amendment. That's the point that we're appealing with  
120 respect to, not the zoning ordinance. Mr. Tokarz references back to 1964, when in fact  
121 the critical date here is 1965, which is the date of the imposition of the condition. We're  
122 not appealing the conditions or any of the zoning or any of the regulations specific to the  
123 zoning ordinance; we're asking for an amendment of the very condition of the variance,  
124 based on the interpretation of the zoning office at that time. I'd also refer you to the  
125 definition of a lot in the Henrico County Code, which requires that any parcel of land,  
126 occupied or intended to be occupied by a principal building, which contains at least the

127 minimum area and width required by this chapter for a lot in the district. It doesn't say  
128 anything about a separate tax parcel number. It just says, "does your lot have sufficient  
129 area in order to meet, and can you put a building on it," and the answer to both those  
130 questions is yes. I don't think there's any doubt in my mind anyway, that in fact this is a  
131 separate lot, so that when you talk about the lot taken as a whole, 18.09 acres has  
132 absolutely nothing to do with the discussion.  
133

134 The lot taken as a whole that we need to talk about today is simply the property in  
135 question, the 2.37 acres. If the property is taken as a whole under the Cochran  
136 analysis, the question becomes, "is it prevented from having any beneficial use that is  
137 made of it?" I haven't heard any dispute with respect to that. There's not a whole lot of  
138 use that you can make of this property. It was separate after the date of the enactment  
139 of the very zoning regulation that we're requesting amendment that is preventing the  
140 building, and the variance condition in 1965 prevents the use of this parcel.  
141

142 Ms. Dwyer - You're saying that the two lots were separate at the  
143 time.....

144  
145 Mr. Condlin - .....of the variance.  
146

147 Ms. Dwyer - That all took place at one time, did it not?  
148

149 Mr. Condlin - No ma'am. In February of 1964, the property was rezoned,  
150 and in August of 1964, Glenside Drive was actually dedicated and accepted by the  
151 County of Henrico, thus creating two lots. After August of 1964, the owner of the  
152 property at that time was ready for his POD and wanted to go ahead and use the entire  
153 20 acres to calculate his density.  
154

155 Ms. Dwyer - So that's the point of contention, is when the road cut  
156 through the property, were in fact two lots created, or was it still a single parcel. That's  
157 the point of contention.  
158

159 Mr. Condlin - I would certainly say that the Zoning Office at that time said,  
160 "you can't use the 2.7 acres to calculate your density, because you're separated by a  
161 public road, because it's a separate lot. Therefore, you have to get a variance, or just  
162 only have to calculate the density on the 18 acres." That was the whole reason for the  
163 request for the variance, because it did create two lots at that time, so therefore we had,  
164 by the variance interpretation, if it wasn't two lots, if it was one lot, the applicant at that  
165 time should have been able to use the entire 20 acres in order to get all the density that  
166 they wanted at that time, but the County Planning Office prevented them from doing  
167 that. Back in 1964 and 1965, at some point the determination, when they actually  
168 applied for the POD, it was made two lots. You can't use both lots as part of a density.  
169 If it was one lot, then there wouldn't be any density question.  
170

171 Stepping back to the Cochran analysis then, if the property is taken as a whole, and in  
172 this case we're dealing with the property in question, the 2.37 acres, the question

173 becomes, “is there any beneficial use that can be made of the property?” Mr. Tokarz  
174 points out that this is not a question of confiscation, but is simply asking for more  
175 density. It’s no surprise that I disagree with that statement. It’s not a question of  
176 confiscation. Every time, and I would ask you to think about the question – if you’ve got  
177 a property lot that has no public road access, which you’ve covered and seen those  
178 quite a bit. At that moment in time in which you have no public road access, there’s no  
179 “confiscation,” but it’s tantamount to confiscation, because you can’t build on it because  
180 you can’t meet the regulation that requires a public road access. I’ll also take it a step  
181 further, because at that point, your density is zero. When they ask for a variance,  
182 they’re simply asking for a density of one. Right now our density is zero. We cannot  
183 build a single home or beneficial use on this property. Our density is zero. It’s very  
184 much like the Cherrystone Case which Mr. Tokarz quoted. In that case, they said you  
185 could build one home. Therefore, there is a beneficial use. Even though you have five  
186 lots, and you want five homes, you can meet the setback requirements and build one  
187 home. We’re asking for eight homes, out of 34 possible on this site. The density allows  
188 34. We currently are not allowed any, and we are simply asking simply for those eight  
189 homes. Under the R-5 again, multiplying it by the 2.37 acres, pursuant to the record in  
190 this case, 34 units could be achieved. We’re not asking for an increase in density.  
191 Increase in density is with the other lot. On this lot, we’re asking for the right that we  
192 otherwise have and can’t have because of the government regulation that’s being  
193 imposed upon us.

194  
195 The next item I’d like to cover is good faith. The County seems to infer that they’re  
196 taking the position that because the applicant did not ask for zoning conformance in  
197 2005, when they purchased the property, that there was no good faith. If that is in fact  
198 their position, I find it a little disingenuous, because there are a number of cases that we  
199 cited Spence – they cited the Cherrystone Case. You can actually know about the need  
200 for a variance under these Supreme Court cases, by the property and ask for a variance  
201 and still be under good standing and good faith, being a bona fide purchaser at that  
202 point. The only question is, “was there a self-created hardship?” I would propose to  
203 you that obviously there was not a self-created hardship. If there were a hardship that  
204 was created, it was back in 1964 and 1965 when the dedication occurred, accepted by  
205 the County, and the County imposed the condition as part of the variance.

206  
207 Further, I would also point out that separate from that, there was due diligence that was  
208 done. I went on the County website this morning, just to make sure it was the most  
209 recent information I could get, and pulled up the zoning map for this property. You can  
210 note, as Mr. Curnow did, and his partners did, they took a look at the property and the  
211 zoning map. It just simply says R-5; it’s got a separate tax parcel number; there’s no  
212 reference to a condition on the very map that’s in the website of the County of Henrico.  
213 They did take a look at the property and looked for conditions and didn’t see any. Now I  
214 know we’ve covered that in the last hearing, that if you look back at the other zoning  
215 maps physically, on the very much older, I think it’s two versions back, that they had an  
216 actual condition in reference to the BZA case. If you go on the internet, there’s the  
217 information you see.

218

219 The other thing I would point out to you is the fact that we also looked at the tax records.  
220 When you look at the tax records, you saw that it was a separate tax parcel number,  
221 had its own tax parcel number, and was in fact at that time, being assessed at the value  
222 of \$200,000. When you looked at all that, from 1992, it went from \$161,000 to \$200,000  
223 assessed value. I think it was reasonable in his mind to be able to say, in good faith,  
224 that this property was developable, was assumed so by the County when you looked at  
225 the map, and you looked at these tax records.  
226

227 Finally, to cover the three threshold questions that were raised in the staff report, the  
228 question is, "is the property affected by extraordinary circumstances or conditions?"  
229 Certainly the exceptional circumstances or conditions in this case are that the variance  
230 condition, then the sale of the property, and the good faith purchase. It doesn't have to  
231 be, and nowhere in the Code requirements, nowhere in the State requirements, does it  
232 talk about a physical condition. That's usually the case, but in this case, the physical  
233 condition, is that they actually can build, just like a lot with no public road frontage, they  
234 can build a home, they can build eight homes, they can actually build 14 homes plus, on  
235 this property. They're asking for eight homes, and by the Code requirements, they're  
236 allowed for 34 units specifically.  
237

238 They also, I would point to Cherrystone again, which supports the benefits of "if you can  
239 have one beneficial use to this property, such as one unit versus five, again in this case,  
240 we actually have zero again. That's the condition of exceptional circumstance in this  
241 case. There's also reference in the staff report regarding reference to the standard of  
242 no substantial harm to adjacent property or changing character of the district. The staff  
243 report does allude to the fact that there would be an adverse impact. I would propose to  
244 you that the standard is not whether there would not be an adverse impact. There's  
245 always going to be more traffic with even one unit, regardless. The question is whether  
246 it's going to be substantial harm. Just to show that we could put eight units on this  
247 property, there's a thirty-foot setback behind residential units that quite frankly, haven't  
248 been developed, and next to it, existing development right here that would be very  
249 similar, and access out to Glenside Drive. The staff report refers to the 297 units across  
250 the street, and that doesn't have an adverse impact, but our eight units that we're  
251 proposing would have an adverse impact. I would propose with access out to Glenside  
252 Drive, meeting the other Code requirements that in fact, the adverse impact is going to  
253 be quite minimal.  
254

255 Finally, the question is the condition is not so general or of a reoccurring nature so as to  
256 act as an amendment of the Ordinance. I've never come across something like this in  
257 16 years of practice, so I don't think you have come across such a circumstance like  
258 this. I don't think we're going to come across another one in any time, so I'll dispense  
259 with that, unless you have any questions. I don't think there's much question about  
260 asking for that, other than that the staff report refers to this as tantamount to asking for a  
261 rezoning. I don't consider that. I don't think that's the fact, that we're asking for a  
262 rezoning here. It's a question of density, where they have zero, and we're asking for  
263 some out of the 34. The benefit of ownership rests over in the Hunt Club Apartments.  
264 They've got the benefit of the variance that was created in the density. They have the

265 extra density. We're just asking for some of our 34; we're asking for some kind of  
266 density that we can obtain. It's not a rezoning; we're willing to fit within all the  
267 requirements of R-5; we just want to be able to make use of the property. Those are my  
268 legal arguments.

269  
270 I tried to cover the technical requirements, Cochran, Spence and the Cherrystone case.  
271 When you get rid of all the legal arguments, it's a pretty simple case. It's a separate lot;  
272 it was a separate lot back in 1965 when they asked for the POD because they couldn't  
273 get the density requirements. The applicant is not permitted to make a beneficial use of  
274 this property in any significant way that may make a beneficial use of this property.  
275 Given those facts, I don't see how this doesn't fall squarely within the Cochran case.

276  
277 Further, when you take a step and look back at it, this property was bought from an  
278 estate. They did do due diligence necessary; they looked at a zoning map. Could they  
279 do perfect due diligence and ask for a zoning conformance letter? No, but that's not  
280 required. They did acquire it in good faith. They looked at the zoning map; they looked  
281 at the tax records, saw it had a separate tax parcel. This property has been sitting here  
282 for 41 years. There's been no benefit of ownership, and no one can see or figure out  
283 why it was ultimately sold, but I will suggest to you that the problem here becomes the  
284 Hunt Club Apartments. The County shouldn't be opposing this case because we're  
285 asking for a portion of the density that would otherwise be required. They should be  
286 pulling Hunt Club Apartments before this Board and say, "You're successor in interest;  
287 why did you violate the terms of the variance by selling the lot? You had no right to do  
288 that, and now you have to answer to that fact." That hasn't been done. The burden of  
289 the ownership is created on this parcel, and the benefit of the variance is given to the  
290 Hunt Club Apartments. I would contend, of course, that the equity of the situation would  
291 call for at least allowing for eight units out of the 34 that are otherwise allowed by the  
292 Zoning Ordinance. With that, I don't even think, based on that fact, that we need to get  
293 the Cochran analysis, but when we do, I still think we meet those standards, and legally,  
294 we meet the threshold. Given the fact that the 18.09 acres violated the terms of the  
295 variance, and this property was acquired in good faith, paid taxes, was a separate  
296 parcel, was a separate lot in 1965 when the variance was granted, and because of the  
297 zoning regulations that are imposed upon this, there is no reasonable, beneficial use of  
298 the property, we respectfully request an amendment of this variance. I'll be happy to  
299 answer any questions.

300  
301 Mr. Wright - In 2005, when this property was purchased, from the estate  
302 of Judge Mehridge, to your knowledge, did the purchaser have any understanding or  
303 knowledge of the 1965 variance as it was granted by the BZA?

304  
305 Mr. Condlin - No sir, in talking with the client, he had no knowledge. In  
306 fact, he didn't think there were any conditions, though they were familiar with the R-5.  
307 He actually went back and asked his closing attorney at the time whether they ever  
308 asked for a zoning conformance letter. The answer was no. Would that have found it  
309 out? Maybe, but when I looked, even if you look at that case, you could infer that it  
310 applied only to the 18 acres and the 2 acres wasn't .....that's a separate.

311  
312 Mr. Wright - That's not my concern right now. My concern is whether  
313 they had any knowledge of the 1965 variance.  
314  
315 Mr. Condlin - It's not on the zoning map, and while I understand that there  
316 are three books that you have to look at in the Planning Office, what's on the internet,  
317 which is what most people use right now, does not have any reference to the variance.  
318 It's zoned R-5, has a separate tax parcel, and at the time in 2005 when he purchased it,  
319 it was being assessed at \$200,000 for the entire property.  
320  
321 Mr. Wright - Did the owner get an owner's title policy?  
322  
323 Mr. Curnow - My name is Bill Curnow. I actually called my closing  
324 attorney yesterday, just to bring myself up to date. I did not get title insurance on it,  
325 although he said nothing of this nature would have been picked up in a title search. I  
326 had him go back. There are no deed restrictions, so even if I had asked for it, nothing of  
327 this nature would have been disclosed.  
328  
329 Mr. Wright - Are you the owner?  
330  
331 Mr. Curnow - Yes sir, I'm a President of Greenleaf.  
332  
333 Mr. Wright - Did you personally have any knowledge of this 1965  
334 variance which supposedly obligated this property to the other 18 acres?  
335  
336 Mr. Curnow - Not until it was too late. I was committed to the closing.  
337  
338 Mr. Condlin - I will say, Mr. Wright, in the first case, we went back, and I  
339 do have a copy in my files somewhere of the deed from the Hunt Club Apartments to  
340 Judge Mehridge, and a copy of the deed from Judge Mehridge that conveyed it to  
341 Greenleaf. From the title perspective, there's no restrictions to the deed itself.  
342  
343 Mr. Wright - Do you know how much the purchaser paid for this property?  
344  
345 Mr. Condlin - This was part of an overall, a package of property.  
346  
347 Mr. Curnow - Each was separately closed. We bought, from what I  
348 understand, was the remaining parcels in the Richmond area from the estate. It was  
349 120 acres in Chesterfield, 20-some acres in Chesterfield, and this piece. This actually  
350 was recorded as a \$5,000 purchase.  
351  
352 Ms. Dwyer - Because an issue has been made about assessments and  
353 that somehow has bound the County to accepting this as a separate lot, this was  
354 assessed at – when was the purchase?  
355  
356 Mr. Curnow - November, early December, 2005.



357  
358 Mr. Condlin - If you're looking at that deed in 2005, that was because Mr.  
359 Curnow went back and talked to the County Assessor and told him he'd been to the  
360 County, they told him he couldn't use the property, and yet they were assessing him, so  
361 when we printed this off, this was all they could do. They couldn't show me the 2005  
362 assessment.  
363  
364 Ms. Dwyer - So you paid \$5,000 for a piece of property assessed at  
365 \$207,000, is that correct?  
366  
367 Mr. Condlin - I will say that for recording tax purposes, what you do is a  
368 pro-ration, so when you add up all the acreage, they send the different jurisdictions,  
369 there was a deed, when you add up all the acreage, what they do is they assess, they  
370 send a prorated value of the 120 acres, the other acreage, and that's where they came  
371 up with a value per se, the overall purchase price that you'd pay for all the property.  
372  
373 Ms. Dwyer - I thought he said he'd closed separately on the properties,  
374 and for this property he'd paid \$5,000.  
375  
376 Mr. Curnow - We contracted for all the properties. During the course of,  
377 as we came up with, after the fact, that I had to purchase all the properties, that's when I  
378 found out that the County was saying I couldn't do what I thought I could do. But I still  
379 had to close on it. At that point, I called the estate attorney and said they said we can't  
380 do anything with it, so there's no reason to keep paying an assessment of \$275,000 a  
381 year while I'm going about checking this out. I actually called him prior to our closing  
382 and told him he needed to request, since I'm getting the feedback that it's worth nothing,  
383 why pay the taxes, while I've gone through this year's process of trying to get where we  
384 are. There's no doubt that I thought I may be getting a good deal, but in the context of  
385 the overall purchases.  
386  
387 Ms. Dwyer - I'm not interested so much in how it went from \$207,000 to  
388 \$2,400 in assessment. I'm interested in what you actually paid for the property at the  
389 time it was assessed for \$207,000, and the testimony that I heard was \$5,000.  
390  
391 Mr. Curnow - I'm not sure that the assessment hadn't been lowered prior  
392 to my closing. Do we know the date? It may have been assessed differently from what  
393 it is now when I paid the \$5,000.  
394  
395 Ms. Dwyer - But you paid \$5,000?  
396  
397 Mr. Curnow - That is correct.  
398  
399 Ms. Dwyer - I have a suggestion that maybe the Board could consider.  
400 We had extensive testimony on this case in April, and I'm wondering if the parties would  
401 agree to stipulate the evidence that was presented in that case to incorporate that into  
402 today's case. There were a lot more facts developed in April than we're going to take

403 time to do today, because we're all familiar with the fact situation, but one fact in  
404 particular is the exact wording of the variance in 1965, which I think needs to be part of  
405 the record, so if both parties agree, and the Board agrees, I would like to recommend.

406  
407 Mr. Condlin - On behalf of my party, I would certainly agree to that.

408  
409 Mr. Tokarz - The County would agree to that too, Mr. Chairman.

410  
411 Ms. Dwyer - My other question has to do with, you're not really asking for  
412 relief from an Ordinance in this case. You're asking for relief from a previous variance  
413 that was granted in favor of this property.

414  
415 Mr. Condlin - I bring forward an amendment of the condition, not the  
416 variance, but the condition that was imposed. The variance was gained for the benefit  
417 of the apartment property. I'm asking for an amendment of the condition, which this  
418 Board certainly has the ability to do, and quite frankly, in a change of circumstances,  
419 often does.

420  
421 Ms. Dwyer - In some of the written documents, it sounded as though this  
422 was a request for relief from the ordinance, and I didn't see it as that.

423  
424 Mr. Condlin - That may well have been sloppy writing on my part.

425  
426 Ms. Dwyer - I just wanted to clarify that point.

427  
428 Mr. Condlin - Nowhere does the law require in the case law or the statutes  
429 that it only be an Ordinance. A regulation, a general term that I would use, that nothing  
430 prevents. When I submit in a zoning case, you know that proffers are part of the  
431 Ordinance, and they run with the land, and they're enforceful against the property  
432 owner, by the County. Same way with the zoning condition. Unlike a POD condition, I  
433 think this is more tantamount to an Ordinance than any other condition by the BZA. It  
434 runs with the property. When I have a condition with a POD, and buy the property, I  
435 have to come forward to the Planning Commission and ask for a transfer of approval  
436 and accept those conditions. This variance runs with the land and becomes part of the  
437 Ordinance. It is an Ordinance. That condition, in and of itself, is a regulation assigned  
438 to this property.

439  
440 Ms. Dwyer - On the issue of the beneficial use, you're arguing your  
441 property doesn't have any, I'm trying to think of some analogous situation – you know if  
442 you have an easement, and one piece of property grants access over its property to  
443 another piece of property, that's a permanent dependent, and you can't really come  
444 back afterwards.

445  
446 Mr. Condlin - That's not really a government regulation.

447  
448 Ms. Dwyer - But it's analogous – once a property becomes dependent on

449 another piece of property, that seems to be what has happened here.

450

451 Mr. Condlin - You mean one burdened by the other. Certainly, if it's part  
452 of the title record, it's not when I buy the property as a bona fide purchaser, if it's not  
453 recorded, I'm not subject to it as long as I don't know about it. Once it's recorded, it's  
454 deemed constructive knowledge. That, to me, is the difference in this case. We did do  
455 due diligence, and by the very cases themselves, good faith is already achieved,  
456 whether we paid \$5,000 or \$50,000, or \$500,000. The very fact that he did not create  
457 the hardship; that's all we're looking for in good faith.

458

459 Ms. Dwyer - By your own testimony, the decision by the 1965 BZA  
460 became an Ordinance.

461

462 Mr. Condlin - Even in that case, I'll take the Cherrystone case, the  
463 Chesapeake Bay Ordinance was out there. The gentleman bought the property with full  
464 knowledge that the Chesapeake Bay Ordinance was going to have setbacks that would  
465 limit his five lots to one dwelling unit. He knew of the Ordinance. Was there  
466 constructive knowledge? Any public information was constructive knowledge, by the  
467 very fact that it was in the map, which I wasn't aware of at the last hearing until Mr.  
468 O'Kelly pointed it out, is technically constructive knowledge.

469

470 Ms. Dwyer - My next thought is that it seems as though the 2 acre parcel  
471 essentially gave up its development rights to the 18 acre parcel, and in that sense, the  
472 beneficial use of that property has been had. If I had a farm, and I gave the  
473 development rights to that farm to the nature conservatory, then a subsequent  
474 purchaser couldn't come in and say he was entitled to build on it according to the  
475 zoning, because he had bought the property, didn't know about the gift of the  
476 development rights to the sale of the development rights prior to that.

477

478 Mr. Condlin - Again, we're talking about private and whether it's recorded  
479 or not; in that case, we're still getting constructive. The property owner here didn't know  
480 about the 1965 case when he bought it. I think it gets down to the question of who  
481 received the benefit of this. It's not the property per se, but the owner of the apartment  
482 complex, who received the benefit of it. What if ten units in the apartment complex  
483 burned down? We're going to have a race to the Planning Office to get building  
484 permits. When I own a property, and you grant me a variance, I don't have to take  
485 advantage of that variance. I can ignore that variance and build something else and  
486 meet my setbacks if I can. If I don't take advantage of the variance, I don't have to meet  
487 your conditions. In this case, if those ten units burned down, there is nothing that  
488 prevents us from racing to the Planning Office, submitting our POD, and getting our ten  
489 units in before them. I don't think the development rights were particularly given up. I  
490 don't think that's the situation we want here. I wonder why the County's not looking at  
491 the apartment complex and saying, "Why did you violate the terms of the conditions by  
492 you selling it?" They created the hardship; they should bear the burden. Instead,  
493 they're getting all the benefit, and if this gets turned down, they're not required to have  
494 any of the burden, and this property will either sit there, there's nothing that can be

495 made of this property because of that condition.

496

497 Mr. Nunnally - Any other questions of Mr. Condlin? Do you have anyone  
498 else who wants to speak for this case? Mr. Tokarz.

499

500 Mr. Tokarz - Thank you Mr. Chairman. Tom Tokarz, County Attorney's  
501 Office, representing the Director of Planning on this issue, and as Ms. Dwyer indicated,  
502 we have had extensive evidence already presented to the Board in the April hearing,  
503 and I'm not going to go over all of that again. I think I would disagree on a number of  
504 points as to the law with Mr. Condlin, just as he disagreed with me. I'll start with the first  
505 disagreement. I do not believe, if you look at the definition of a variance in the Code of  
506 Virginia, that the variance is an amendment of the Zoning Ordinance. The Zoning  
507 Ordinance is a legislative act, as defined in 15.2-2201. Variance is defined as "a  
508 reasonable deviation from those provisions regulating the size or area of a lot or parcel  
509 of land, or the size, area, bulk or location of a building or structure when the strict  
510 application of the ordinance would result in unnecessary or unreasonable hardship."  
511 The reason I point that out to you is the Supreme Court, in Cochran, has made it clear  
512 that there is a difference between the legislative power of the Supervisors to enact the  
513 ordinance, and the administrative power of the Board of Zoning Appeals, to grant a  
514 deviation, assuming that all the statutory grounds for granting the variance are satisfied.  
515 I don't believe that the variance is a part of the ordinance, the 1965 variance is not part  
516 of the ordinance, and I think that in addition, that the 1965 variance that the applicant  
517 seeks to amend, actually totally undercuts the argument that the applicant makes to the  
518 Board today.

519

520 What the applicant seeks to have the Board do, is to ignore the fact, that in 1965, the  
521 owner of the two parcels, the 18.09 acre parcel, and the 2.37 acre parcel, owned  
522 together by the same owner at that time, came to this body, came to your predecessor  
523 body and said, "Please give us the benefit of the 2.37 acre parcel, which has been  
524 separated by the dedication of Glenside Drive, please give us the benefit of those 2.37  
525 acres, which is equivalent to 34 units, and allow us to build the 34 units on the north  
526 side of Glenside Drive, rather than the south side of Glenside Drive. At the very time  
527 that the BZA even heard this case, the BZA was asked to give beneficial use of the 2.37  
528 acre parcel to the apartment complex. I think because that's the case, because that  
529 was the whole premise of the 1965 case, I don't believe that the applicant can  
530 accurately come to you and say today that the 2.37 acre parcel should be considered  
531 separately from that parcel in seeking an amendment of the condition that was imposed  
532 by the BZA in that case.

533

534 The whole record of the case, the transcript of the minutes of the case which are then  
535 submitted to you by Mr. Condlin in his packet in this case, and which are in the record of  
536 the previous case, indicates the recognition by both the applicant and the BZA, that the  
537 2.37 acres was being given consideration solely for the purpose of providing additional  
538 density that would not otherwise be permitted on the 18.09 acre parcel. With respect to  
539 Mr. Condlin's claim that the County should be going after the apartment complex, the  
540 owners of the 18.09 acre parcel, rather than denying development of this 2.37 parcel, I

541 would point out to you that the apartment complex has done nothing in violation of that  
542 variance condition. The apartment complex has not applied to the County to develop  
543 that property. The apartment complex has retained its density at 297 units that is  
544 permitted by the 1965 variance, and as a result, there is no violation by the apartment  
545 complex of the variance condition that was imposed by the BZA in 1965.  
546

547 Mr. Wright - Didn't the owner of the 18 acres use this 2.37 acres in order  
548 that he could build the number of units that he wanted to?  
549

550 Mr. Tokarz - Yes sir.  
551

552 Mr. Wright - When he sold it, wasn't he in effect violating that, because  
553 he owned it together, and he got the benefit of it, and then he sold it – doesn't that  
554 cause you some concern, the fact that he has gotten rid of that acreage that he used to  
555 benefit from it?  
556

557 Mr. Tokarz - I don't believe so, Mr. Wright, because I think the applicable  
558 requirement of the variance condition, as I understand it, reading back in the 1965  
559 record, was that the BZA wanted to insure that the 2.37 acre parcel was not developed,  
560 that the units that would be allowed as a result of a combination of the 18.09 acre parcel  
561 and the 2.37 acre parcel, would be limited to 297 units, which is what has occurred.  
562 When the sale of the property occurred, and I don't know any more than Andy does the  
563 history of what happened in 1974, when the property was sold, I don't know what the  
564 conditions of the sale were between the owner of the 18.09 acre parcel and the  
565 purchasers. What we do know is that there has been no application for development by  
566 the holder of the variance from 1965, and at the time that we did get a request for  
567 development, the County said, "You have to deal with the requirement that was  
568 imposed by the BZA in 1965 to get a text amendment of the zoning ordinance. That's  
569 been the position that I took in April, and that's the position that I take again today, that  
570 the relief that the applicant wishes has got to come from the Board of Supervisors, not  
571 from the Board of Zoning Appeals, but the amendment of the variance condition is not  
572 the proper vehicle to seek relief in this case.  
573

574 Mr. Wright - That parcel that's sitting there at 2.37 acres now, and if all of  
575 this hadn't happened, it was just sitting there, and Glenside Drive was there, could it be  
576 developed? Does it satisfy the zoning requirements and so forth that they could put  
577 these units on there without a variance?  
578

579 Mr. Tokarz - You mean if there had been no 1965 .....

580  
581 Mr. Wright - If nothing had happened in the past, that's just sitting there,  
582 the 2.37 acres is there, isn't it a buildable lot?  
583

584 Mr. Tokarz - I think Mr. O'Kelly or Mr. Blankinship might be able to  
585 address that question. I don't know the zoning answer to your question.  
586

587 Mr. Wright - The other thing that concerns me more than anything else is  
588 the fact that the County didn't do anything to give notice to a future purchaser of that  
589 property. I've examined many titles in my career. I'm entitled to go to the record room  
590 and examine the title. Even if I went over and looked at this, nothing's on it. I don't  
591 think there's any requirement to get a bona fide title to that property, to get it insured,  
592 but to check the record in the record room and then if they look at this, nothing's on it,  
593 and I don't have any knowledge of anything that's happened in the past, so therefore,  
594 you've taken my property without due process.

595  
596 Mr. Tokarz - Mr. Wright, I would respectfully suggest to you a different  
597 way of thinking about it. I don't think that what the County is doing, has any effect at all  
598 with respect to the title of this property. The purchaser has testified to the Board that he  
599 paid \$5,000 for a 2.37-acre parcel. He continues to retain title to that parcel. He can  
600 retain title to that parcel for as long as he's willing to pay the real estate taxes. There's  
601 been no deprivation of his title to the property. That's different than whether he can  
602 develop it as he would like to develop it, which is not a matter of title. It's a matter of the  
603 zoning ordinance, and in order to make a determination of whether you can develop  
604 under the zoning ordinance, that requires an examination of the Planning Office  
605 records. I only suggest to you that had there been either a request for a Zoning  
606 Conformance Letter or some further inquiry into the history of the parcel, which would  
607 have led to an examination of the 1965 case, that zoning history would have been  
608 known to the purchaser before the purchase contract was entered into.

609  
610 Mr. Wright - It's not on your zoning map.

611  
612 Mr. Tokarz - I don't believe that anybody can rely simply on a zoning map  
613 without looking at subsidiary records of the Planning Office, and then say, "I'm entitled  
614 to rely on a map, and that's all I have to do, and I'm entitled to get a building permit just  
615 because the map doesn't tell me I can't. I suggest to you that every applicant has to  
616 conform with all the requirements of the zoning ordinance; you have to come in and look  
617 at the comprehensive plan; you have to come in and look at subdivisions; you have to  
618 look at a whole host of things in making that decision.

619  
620 Mr. Wright - I don't agree with you. I think if I go purchase a piece of  
621 property, all I need to do is check the zoning classifications, if it's zoned for whatever I  
622 want to do with that property. I don't want to have to go back through the history of that  
623 property. I ought to be entitled to rely upon how that property is zoned when I purchase  
624 that property, to do what I need to do on that property. You're imposing a serious  
625 burden on everybody upon every property owner in the County if you've got to do that  
626 every time you buy a piece of property.

627  
628 Mr. Tokarz - Mr. Wright, I would only point out to you that my  
629 understanding is that as part of due diligence process, a lot of times people do ask for  
630 zoning conformance letters to insure, or they make the purchase of a piece of property  
631 contingent upon rezoning approval in order to insure, not only that they can get title to  
632 the property, but also to develop it in the way that they wish to do so. Had that been

633 done in this case, had there been a request to the County, they would have been  
634 advised that it would be a problem.

635  
636 Mr. Wright - How are you sure of all that? We've had other people go  
637 and check with the Planning Office, and they've been told they could do this, and they  
638 get it, and then all of a sudden they decide there's an error. If somebody had looked at  
639 this, they'd say, "Oh, you could do that; it's very simple."

640  
641 Mr. Tokarz - With respect to the situation when there has been a written  
642 determination by the Planning Office that something can be developed, and that turns  
643 out to be an error, the owner has a statutory protection under Title 15.2, I think it's 2311,  
644 which was the section of the Code that was involved in the case that you heard, I think  
645 in 2004, with the Hanover Trailer Park, where in that situation, they did ask for and  
646 received a letter from the Zoning Administrator, saying, yes, you can buy the property  
647 and it can continue to be used in it's current condition. That is a protection that is  
648 statutorily provided to people who get a written determination from the Planning Office  
649 as to the zoning use of the property. That was not requested in this case. Had they  
650 requested it, and it been erroneously given, they would have been protected by the  
651 Code.

652  
653 Mr. Blankinship - And as soon as they submitted their Plan of Development,  
654 they were informed.

655  
656 Ms. Dwyer - Is that relevant to the question of whether this property has  
657 been burdened by the transfer of its development rights or its density classification to  
658 the 18 acres? Seems to me that legally this property has been burdened at the request  
659 of the landowner in 1965, the right to develop according to its zoning classification, was  
660 given, was transferred to the 18 acres by the then owner of both parcels, so legally that  
661 parcel remained burdened. Whether somebody did or didn't do whatever research or  
662 whether somebody should or shouldn't have sold the property, it seems to me that all  
663 those private activities that people engage in are not relevant to the status of that  
664 parcel.

665  
666 Mr. Tokarz - I agree with you under Cochran, if we step back and look at  
667 the threshold test under Cochran, the threshold test is whether the property taken as a  
668 whole has been deprived of all reasonable beneficial use. The point that Mr. Condlin  
669 and I disagree with is, what is the property taken as a whole. He would like for the  
670 Board to consider only the 2.37 acres to be the property taken as a whole, but he asks  
671 you to do so in the context of amending a condition from a 1965 case, in which the BZA  
672 was asked to consider and did consider an increase in density, by considering not only  
673 the 18.09 acre parcel, but also the 2.37 acre parcel. In 1965 the BZA acted on, and  
674 was induced to act by viewing the property, taken as a whole, as consisting of the 18.09  
675 acres and the 2.37 acre parcel. The reason the good faith issue has come up, and the  
676 question that we've even addressed it, is simply because one of the grounds that Mr.  
677 Condlin has suggested for granting the variance is that good faith ought to be an issue.  
678 If I might direct the Board's attention to 15.2 2309, that really is not the appropriate

679 issue with respect to this particular case, because in 15.2-2309.2, the powers of the  
680 Board of Zoning Appeals with respect to a variance, is the section that talks about good  
681 faith. "When a property owner can show that his property was acquired in good faith  
682 and where, by reason of the exceptional narrowness, shallowness, size or shape, of a  
683 specific piece of property at the time of the effective date of the ordinance." I have not  
684 heard Mr. Conclin argue that that section of the Code justifies an amendment of the  
685 variance condition. It's not a matter of narrowness, shallowness, size or shape of a  
686 specific piece of property at the time of the effective date of the ordinance, and I  
687 assume the reason he's not arguing that to you, is because the effective date of the  
688 ordinance applicable to this property is 1960, January 1, 1960, and certainly February  
689 1964 when the property was rezoned R-5. So even before the division of the property,  
690 the zoning ordinance was in effect, it had density restrictions in it, the property was  
691 rezoned, and only after that did the two lots become created. Therefore, under  
692 Cherrystone, the property taken as a whole consists of the two lots considered together,  
693 just as the BZA did in 1965 when it approved the variance condition, allowing the  
694 greater density on the 18.09 acres. My only point with respect to the density increase  
695 as being sought here, is the property owner in 1965 got the beneficial use of the 2.37  
696 acre parcel. They got more density than they were allowed. They got the maximum  
697 amount of density that's allowed when you consider the 18.09 acre parcel and the 2.37  
698 acre parcel taken together. What the applicant now seeks is to say notwithstanding the  
699 fact that we've gotten the maximum amount of density allowed under the ordinance, we  
700 want you to give us even more. We want you to give us eight more units than allowed  
701 by the zoning ordinance, even though the previous owner of the property has already  
702 gotten the benefit of this 2.37 acres in developing the property. That's what we don't  
703 believe is appropriate for amending the condition at this point.

704  
705 Mr. Wright - When you take Cherrystone, you've got to read the whole  
706 case. You can't just take a part. This is what the opinion said. When Cherrystone  
707 acquired the property, it was aware that the apartment lots were zoned Rural Village,  
708 Rural Residential, a restricted residential classification in Northampton County Zoning  
709 Ordinance. Cherrystone was also aware that no residences could be built upon the lots  
710 unless variances could be obtained, because they were subject to zoning setback  
711 requirements that rendered them unbuildable. This is set out in the beginning, and I  
712 submit that this case was decided on that basis, that they had knowledge. My point  
713 here is, this owner didn't have knowledge.

714  
715 Mr. Tokarz - Mr. Wright, I certainly am aware of that section of page 2 of  
716 Cherrystone, but if you have the decision, if you can look at page 6, I think the point of  
717 Cherrystone is, that the case did not turn on the good faith knowledge of the purchaser  
718 at the time. The Court's decision at the bottom of page 6 of the slip opinion said that  
719 "here the applicant failed to show that the lots for which variances were sought were lots  
720 of record in 1988, when the Bay Act became effective." Because of the express  
721 language of the Bay Act, and Code 15.2-2309.2, the section I just read to you, that  
722 failure alone would have precluded variances based on the shallowness of the lots.  
723 What I believe the determining factor the Supreme Court said, based on that language  
724 is, the lots didn't exist at the time the ordinance provision came into effect. Because the



725 lots weren't created until after the ordinance provision came into effect, the BZA had to  
726 consider the property as it was when the ordinance restriction came into effect.

727  
728 Mr. Wright - Why did they allude to the fact that Cherrystone had  
729 knowledge? I think that had something to do with the decision of the court.

730  
731 Mr. Tokarz - All I can say is, I read the bottom of page 6 and the top of  
732 page 7, when they quote the Cochran decision, in which they said further, "the applicant  
733 was unable to show that the effect of the zoning ordinance upon his property would, in  
734 the absence of the variances sought, interfere with all reasonable beneficial uses of the  
735 property taken as a whole. In the absence of such a showing, the BZA had no authority  
736 to grant variances." When you look at the conclusion at the bottom of page 7, the only  
737 two factors they mention were: because the lots for which the variances were sought,  
738 did not exist of record on the effective dates of the Bay Act, and because the effect of  
739 the zoning ordinance did not interfere with all reasonable, beneficial uses of the property  
740 taken as a whole, the Circuit Court correctly affirmed the decision of the BZA, which in  
741 that case, denied the variance. Those are the only two factors that the Court cites in its  
742 conclusions as to reasons for affirming the reasons of the BZA.

743  
744 Mr. Wright - They went on to say something more too. They said, "with  
745 the remaining land used as a valuable waterfront amenity" – that gets into the  
746 "reasonableness" of this, and I think that had something to do with it too. You've got to  
747 take each case on its own facts, and it's got to stand on its own.

748  
749 Mr. Tokarz - I agree with you, Mr. Wright, and all I'm submitting to you  
750 and Board is, that in this particular case, when you take the property as a whole, the  
751 18.09 acre parcel, and the 2.37 acre parcel, that when you take it as a whole, the 2.37  
752 acre parcel did have reasonable, beneficial use because it provided the added density  
753 on the 18.09 acre parcel that the owners sought, and which he was not otherwise  
754 entitled to at the time of the variance request.

755  
756 Mr. Wright - My point is, you don't do that, because they didn't have any  
757 notice of it.

758  
759 Ms. Dwyer - Mr. Tokarz, what you're saying is that whether an owner has  
760 knowledge or not, is not grounds for granting or denying a variance. That only comes  
761 into play in the question of good faith under 24.116(b)(1), which says that "when a  
762 property owner can show that he acquired in good faith, and by reason of exceptional  
763 narrowness of the property, etc., a denial of the variance would deny reasonable,  
764 beneficial use of the property." It's a part of the consideration, but it's not the  
765 determining factor as to whether or not a variance is granted. If a person comes and  
766 says he didn't know this or that factor applied to this lot, we can't grant a variance based  
767 on whether or not a person knew or didn't know the law or whether a variance had been  
768 granted or what the impact of the zoning was.

769  
770 Mr. Tokarz - I absolutely agree with you, and I think we stated it so that

771 I'm as clear as I can be to the Board. The good faith issue, under the statute, is only  
772 tied to the situation where the applicant is seeking a variance because of the  
773 exceptional narrowness, shallowness, size or shape of a specific piece of property at  
774 the time of the effective date of the ordinance. There are multiple conditions in the  
775 statute in which you can apply for a variance. The first one is the good faith for  
776 shallowness; then it says or by reason of exceptional topographic conditions or other  
777 extraordinary situation or condition of the piece of property. That would be a second  
778 ground. Or the condition, situation, development of property immediately thereto, so I  
779 think the statute, the way it's been written by the General Assembly, has created three  
780 different situations where they can come to you. Or the fourth one is, or where the  
781 Board is satisfied upon the evidence heard upon it, that the granting of the variance will  
782 alleviate a clearly demonstrable hardship approaching confiscation. To me, those are  
783 the four grounds that they can seek to apply to you, and then you have to go to the  
784 checklist of things that you have to find which are set forth in a, b, and c, and also the  
785 other provisions in the statute.

786  
787 Mr. Wright - You get to the point here, if they can't build on this property,  
788 it certainly approaches confiscation.

789  
790 Mr. Tokarz - And that brings me back to the Cherrystone analysis. In the  
791 Cherrystone case, they had six lots, five of which they could not build on because of  
792 their action at the time of the ordinance setback requirements coming into effect. The  
793 Supreme Court said that is sufficient to deny the variance, even though they can't build  
794 on those five lots, because they got beneficial use of the property taken as a whole.  
795 Our argument here is that's the same thing as happens here, you have reasonable,  
796 beneficial use of the property taken as a whole when you consider the 18.09 acres and  
797 the 2.37 acre parcel.

798  
799 Mr. Kirkland - If this was a different day, and someone else came in and  
800 wanted to purchase this land, came into the County Planning Office, got the same map  
801 with nothing noted on it, would we be here again? What provisions would you put on  
802 there to have prevented this in the first place? What would have been noted on this  
803 map that would have said there was a variance attached?

804  
805 Mr. Blankinship - I know in the previous version of the zoning map, there was  
806 a notation of the variance case – it said “see variance case A-whatever.”

807  
808 Mr. Kirkland - But this one doesn't. That's the current one, so if I walked in  
809 today, and I wanted to purchase this property, I'd come in and I wouldn't do all this  
810 research. When I bought my business property, I went in, I looked at the map, it said B-  
811 2, and I went on and purchased it. I bought it in good faith, and I had no problems of  
812 course, but I don't see what you've done since to help us out.

813  
814 Mr. Blankinship - That's an excellent suggestion. I will ask that that become...

815  
816 Mr. O'Kelly - The zoning maps are a part of the zoning ordinance, and the

817 reason zoning case numbers are shown on the zoning maps is that it's an amendment  
818 to the ordinance when the Board grants a case. Variances are not shown as a matter of  
819 record on the zoning maps, because they're not an amendment to the map.

820  
821 Mr. Wright - So what you're saying is, "let the buyer beware."

822  
823 Mr. Blankinship - We show them that way as a matter of administrative  
824 convenience, so that when we go to find a variance, it's easier for us to find it. We can  
825 determine the case number and look up the file. I agree with you that there's no reason  
826 not to show it on the map.

827  
828 Mr. Kirkland - If this was denied, someone else could come in six months  
829 down the road, and we'd be going at this again.

830  
831 Mr. Blankinship - There are parcels all over the County that have this  
832 handicap or that handicap, and we get calls frequently saying, "is this a buildable lot,"  
833 because people see value left on the table, and they want to know why.

834  
835 Mr. Kirkland - If one of the County employees looked at this or brought it  
836 up on their computer, would it say something that it's not a buildable lot?

837  
838 Mr. Blankinship - It does not now, not on that map.

839  
840 Ms. Dwyer - When you pay \$5,000 for a piece of property that was  
841 previously appraised at \$207,000, I think there's some notice that perhaps this property  
842 does have some sort of handicap.

843  
844 Mr. Kirkland - Either that or you got one good deal.

845  
846 Mr. Blankinship - There's no good reason for us not to show it on the map.

847  
848 Ms. Dwyer - The other thing is, that maybe there's a cause of action  
849 against the seller if anyone was misled about the value of the property, the opportunity  
850 to develop it. It's also conceivable that this property could have value if it were  
851 combined with properties surrounding it, and this were used as a nice green space to  
852 improve the value of adjacent property, so it's not as if it were wholly without any value  
853 whatsoever, but again, I think there may be a private cause of action against the seller,  
854 or if there was any misleading going on, but I don't think the County has misrepresented  
855 anything.

856  
857 Ms. Harris - Mr. Tokarz, what do you see as a remedy for this burdened  
858 lot? Clearly it's burdened. If we did not rescind our decision, what do you see as the  
859 recourse for it?

860  
861 Mr. Tokarz - I think the recourse to the owner is the recourse that was set  
862 forth by the BZA in 1965. Their remedy is to go to the Board of Supervisors and request

863 an amendment to the Zoning Ordinance that will allow greater density. The BZA  
864 condition at that time said that if there was greater density allowed by the Zoning  
865 Ordinance, then it could be developed. If the Board of Supervisors were willing to  
866 increase the density from 34 units per acre to 36 units per acre, that would allow them  
867 to satisfy the condition and would allow them to develop the property. That's really my  
868 point, is that ultimately I believe this is a legislative decision by the Board of  
869 Supervisors, rather than an administrative decision by the Board of Zoning Appeals,  
870 under the facts of this particular case.

871  
872 Mr. Blankinship - Mr. Chairman, if I can pick up on that, Mr. Condlin  
873 specifically challenged one statement in the staff report, which is the reference that  
874 removing this condition could be considered tantamount to rezoning the property.  
875 That's exactly the logic on which we wrote that sentence. The condition states, "The  
876 part of the parcel containing 2.37 acres be obligated to the part of the parcel containing  
877 the 18.09 acres until such time as the zoning regulations relating to the 18.09 acres are  
878 changed." That was the reason we used that phrase. Since he challenged that, I  
879 wanted to clarify it.

880  
881 Mr. Wright - What can he do with respect to the 18.09 acres? He doesn't  
882 own that. He can't go in and ask for that to be rezoned.

883  
884 Mr. Tokarz - What he can do, is he can ask the Board of Supervisors to  
885 amend the Zoning Ordinance to increase the allowable density in the R-5 district, and if  
886 the density were increased from 34 units to 36 units per acre, my understanding is he  
887 would be allowed under that condition to develop.

888  
889 Mr. Wright - Why would the Board do that?

890  
891 Mr. Tokarz - Either because they think it's an equitable thing to do, or a  
892 good thing to do.....

893  
894 Mr. Wright - They think it's too much density on it anyhow. That's  
895 conjecture.

896  
897 Mr. Tokarz - It is conjecture, but .....

898  
899 Mr. Wright - How would it apply to everybody in the County?

900  
901 Mr. Tokarz - That is correct, but I guess my point is that this is a  
902 legislative decision for the Board to make, rather than a decision to be changed by,  
903 modified by an administrative decision of this Board through the variance process. The  
904 wisdom of it is something I believe to be addressed by the legislative body in this case.

905  
906 Mr. Nunnally - Mr. Condlin, do you have a short rebut?

907  
908 Mr. Condlin - I will give a very short rebuttal. I've just got a couple of

909 points. If every case hinged on the fact that the Board of Supervisors was going to  
910 amend the ordinance, you would never grant a variance, because in every case the  
911 Board of Supervisors can amend the ordinance to alleviate that variance, so that's why  
912 the argument falls flat. I think I can speak to the fact that there's a factual situation that  
913 seems to be a burr under the saddle here. The \$5,000. What he paid for the property  
914 has absolutely nothing to do with the good faith and whether the variance conditions  
915 should be amended. That's what we're asking for here is the amendment to the  
916 variance condition. What happened was, he was going to pay \$425,000 for a total of  
917 142 acres throughout the Richmond area. Judge Mehridge's Executor wanted to get rid  
918 of all the Richmond property, and it was a package deal, all or nothing. Based on the  
919 conditions that were in the contract, he started applying for POD's to develop all the  
920 property. That contract was very typical, and when he found out he couldn't develop it,  
921 he went back to the owner, said we need to change the set value from the \$275,000 at  
922 the time, down to the \$200,000, and despite the fact that you've been paying taxes on it  
923 all along on behalf of Judge Mehridge, or Judge Mehridge has, we need to assess the  
924 value because I can't build on it. That's why they allocated it at that point \$5,000. He  
925 paid \$420,000 for a total of 142 acres, including this piece. They just allocated that at  
926 the time. Mr. Wright, I will refer you to, and I'm surprised it didn't come up otherwise by  
927 Mr. Tokarz with respect to the Spence case, with respect to good faith. You alluded to  
928 Cherrystone. They didn't even make a decision in that case because it was already set  
929 law in Spence, which I can give to you, which was already decided by the Supreme  
930 Court in 1998 by 496 Southeast 64, which specifically said, "The landowners'  
931 knowledge that a previous owner of property had been denied a variance, did not  
932 preclude a finding of good faith." In that case they actually had a previous owner apply  
933 for a variance; it got turned down. He knew about it, and he still bought it in good faith  
934 because he didn't create the hardship. I'll give this to Mr. Blankinship.

935  
936 Finally the question of "taken as a whole," I'm going to refer you to the very case that  
937 Mr. Tokarz and the very site that he keeps referring to, which is with respect to the  
938 property taken as a whole. "Here the applicant failed to show that the lots for which  
939 variances were sought, were lots of record in 1988, when the Bay Act became  
940 effective." What we're asking for amendment is the effective regulation at that point.  
941 Nowhere does it say it has to be a specific ordinance; it's about the regulation that's  
942 specific. In this case, it's the Chesapeake Bay Act and many other acts that could be  
943 out there. Specifically, we're asking for amendment for the variance. At the time of the  
944 variance, there were two lots. If it was one lot, we wouldn't be there in 1964 in front of  
945 the BZA, asking for a variance because we could use one lot to create all the density  
946 that we needed. There were two lots, and that's why we couldn't get the density, and  
947 that's why they had to ask for the variance.

948  
949 Finally, Mr. Tokarz said I've avoided, I don't think so, any of these standards he's  
950 provided. Finally he quoted the condition that's on page 3 or 4 of your staff report, the #  
951 1 that's half-way down, that the property is affected by exceptional narrowness,  
952 shallowness, size, or shape, topographic conditions or other extraordinary situation or  
953 condition. I will contend to you this is about as extraordinary condition or situation that  
954 I've seen in along time. I am a little passionate about it, because I feel very strongly

955 that there's a wrong that's done here. The benefit has gone to the owners of the  
956 apartment. They went ahead. Had they done nothing, as Mr. Tokarz said, no in fact  
957 they sold the property. They got a benefit when they sold the property because they got  
958 proceeds at that time, we assume. They also got the benefit of the 18 acres. They got  
959 the total units on those 18 acres, in excess of the density issue, but they violated the  
960 terms of the BZA condition and the BZA ordinance. They got a benefit not only from the  
961 variance, but from selling the property, so they hoodwinked somebody. They got their  
962 money, and now they're sitting up there pretty, and meanwhile someone buys the  
963 property in good faith. I would finally contend to you that when you look at this case,  
964 from a Cochran analysis, we meet each and every one of the requirements, property  
965 taken as a whole at the time of the enactment of the regulation, at the time that you  
966 cannot use the property. You cannot use the property at all if you have zero units that  
967 you can build on here in an R-5 District. To ask the Board of Supervisors to amend the  
968 ordinance; we can always ask the Board of Supervisors to amend the ordinance.  
969 Equitably, the property from 1992 has been paying taxes on an assessed value in  
970 excess of \$160,000, a separate tax parcel number, and they found out because of the  
971 zoning regulation that was imposed upon this, there's no beneficial use of the property.  
972 We'll be happy to accept the conditions as suggested by the staff report.

973  
974 Mr. Nunnally - Thank you. That concludes the case. A-45-2006 – do I  
975 have a motion on that?

976  
977 **DECISION**

978  
979 Mr. Kirkland - I move we approve it.

980  
981 Mr. Nunnally - Motion by Mr. Kirkland that we approve it; do I have a  
982 second?

983  
984 Mr. Wright - I'll second it.

985  
986 Mr. Nunnally - Seconded by Mr. Wright that it be approved.

987  
988 Mr. Kirkland - The reason I approve it, is that when the applicant  
989 purchased the property, in good faith, he did not know there was a stipulation tied to the  
990 land, stating that it had to be considered with the other piece of property. Therefore, if  
991 he's not given the right to use the property, I consider it a "taking."

992  
993 Ms. Dwyer - Is it time for discussion?

994  
995 Mr. Kirkland - I want you to discuss.

996  
997 Ms. Dwyer - I would like you to show me where in the Code it says that a  
998 purchase in good faith, meaning the person didn't know of a defect or handicap  
999 associated with the property, that is in and of itself, justification for a variance, because I  
1000 don't see that. I feel sorry for the guy. He may have made a bad business decision.

1001 He may have had bad advice; he may have been misled. Maybe his attorney didn't do  
1002 all the work. Maybe it was hard to find it, but to me, that doesn't affect the legal status  
1003 of the property, and I don't see simple purchase in good faith and ignorance of the  
1004 variance as justification for this variance request.

1005  
1006 Mr. Kirkland - He didn't know there was a variance. The only way he could  
1007 know that is if he went to the County, and he did look on the – how was it, going to fall  
1008 out of the sky and tell him? I just don't understand how he knew what the history was  
1009 going to be.

1010  
1011 Ms. Dwyer - Maybe it was hard to find; it wasn't public record. I think the  
1012 fact that he didn't know about the variance is not a legal justification for us granting this  
1013 variance.

1014  
1015 Mr. Wright - I think I disagree with you. I think that the fact that there was  
1016 no knowledge causes this to be a reasonable use situation considered as taken as a  
1017 whole. I'm taking this 2.37 acres as a whole. In the first place, the County put him in  
1018 this position by taking the road and separating the property. That wasn't done by the  
1019 owner. When the owner conveyed it – there's a letter in the file from the County, back  
1020 to Mr. Byrne at the time, evidencing concern about that. It looks like to me that the  
1021 County should have taken some steps to do something to put a purchaser on notice  
1022 when they buy the property. To me, that's an unconstitutional taking which I think,  
1023 based on the case law, gives you the beginning point of the right to forward it to grant  
1024 the variance. If you look at it that way, you take this lot in and of itself, then I think you  
1025 could apply the standard to it, the Cherrystone standard, or you could take the Cochran,  
1026 it would have no reasonable use of the property.

1027  
1028 Ms. Dwyer - The County didn't do anything to this purchaser. What  
1029 happened was, the County, in the form of the BZA said, OK, you have this 20 acres. I  
1030 know you want to build the density that's allowed for 20 acres, but we do have this road  
1031 going through, so since you can't build the density you want on the two acres, we'll just  
1032 give that density to the 18 acres, let you build more than you could have otherwise on  
1033 this 18 acres, to compensate you for the fact that you have this sort of 2-acre property  
1034 sitting over there, and you claim you can't build on it. So it's not a taking, because the  
1035 property owner in 1965 voluntarily came to the County and said, "please give me relief  
1036 in the form of a variance and allow me to build the maximum density, taking the property  
1037 as a whole, meaning the 18 plus the 2 acres. That was the beneficial use of that 2  
1038 acres. The Board of Zoning Appeals in 1965 gave that variance to allow the owner of  
1039 those pieces – the BZA considered that as the property as a whole, the 2 acres plus the  
1040 18 acres. They had to do that in order to allow the building to the density that they did,  
1041 so in 1965, the BZA said, "this is one parcel, the 2-acre and this 18 – we're going to  
1042 consider it one parcel, and we're going to let you build to the maximum density allowed  
1043 for the 20-some acres." That was the beneficial use. To me the status of that, there's  
1044 nothing that has happened to change the legal status of that 2-acre parcel. The  
1045 beneficial use has been granted by the BZA in 1965, and absolutely nothing, no matter  
1046 who sells it, no matter who deceived whom or didn't deceive whom, no matter how

1047 competent or incompetent the seller or real estate agent or the lawyer may have been in  
1048 the meantime – none of that affects the fact that the beneficial use to that 2 acres is  
1049 there and has been used, so the status of that parcel hasn't changed in two ways. One,  
1050 it's still something we need to consider as a whole, that is, we need to consider the two  
1051 acres with the 18 acres – that's the parcel considered as a whole under Cochran and  
1052 Cherrystone. Secondly, nothing, none of the machinations that have occurred since  
1053 then among buyers and sellers changes that fact. To me, it's an open and shut case  
1054 that the property has beneficial use. Its beneficial use is in the nature of a piece of  
1055 property that might grant an easement to another piece of property, so the beneficial  
1056 use is there. The property as a whole, you can't take that two acres and now separate it  
1057 out after the BZA considered it as part of a whole in 1965.,  
1058

1059 Mr. Wright - I think the County allowed it to be done, by not evidencing  
1060 something in the record of notice, I think the County permitted it to be done. If the same  
1061 owner were to come in here, I would be wholeheartedly in support of what you say. If  
1062 the same owner were in here, just like in Cherrystone, the same owner, and the court  
1063 made a real strong note of that, that owner had notice, knew, and I don't think they put  
1064 words in a decision just to be putting them in there. There's something here that you've  
1065 got to give some benefit to a person who's done what he needs to do, and I've  
1066 examined enough titles in my life, I would hate to be put in the position that the  
1067 purchaser of that property's put in. He did everything he could, went and looked at it.  
1068 At least if they put it on there, it would have some sort of notice, but there's nothing  
1069 there.  
1070

1071 Ms. Dwyer - But that still doesn't change the status of the property, that it  
1072 was considered as a whole.  
1073

1074 Mr. Wright - I know, if you want to look at it that way.  
1075

1076 Ms. Dwyer - I think that's the only way we can look at it. I don't think you  
1077 can take into account the machinations, as I said, among buyers and sellers in the  
1078 meantime. I don't think that is a legal basis for granting a variance.  
1079

1080 Mr. Wright - I would sure like to see this go to the Supreme Court and  
1081 find out how they would take it.  
1082

1083 Mr. Blankinship - Did it interest you, Mr. Wright, that he had only paid \$5,000  
1084 for the property, or did you not consider that?  
1085

1086 Mr. Wright - I don't care what he paid for the property; that's kind of  
1087 convoluted how he arrived at that. A person has a right to go buy that property and go  
1088 examine the title and check the record and rely upon that and use it. Otherwise, I'm  
1089 saying that's unconstitutional taking, which gives us the right to grant the variance.  
1090

1091 Ms. Dwyer - I'm in agreement that it's not a taking, because a beneficial  
1092 use was granted in 1965, and that continues to be the beneficial use that's constituted



1093 in that two acres, and you just can't separate the 18 from the 2, because in 1965, the  
1094 Board made a decision to consider them as a whole. I think Mr. Tokarz is correct,  
1095 because there's an increased density on that 18 acres. If we allow this to now be  
1096 separated from that, when conditions have not changed at all from the time the variance  
1097 was granted, we are in effect rezoning this property and allowing a greater density than  
1098 should be allowed under law. I think that exceeds our jurisdictional authority.  
1099

1100 Ms. Harris - I hear both of your arguments, and I think they are well  
1101 taken, but when the owner purchased these two acres for just a few thousand dollars, I  
1102 think he thought that he had an unbuildable lot, and I think people do purchase  
1103 unbuildable lots for whatever reason, and then they go to whatever Board is necessary  
1104 to make what they want happen. I think that we're not the Board; I think it is the Board  
1105 of Supervisors for him to make it happen. I think that we ruled correctly all along the  
1106 line in this case, and whatever happens, to let the buyer beware. I don't think that has  
1107 changed, so I do think that we have done what we are supposed to have done, and we  
1108 should stand by it, and if he wants to build upon it, he needs to go to the Board of  
1109 Supervisors and let them change the zoning requirements.  
1110

1111 Mr. Wright - He'd have as much chance of doing that as I've got of flying  
1112 to the moon.  
1113

1114 **(Unintelligible, too many people talking at once)**  
1115

1116 Ms. Dwyer - He could petition maybe to rezone that piece of property, to  
1117 look at the property as a whole. Whether or not he has a good chance again, does not  
1118 affect the legal status of that property as it was dealt with in 1965, and that was  
1119 controlling.  
1120

1121 Mr. Blankinship - That really emphasizes the point of whether you are  
1122 usurping or providing an end run to the Board.  
1123

1124 Mr. Nunnally - We have a motion here by Mr. Kirkland, second by Mr.  
1125 Wright, that it be approved. All those in favor, say aye. Opposed? It's been approved,  
1126 three to two.  
1127

1128 Mr. Blankinship - Mr. Chairman, you voted in favor?  
1129

1130 Mr. Nunnally - Yes, I did.  
1131

1132 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
1133 Wright, the Board **granted** application **A-45-2006** for a variance to build eight  
1134 townhouses at 4201 Glenside Drive (Parcel 770-748-7625). The Board granted the  
1135 variance subject to the following conditions:  
1136

1137 1. Only the improvements shown on the plan filed with the application may be  
1138 constructed pursuant to this approval. Any additional improvements shall comply with

1139 the applicable regulations of the County Code. Any substantial changes or additions  
1140 may require a new variance.

1141  
1142 2. The new construction shall match the existing dwellings on the parcel  
1143 immediately to the west (G.P.I.N. 770-748-3221) as nearly as practical in materials and  
1144 color.

1145  
1146 3. At the time of building permit application, the applicant shall submit the  
1147 necessary information to the Department of Public Works to ensure compliance with the  
1148 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
1149 water quality standards.

1150  
1151 4. The applicant shall present a complete grading, drainage, and erosion control  
1152 plan prepared by a Professional Engineer certified in the state of Virginia to the  
1153 Department of Public Works for approval. This plan must include the necessary  
1154 floodplain information if applicable.

1155  
1156 1. This approval is subject to all conditions that may be placed on the proposed  
1157 Plan of Development by the Planning Commission.

1158  
1159  
1160 Affirmative: Kirkland, Nunnally, Wright 3  
1161 Negative: Dwyer, Harris, 2  
1162 Absent: 0

1163  
1164  
1165 **UP-42-2006 RYAN HOMES** requests a temporary conditional use permit  
1166 pursuant to Section 24-116(c)(1) to operate a temporary sales  
1167 trailer at 4101 Mechanicsville Turnpike (Grove Pointe) (Parcel 804-  
1168 736-0481), zoned B-2C, Business District (Conditional) and R-5C,  
1169 General Residential District (Conditional) (Fairfield).

1170  
1171 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
1172 please stand and raise your right hand?

1173  
1174 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1175 truth, and nothing but the truth, so help you God?

1176  
1177 Mr. Lanphear - Good morning, ladies and gentlemen. My name is Rob  
1178 Lanphear. I'm here on behalf of Ryan Homes, requesting a temporary sales trailer  
1179 conditional use permit on the east side of Mechanicsville Turnpike. This will be for the  
1180 Grove Pointe neighborhood, which will be Section One, 90 residential units. This trailer  
1181 will be in place from January 2007, until December 2007, and removed promptly upon  
1182 the completion of our model home. I believe that you have a layout and landscaping,  
1183 lighting, architectural plans in your package. We would be happy to abide by all the  
1184 suggestions of the Planning staff and humbly request your approval of this project. I'll

1185 be happy to answer any questions that you have at this time.  
1186  
1187 Mr. Kirkland - Mr. Lanphear, are you going to use a portable toilet. We  
1188 have in condition 5, I notice that it's septic and well in the beginning, but are you going  
1189 to use a portable toilet?  
1190  
1191 Mr. Lanphear - It's actually a half bath that is enclosed in the sales trailer  
1192 itself.  
1193  
1194 Mr. Kirkland - Are you going to connect them to the water and sewer?  
1195  
1196 Mr. Lanphear It will be a temporary source, but it will have potable water.  
1197  
1198 Ms. Harris - On the parking layout for the sales trailer, what is the 20-foot  
1199 area reserved for?  
1200  
1201 Mr. Lanphear - I believe that there is a lit, temporary sign, to go in that area,  
1202 to attract folks to the neighborhood.  
1203  
1204 Ms. Harris - There's a sign?  
1205  
1206 Mr. Lanphear - The 20-foot area in front of the parking area?  
1207  
1208 Ms. Harris - Yes.  
1209  
1210 Mr. Lanphear - If you turn back to the diagram, it shows the location of the  
1211 low voltage lighting and the sign.  
1212  
1213 Mr. Kirkland - Is that a temporary sign, or is that going to be the sign for the  
1214 subdivision?  
1215  
1216 Mr. Lanphear - That's a temporary sign for the subdivision while we are  
1217 selling.  
1218  
1219 Ms. Harris - How close is this to the shops at Grove Pointe?  
1220  
1221 Mr. Lanphear - As for the exact distance, I would have to get back to you.  
1222 I'm not familiar with the shops at Grove Pointe, the exact distance.  
1223  
1224 Ms. Harris - How many homes are you constructing again?  
1225  
1226 Mr. Lanphear - In Section One there are, I believe, 90 residential units. The  
1227 entire Grove Pointe neighborhood, including all sections, will be approximately 260. I  
1228 would just reiterate that this will be temporary. As soon as our model home is done,  
1229 we'll move into that.  
1230

1231 Mr. Nunnally - Any other questions from the Board or staff? Is anyone here  
1232 in opposition? Thank you for appearing. That concludes the case. UP-42-2006.

1233  
1234 **DECISION**

1235  
1236 Ms. Harris - I move that we approve.

1237  
1238 Mr. Kirkland - Second.

1239  
1240 Mr. Nunnally - Motion by Ms. Harris, second by Mr. Kirkland, that it be  
1241 approved. All in favor say aye. All opposed? It's been approved.

1242  
1243 After an advertised public hearing and on a motion by Ms. Harris, seconded by Ms.  
1244 Dwyer, the Board **granted** application **UP-42-2006** for a temporary conditional use  
1245 permit to build a operate a temporary sales trailer at 4101 Mechanicsville Turnpike  
1246 (Grove Pointe) (Parcel 804-736-0481." The Board granted the use permit subject to  
1247 the following conditions:

1248  
1249 1. Only the improvements shown on the plan filed with the application may be  
1250 constructed pursuant to this approval. No substantial changes or additions to the layout  
1251 may be made without the approval of the Board of Zoning Appeals. Any additional  
1252 improvements shall comply with the applicable regulations of the County Code.

1253  
1254 2. The trailer shall be skirted on all sides with a durable material as required by the  
1255 building code for a permanent installation.

1256  
1257 3. A detailed landscaping and lighting plan shall be submitted to the Planning  
1258 Department with the building permit for review and approval. Approved landscaping  
1259 shall be installed as soon as the weather permits. All landscaping shall be maintained  
1260 in a healthy condition at all times. Dead plant materials shall be removed within a  
1261 reasonable time and replaced during the normal planting season.

1262  
1263 4. The trailer shall be removed from the property on or before December 1, 2007, at  
1264 which time this permit shall expire.

1265  
1266 5. Any portable toilet or holding tank placed on the site shall be located underneath  
1267 or behind the sales trailer and shall be screened from view.

1268  
1269 6. The applicant shall satisfy the Department of Public Works that adequate sight  
1270 distance has been provided entering onto Mechanicsville Turnpike and adequate  
1271 parking has been provided on the site.

1272  
1273 7. If construction plans show more than 2,500 square feet of land disturbance , the  
1274 applicant shall submit an Erosion and Sediment Control plan to the Department of  
1275 Public Works for review and approval. Plans may be submitted with construction plans  
1276 or separately.

1277  
1278 8. The construction plans for Grove Pointe, Section one shall be approved prior to  
1279 the issuance of a building permit for the temporary sales trailer.

1280  
1281  
1282 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1283 Negative: 0  
1284 Absent: 0

1285  
1286  
1287 The Board granted the request because it found the proposed use will be in substantial  
1288 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1289  
1290  
1291 **A-40-2006 MATTHEW ROBINSON** requests a variance from Section 24-94 to  
1292 build a one-family dwelling at 4157 Oakleys Lane (Parcel 815-722-  
1293 5368), zoned A-1, Agricultural District (Varina). The lot width  
1294 requirement and total lot area requirement are not met. The  
1295 applicant has 112 feet lot width and 0.9 acre total lot area, where  
1296 the Code requires 150 feet lot width and 1 acre total lot area. The  
1297 applicant requests a variance of 38 feet lot width and 0.1 acre total  
1298 lot area.

1299  
1300 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
1301 please stand and raise your right hand?

1302  
1303 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1304 truth, and nothing but the truth, so help you God?

1305  
1306 Mr. Kestner - Yes sir. I'm Andy Kestner, representing the applicant in this  
1307 case. We concur with the staff report, and we accept all staff conditions. If you have  
1308 any additional questions of me, I'll be more than happy to answer them.

1309  
1310 Ms. Dwyer - Mr. Kestner, the staff report indicates that in 1961, when this  
1311 lot was created, it did not meet the minimum Code requirements even at that time. It  
1312 still doesn't meet the minimum Code requirements.

1313  
1314 Mr. Kestner - Yes ma'am. This is identical to the variance that was  
1315 granted right next door to it.

1316  
1317 Ms. Harris - Mr. Kestner, have you considered changing zoning or has  
1318 the neighborhood considered changing zoning for that area?

1319  
1320 Mr. Kestner - Yes ma'am, I have, but there's no sewer available to the site,  
1321 so you cannot do anything else to the property.

1322

1323 Mr. Blankinship - But if it were rezoned R-2A, you'd have lower requirements,  
1324 and you'd be able to meet them.  
1325

1326 Mr. Kestner - Yes sir, but we have no public utilities.  
1327

1328 Ms. Dwyer - What you're saying is, it has to be zoned A-1, and you have  
1329 to have a minimum 1-acre parcel in order to have a septic system, so you're asking for  
1330 a smaller lot than the Code requires in order to have a septic system.  
1331

1332 Mr. Kestner - Yes ma'am.  
1333

1334 Mr. Nunnally - Is this house being built for Mr. Robinson?  
1335

1336 Mr. Kestner - No sir.  
1337

1338 Mr. Nunnally - He's the property owner though?  
1339

1340 Mr. Kestner - Yes sir, he is.  
1341

1342 Mr. Wright - Mr. Kestner, do you know when this property was acquired  
1343 by Mr. Robinson?  
1344

1345 Mr. Kestner - No sir, I think it was passed down as an inheritance.  
1346

1347 Mr. Wright - So it's been in the family?  
1348

1349 Mr. Kestner - Yes sir.  
1350

1351 Ms. Dwyer - Who currently owns it, Mr. Robinson? Does he also own the  
1352 adjacent parcel?  
1353

1354 Mr. Kestner - Yes ma'am. No ma'am, he does not.  
1355

1356 Mr. Nunnally - He's not the Mr. Robinson who lives up on the corner of Nine  
1357 Mile Road?  
1358

1359 Mr. Kestner - I really don't know, sir.  
1360

1361 Ms. Harris - Is there still a frame dwelling on the property?  
1362

1363 Mr. Kestner - No ma'am; that's fallen down.  
1364

1365 Mr. Wright - In 1961, who owned the property at that time, do you know?  
1366

1367 Mr. Blankinship - I believe we included that deed in the package. No the plat  
1368 from the deed was included, but the deed itself was not.

1369  
1370 Mr. Wright - I was curious to know who divided it.  
1371  
1372 Mr. Kestner - I believe at that time that the property was divided among  
1373 three children. Mr. Gidley, does that sound correct?  
1374  
1375 Mr. Gidley - Yes sir, I believe it was an inheritance among three children.  
1376  
1377 Mr. Wright - So it was a family division at the time.  
1378  
1379 Mr. Gidley - **(Could not hear)**  
1380  
1381 Mr. Kestner - We have spoken to them, but it's not feasible to combine the  
1382 two pieces of property because of the purchase price that's being asked for the parcels.  
1383  
1384 Mr. Nunnally - Any other questions from the Board or staff? Is anyone here  
1385 in opposition?  
1386  
1387 Mr. Anderson - My name is Elisher Anderson, and I think I'm the one who  
1388 owned the property adjacent to where he's talking about. I don't feel that – if you lower  
1389 the standards for what it should be for a septic tank, I probably would be able to get two  
1390 houses in there, but I'm not really interested in that. I think we need to leave it the way  
1391 it is.  
1392  
1393 Ms. Dwyer - You're concerned about creating a lot that doesn't have  
1394 enough land under the Code to support a septic system?  
1395  
1396 Mr. Anderson - Very true. Because it's kind of a marsh area anyway, and it  
1397 would probably contaminate what I have, especially if we have a gravity flow.  
1398  
1399 Ms. Harris - Mr. Anderson, which parcel is yours?  
1400  
1401 Mr. Anderson - I think it's the one to the left of his. I'm really not sure,  
1402 because I travel a lot, and I really haven't had the time to do the homework on it.  
1403  
1404 Ms. Harris - Can we see the three parcels to see if he can identify the  
1405 parcel A or B. Do you recognize any of these?  
1406  
1407 Ms. Dwyer - Parcel B is the one we're looking at now.  
1408  
1409 Mr. Blankinship - This is parcel A.  
1410  
1411 Ms. Dwyer - So you live on parcel A, that's your home? I'm reading it that  
1412 parcel A has a house on it.  
1413  
1414 Mr. Anderson - There's not a house there.

1415  
1416 Mr. Blankinship - This must be a different parcel A then. The plat says parcel  
1417 A.  
1418  
1419 Ms. Harris - Does it have the dimensions there?  
1420  
1421 Mr. Anderson - There's really two parcels A, one larger one and one smaller  
1422 one.  
1423  
1424 Ms. Dwyer - Are there any buildings on your parcel at all?  
1425  
1426 Mr. Blankinship - I see now, this is parcel C. I don't know why it's labeled A on  
1427 this plat. It's the parcel immediately east, to the right of the subject, on the map.  
1428  
1429 Mr. Wright - You own parcel C?  
1430  
1431 Mr. Blankinship - Yes, he owns parcel C and the small parcel adjoining it –  
1432 they're both shown on this plat with one boundary around them. Total, they would be  
1433 about almost 1.3 acres, and wide enough that it seems he could adjust this boundary if  
1434 something could be worked out with the neighbor, that you'd still have a buildable lot,  
1435 because you have the additional land there. You'd still have a buildable lot, and he  
1436 could make his lot buildable if you could work out an agreement to adjust the boundary  
1437 line between you, if you would sell him a strip of land, in other words.  
1438  
1439 Mr. Anderson - Or I might have enough to get two, if you lowered the .....  
1440  
1441 Mr. Kirkland - But there's no water or sewer down there. You're going to  
1442 have to have a minimum of one acre to do the water and sewer thing.  
1443  
1444 Mr. Anderson - Exactly, and he has the same thing.  
1445  
1446 Mr. Kirkland - That's why he's here. Mr. Blankinship, am I reading right,  
1447 that where the word "Irby" is part of his too, on this map?  
1448  
1449 Mr. Blankinship - Right, a part of that; it doesn't go all the way back, but  
1450 enough that he could sell off some of his land, enough to bring this other lot up to the  
1451 one acre and up to the width, but the width is still quite a bit short. He might still need a  
1452 variance into the width.  
1453  
1454 Ms. Dwyer - But he doesn't own two acres.  
1455  
1456 Mr. Blankinship - No, it's about 1.3.  
1457  
1458 Ms. Dwyer - So you couldn't have two lots there, because each lot has to  
1459 be an acre. You have to have two whole acres to get two lots out of your property,  
1460 according to the plat we're looking at.



1461  
1462 Ms. Harris - Mr. Anderson, do you want to sell your property?  
1463  
1464 Mr. Anderson - Not really, but .....

1465  
1466 Ms. Harris - .....if the price is right, yes.  
1467  
1468 Mr. Anderson - If the price is right.  
1469  
1470 Mr. Nunnally - Is there anyone else here to speak on this case?  
1471  
1472 Mr. Kestner - Andy Kestner again. For your information, we have an  
1473 approved drain field site on our .9 acre, so that's been a parcel since 1961, so I would  
1474 like to ask for approval of it as it stands, without having to try to do something else with  
1475 the adjacent property.  
1476  
1477 Mr. Kirkland - What size home are you planning to put on the lot sir?  
1478  
1479 Mr. Kestner - 1,700 square feet.  
1480  
1481 Mr. Nunnally - Two story?  
1482  
1483 Mr. Kestner - Yes sir.  
1484  
1485 Mr. Wright - Mr. Blankinship, rezoning would not be the answer to this,  
1486 would it?  
1487  
1488 Mr. Blankinship - No sir, I went a little bit into that, but I shouldn't have. He  
1489 would still have 150 feet and 1 acre minimum because of the water and sewer.  
1490  
1491 Mr. Wright - Where is the water and sewer? How far?  
1492  
1493 Mr. Blankinship - That's what I'm looking at right now; it's about 400 feet to the  
1494 east.  
1495  
1496 Mr. Kestner - It's right around the corner, about 400 feet is correct.  
1497  
1498 Mr. Blankinship - It's about the same distance to the west, and there's also  
1499 water and sewer to the north.  
1500  
1501 Mr. Wright - This subdivision to the north, what is that, R-5?  
1502  
1503 Mr. Blankinship - Yes, it's R-5, duplexes or something there.  
1504  
1505 Mr. Wright - Obviously they have water and sewer.  
1506

1507 Mr. Blankinship - Yes they do.  
1508  
1509 Mr. Nunnally - Any other questions? Does anyone else have something to  
1510 add to this? Thank you for appearing. That concludes the case. A-40-2006, Matthew  
1511 Robinson.  
1512

1513 **DECISION**

1514  
1515 Mr. Blankinship - The Cherrystone test case. Sorry to bring you so many  
1516 tough ones in one month.  
1517

1518 Ms. Dwyer - I move that it be denied, and my main concern here is that  
1519 the County Ordinance requires a one-acre lot when you're going to have a septic  
1520 system, and I think that to change that or to reduce that requirement would not  
1521 recognize that the Board of Supervisors has determined that you need an acre for a  
1522 septic system.  
1523

1524 Mr. Kirkland - I'll second your motion.  
1525

1526 Mr. Nunnally - Motion by Ms. Dwyer, second by Mr. Kirkland, that it be  
1527 denied. All in favor say aye. Opposed.  
1528

1529 Mr. Wright - No. The basis for my "no" is, that I don't think it has a  
1530 reasonable use under the Cherrystone, because I think Cherrystone is limited when  
1531 they threw in this idea that it had "valuable waterfront amenity," and I don't think that  
1532 property there has any valuable waterfront amenity or any use other than for a single-  
1533 family home in that are on almost two acres of property.  
1534

1535 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.  
1536 Kirkland, the Board **denied** application **A-40-2006** for a variance to build a one-family  
1537 dwelling at 4157 Oakleys Lane (Parcel 815-722-5368)."  
1538

1539  
1540 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4  
1541 Negative: Wright 1  
1542 Absent: 0  
1543

1544  
1545 **A-41-2006** **PENNY WILLIAMS** requests a variance from Sections 24-94 and  
1546 24-9 to build a one-family dwelling at 3640 Britton Road (Parcel  
1547 825-699-1173), zoned A-1, Agricultural District (Varina). The lot  
1548 width requirement and public street frontage requirement are not  
1549 met. The applicant has 12 feet lot width and 12 feet public street  
1550 frontage where the Code requires 150 feet lot width and 50 feet  
1551 public street frontage. The applicant requests a variance of 138  
1552 feet lot width and 38 feet public street frontage requirement.

1553  
1554 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
1555 please stand and raise your right hand?  
1556  
1557 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1558 truth, and nothing but the truth, so help you God?  
1559  
1560 Ms. Williams - I do. I'm Barbara L. Williams. My daughter is Penny  
1561 Williams. This property was purchased by my father back in the early '50's, and my  
1562 mom and dad lived there for years. My children started school in Varina, but my father  
1563 passed away in '75, and my mother just recently passed away, and I would like to build  
1564 my single-story, 3-bedroom home there.  
1565  
1566 Mr. Nunnally - How much land do you have there?  
1567  
1568 Mr. Williams - It's eleven acres.  
1569  
1570 Mr. Nunnally - And you plan on putting one home on the lot?  
1571  
1572 Ms. Williams - Yes sir, one home.  
1573  
1574 Mr. Nunnally - Now and forever?  
1575  
1576 Ms. Williams - Now and forever, peace and quiet.  
1577  
1578 Ms. Dwyer - Could we make a condition to this ordinance that only one  
1579 home would be placed on these eleven acres?  
1580  
1581 Ms. Williams - That's fine with me. The majority of it will remain wooded.  
1582  
1583 Mr. Kirkland - Ma'am, you've pretty much bulldozed everything on the lot  
1584 already?  
1585  
1586 Ms. Williams - Not already. I waited for the variance. I have had the soil  
1587 evaluation – Mr. Stringer has been down there. I have also hired a private contractor to  
1588 deal with the drain fields and set that up in a well.  
1589  
1590 Mr. Kirkland - So you have your septic permit already?  
1591  
1592 Ms. Williams - I haven't gotten it yet, but we are working on it. I wanted to  
1593 wait and see what you told me on the variance first.  
1594  
1595 Ms. Dwyer - You only have a twelve-foot easement, or is it you own the  
1596 12 feet?  
1597  
1598 Ms. Williams - I own the 12 feet.

1599  
1600 Ms. Dwyer - Would there be any way to get more of an access?  
1601  
1602 Ms. Williams - Not at the present time, with Mr. Glassco on one side. His  
1603 father and my father shared the same driveway for years, and we're still sharing. He,  
1604 Mr. Glassco, is still there, and on the other side, I've made several attempts to contact  
1605 those people, but they've never called me back.  
1606  
1607 Ms. Dwyer - I do have a concern about a mere 12 feet wide.  
1608  
1609 Ms. Williams - I would consider, if I ever could get in touch with the other  
1610 side, not Mr. Glassco, who is on the left of the driveway, but the other side, I think their  
1611 name is Puryear. I've made several attempts to contact them, and they haven't  
1612 returned any of my calls.  
1613  
1614 Mr. Kirkland - Of those 12 feet, is that all gravel?  
1615  
1616 Ms. Williams - Gravel.  
1617  
1618 Mr. Kirkland - The whole 12 feet is gravel; it's not just the 12-foot  
1619 easement; it's gravel on all the 12 feet?  
1620  
1621 Ms. Williams - Yes.  
1622  
1623 Mr. Kirkland - So it's property line to property line?  
1624  
1625 Ms. Williams - Yes it is.  
1626  
1627 Ms. Harris - In the history of your property, have you ever had  
1628 emergency vehicles to come down this gravel road?  
1629  
1630 Ms. Williams - Yes, when my father was still alive, the barn caught on fire.  
1631  
1632 Mr. Nunnally - Any other questions from the Board or staff? Is anyone here  
1633 in opposition? Thank you for appearing. That concludes the case. A-41-2006, Penny  
1634 Williams.  
1635  
**1636 DECISION**  
1637  
1638 Ms. Harris - I move that we approve.  
1639  
1640 Mr. Nunnally - Motion by Ms. Harris that we approve.  
1641  
1642 Ms. Harris - Is this where we added the condition, one home for the site?  
1643  
1644 Mr. Wright - She agreed to that.

1645  
1646 Mr. Nunnally - Is there a second?  
1647  
1648 Mr. Wright - Second.  
1649  
1650 Mr. Nunnally - Second by Mr. Wright. All in favor say aye. Opposed? It's  
1651 been approved.  
1652

1653 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
1654 Wright, the Board **granted** application **A-41-2006** for a variance to build a one-family  
1655 dwelling at 3640 Britton Road (Parcel 825-699-1173). The Board granted the variance  
1656 subject to the following conditions:  
1657

1658 1. [AMENDED] This variance applies only to the lot width and public street frontage  
1659 requirements for one dwelling only. All other applicable regulations of the County Code  
1660 shall remain in force.  
1661

1662 2. Approval of this request does not imply that a building permit will be issued. Building  
1663 permit approval is contingent on Health Department requirements, including, but not  
1664 limited to, soil evaluation for a septic drainfield and reserve area, and approval of a well  
1665 location.  
1666

1667 3. At the time of building permit application, the applicant shall submit the necessary  
1668 information to the Department of Public Works to ensure compliance with the  
1669 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
1670 water quality standards.  
1671

1672 4. Prior to building permit application, the owner shall acquire legal access to the  
1673 property that allows for a 12-foot-wide all-weather surface and 18-foot-wide clearance.  
1674

1675 5. The owners of the property, and their heirs or assigns, shall accept responsibility for  
1676 maintaining access to the property until such a time as the access is improved to  
1677 County standards and accepted into the County road system for maintenance.  
1678

1679 6. Prior to building permit application the owner shall apply for demolition permits and  
1680 remove any unsafe buildings and structures from the property.  
1681

1682  
1683 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1684 Negative: 0  
1685 Absent: 0  
1686

1687  
1688 The Board granted this request, as it found from the evidence presented that, due to the  
1689 unique circumstances of the subject property, strict application of the County Code  
1690 would interfere with all reasonable beneficial use of the property, and authorizing this

1691 variance will neither cause a substantial detriment to adjacent property nor materially  
1692 impair the purpose of the zoning regulations.

1693  
1694 **A-42-2006**                    **ROGER WILLIAMS** requests a variance from Section 24-95(b)(6)  
1695 to build a one-family dwelling at 1100 Virginia Avenue (Biltmore)  
1696 (Parcel 784-761-9975), zoned R-4, One-family Residence District  
1697 (Fairfield). The lot width requirement is not met. The applicant has  
1698 47 feet lot width, where the Code requires 50 feet lot width. The  
1699 applicant requests a variance of 3 feet lot width.

1700  
1701 Mr. Nunnally -                    Is anyone else here interested in this case? If so, would you  
1702 please stand and raise your right hand?

1703  
1704 Mr. Blankinship -                Do you swear that the testimony you are about to give is the  
1705 truth, and nothing but the truth, so help you God?

1706  
1707 Mr. Williams -                    My name is Roger Williams, and I also have my real estate  
1708 broker, Deborah LaVecchia, with me. I contracted to buy this property at 1100 Virginia  
1709 Avenue from Don and Ken Stanley in August of 2005. They had owned the property  
1710 since 1979, and I believe from the staff report that it was originally divided in 1926 and  
1711 then revised in 1949. At the time that it was built, or the time it was divided, it could  
1712 have been built on, but no one ever did. The Stanley's had told me they had bought it  
1713 from a neighbor who moved out of town. At the time, they didn't have any proof that the  
1714 lot was buildable. They had just stated that it had been told to them in the past that they  
1715 could build on it, but they never did.

1716  
1717 I asked for proof from the County and purchased the property, contingent upon Henrico  
1718 County verifying that it was a buildable lot. I wrote a letter requesting a Letter of  
1719 Conformance from the Planning Commission, and received a reply on September 26,  
1720 2005, saying that it was not a buildable lot and to contact them if there were any more  
1721 questions. I called back to see what the issue was, talked to Mr. Blankinship. He told  
1722 me over the phone that there was an error made, that there was an exception on the  
1723 property going back to the original subdivision, and that it was indeed a buildable lot. I  
1724 explained to him at that time that I wanted to make sure that this was the case, whether  
1725 it was or not, because the property purchase was contingent upon this being buildable.  
1726 Otherwise, this was a worthless lot. He stated at that time that it was a buildable lot.  
1727 This was on September 27.

1728  
1729 He had another letter written, determining that it was a buildable lot. That was faxed to  
1730 me that day, and later on that week, I received a copy in the mail. I went ahead with the  
1731 purchase of the property, assuming that I would be able to market it as a buildable lot  
1732 for sale, and as I've gone through and tried to sell the property, each time that a buyer  
1733 has had several contracts on it, I had builders bidding against it when I first got it. Each  
1734 time that they contacted the County, they would first say, "no, it's not a buildable lot."  
1735 Then my representative, Ms. LaVecchia, would send them a copy of the letter of  
1736 confirmation, and they would reverse their decision, whoever had told them that on the

1737 phone.

1738

1739 As late as June of this year, Harold Ellis had been presented both with the letter that  
1740 first said from the McKinneys that they'd inquired about the lot, that the lot wasn't  
1741 buildable because it wasn't wide enough. We, Ms. LaVecchia, sent a copy of the  
1742 Conformance Letter from 9/27/05 and a copy of the survey that was provided to me at  
1743 closing by the sellers, which was dated a week prior to the 9/27 letter, dated 9/21/05.  
1744 Both copies of those were sent to Mr. Ellis, and his reply to Ms. LaVecchia, was that the  
1745 lot was indeed buildable. We asked if he needed to reconfirm the conforming letter from  
1746 9/27. He said it was not necessary to reconfirm that letter; it was clear in the letter that  
1747 it was buildable. I'm not a contractor or anything; I'm just a guy who bought the lot,  
1748 thinking that it was buildable. At the time I purchased it, I got a letter of conformity,  
1749 which I thought was proof to me, that I could market the lot as buildable. At closing, I  
1750 got a letter and copy of the survey, which was dated prior to that. I had no knowledge  
1751 that was included in the due diligence of the County or not, but it all seemed right to me.

1752

1753 I posted both of these things on the website to sell the property from day 1, and each  
1754 time we've had a flip-flop, I've lost several contracts to sell the property because they  
1755 would first go into that it wasn't buildable, then reverse the decision saying that it was  
1756 buildable. By that time, the buyers had lost confidence in me and didn't know who to  
1757 believe. So at the very last date, on June of this year, the McKinneys asked to pull out.  
1758 They had been driving down from Washington to go through and get their building  
1759 permits and whatnot, and they just got tired of the whole deal. I can't get a straight  
1760 answer, so I want to be released. So I released them.

1761

1762 I got another contract, probably two days later, from Paul Bradbury, again asking for a  
1763 letter of conformity from the County. At that time, there was a letter written on 10/2/06,  
1764 saying that the lot was not buildable, that this was because of the 9/21/05 survey, that it  
1765 was 3 feet short of the width of the property on the setback, and that was the first time  
1766 since I bought the property that I'd had a determination in writing that said I needed a  
1767 variance for the property. We spoke to Mr. Blankinship that time; I think my  
1768 representatives spoke to Mr. O'Kelly. We determined that the cure on this situation,  
1769 since it had been a year's time back and forth on this, was to apply for a 3-foot variance  
1770 to bring the property into conformance. I agree with the staff report and accept the  
1771 conditions, and am looking just to see that my rights are protected, since I've tried to do  
1772 everything possible, as the law requires, to buy the property in good faith and market it  
1773 in good faith.

1774

1775 Mr. Nunnally - Did you say you tried to buy some extra property from the  
1776 owner next door to you?

1777

1778 Mr. Williams - This property is on the corner of Telegraph and Virginia.  
1779 When I bought the property, Ken and Don Stanley were trying to sell their mother's  
1780 house next door. She was 93; they wanted to sell her property and they wanted to sell  
1781 their lot, so they wanted to make a deal, where they would sell the mother's property  
1782 and they would sell the lot. I made, because I wasn't really interested in the properties if

1783 the lot wasn't a buildable lot, it was worthless, and they were asking for over \$20,000 for  
1784 the property. So I made both contracts contingent upon this lot being approved by the  
1785 County to be buildable, and they wanted a substantial amount of money for the house  
1786 and the property. At that time I'm guessing, I'm not a surveyor, but at that time if I'd  
1787 been notified that there was any kind of problem with the lot and I needed to acquire  
1788 more property, I guess I would have owned the property at the time and could have  
1789 done something about it, but not over the course of a year, no one had told me there  
1790 was a problem with that, and I have since sold the house, and I think the house was  
1791 sold somewhere between April and June. At that time, I was still being told by the  
1792 County Board of Planning that there was no need for a variance, that the 9/27 letter  
1793 would do.

1794  
1795 Ms. Dwyer - I assume you would orient the front of the house toward  
1796 Telegraph Road?

1797  
1798 Mr. Williams - I'm selling the property to another buyer. I don't know how  
1799 he wants to face the property.

1800  
1801 Ms. Harris - The shorter (side of the) lot is on Virginia Avenue.

1802  
1803 Mr. Williams - The lot was originally known as 1100 Virginia Avenue. I had  
1804 the address changed to 9050 Telegraph Road, after I purchased the property.

1805  
1806 Ms. Dwyer - It would be safe to say that all or most of the houses in this  
1807 neighborhood are single story?

1808  
1809 Mr. Williams - Most, there are some .....

1810  
1811 Ms. Dwyer - There are some across on Telegraph Woods Drive that are  
1812 probably 2-story, but on Virginia Avenue and Maryland Avenue, those are single-story  
1813 homes?

1814  
1815 Mr. Williams - There are some that are 2-story and some single story. The  
1816 newer houses are 2 stories down closer towards Brook Road, at the other end of this  
1817 same block, there are, I think 3, 2-story houses.

1818  
1819 Ms. Dwyer - But the older homes that surround this lot are single-story.  
1820 My concern is that you have a substandard lot; it's a little bit too small. I think it's even  
1821 more important that it fit in with the neighborhood. Would you be willing to add a  
1822 condition that would say it would be a single story home, if the variance were granted?

1823  
1824 Mr. Williams - At this point, I have the property sold to the Bradburys; that's  
1825 under contract. I don't know what it is they're planning to build.

1826  
1827 Ms. Dwyer - Your private contracts with other people are not really  
1828 relevant to us here. What's relevant to us is whether we should grant the variance.



1829 One of the conditions might be that we might consider, as a prerequisite to granting the  
1830 variance would be, even though the lot's too small, maybe it would be okay if a single –  
1831 story house were put in there, and that would be more in keeping with the  
1832 neighborhood.

1833

1834 Mr. Wright - I didn't think the lot was too small; it's the width problem.

1835

1836 Mr. Williams - Why is it the width that's in question?

1837

1838 Mr. Blankinship - It does meet the lot area.

1839

1840 Mr. Williams - It does meet the lot area, so it's not too small. As far as I  
1841 know, there hasn't been any.....

1842

1843 Ms. Dwyer - It's not wide enough; it's too small in width.

1844

1845 Mr. Williams - It's trapezoidal. The rear of the property is 170-some feet.

1846

1847 Ms. Dwyer - But the variance is for 3 feet; it's too small in lot width.

1848

1849 Mr. Wright - At the building line.

1850

1851 Mr. Williams - At the building line.

1852

1853 Mr. Wright - If you built it on Virginia Avenue.

1854

1855 Mr. Williams - But there's several other lots in the area, at least 3 lots in the  
1856 area that have dwellings on them, that are similar to this property. There's actually 4 –  
1857 one's in the floodplain.

1858

1859 Ms. Dwyer - My question then is, would you agree to a variance that  
1860 would say the house would be single story so that it would be in keeping with the  
1861 neighborhood, the immediate houses? You can say no if you want.

1862

1863 Mr. Williams - My hesitation is that I don't know; I'm selling this in good  
1864 faith, and I'm not trying to put restrictions on the people who have contracted to  
1865 purchase the property from me. If I say yes right now, that may just nullify their contract  
1866 and their building permit. I don't want to do that.

1867

1868 Ms. Dwyer - I take it that's a no.

1869

1870 Mr. Williams - I don't see any reason why there shouldn't be a two-story  
1871 built on the property if it meets the requirements. I don't know if they want to put a two-  
1872 story on it. But there are other ones on the block.

1873

1874 Mr. Nunnally - Is Ms. LaVecchia your real estate agent?

1875  
1876 Mr. Williams - Yes.  
1877  
1878 Mr. Nunnally - May I ask her a question. State your name for the record  
1879 please.  
1880  
1881 Ms. LaVecchia - Debbie LaVecchia.  
1882  
1883 Mr. Nunnally - Do you, by any chance, have any idea what type of house  
1884 they're planning on building on it?  
1885  
1886 Ms. LaVecchia - I believe they're looking at a 2-story plan, and that will be  
1887 facing the two stories that are right across Telegraph Road from them.  
1888  
1889 Mr. Wright - So the house would face on Telegraph?  
1890  
1891 Ms. LaVecchia - I believe that's their plan.  
1892  
1893 Mr. Kirkland - Mr. Blankinship, all these drawings we've got here, and  
1894 aerials – how close is the property line to the Wilborn home at 1102?  
1895  
1896 Mr. Blankinship - Let me just warn you that is the geographic information  
1897 system, not intended to be accurate to the foot, and is often not accurate to the foot.  
1898 Given that, I don't know the answer to your question.  
1899  
1900 Mr. Kirkland - On one of your drawings, you show the existing driveway  
1901 completely on this lot.  
1902  
1903 Mr. Blankinship - Right. We rely on the GIS for a lot of our information, and it  
1904 is not an engineering program. It's not intended to be accurate to the foot.  
1905  
1906 Mr. Williams - On the 1102 property, when I owned that, I created another  
1907 driveway inside the property lines, so when I sold the property, the driveway that is  
1908 through there is, I think the owner's kind of used the side lot there in connecting it to an  
1909 easement property in the back, so they could get through to Telegraph Road, kind of  
1910 made a circular driveway for themselves. They kind of snaked across the property line;  
1911 actually the driveway is in the middle of the property line at the front.  
1912  
1913 Ms. Harris - Those pictures that we're seeing, of the house with the  
1914 driveway, is really your property?  
1915  
1916 Mr. Williams - No, I don't own the house any more. I bought both  
1917 properties at the same time; the corner lot at Telegraph and Virginia is the lot in  
1918 question. The house beside it, I bought at the same time and have since sold.  
1919  
1920 Mr. Blankinship - This is more or less looking down the property line between

1921 1100 and 1102.  
1922  
1923 Mr. Williams - Right.  
1924  
1925 Mr. Kirkland - And you've added a driveway over in front of the house, is  
1926 that correct?  
1927  
1928 Mr. Williams - That's the old driveway, and the property line is actually in  
1929 the middle of that grass that you see, and it goes back at an angle closer to the house,  
1930 and the storage shed is part of the 1102 property, goes back into those trees in the  
1931 background there. My added driveway is not in the picture; it's added at the left-hand  
1932 side so there's enough to put two cars in there.  
1933  
1934 Mr. Nunnally - Any other questions from the Board or staff? Is anyone here  
1935 in opposition?  
1936  
1937 Mr. Kane - Good morning. My name is Robert E. Kane, Jr., of Kane,  
1938 Jeffries, Cooper & Janus here in Henrico. I represent Rachel and Andrew Wilborn, who  
1939 own 1102 Virginia Avenue. As you could see from the picture that was just displayed to  
1940 us, the property line is very, very close to 1102, and they would certainly have to park  
1941 their car in front of the house. Any house that is built on this lot, considering the  
1942 configuration that we see there on the board, is going to be very close to my clients'  
1943 house, whether it faces Telegraph or it faces Virginia Avenue. I believe that the citizens  
1944 of this County have the right to rely upon the ordinances, in good faith, to prohibit having  
1945 a house on such a small lot as this. I realize that the size of it is not the issue, but the  
1946 width of it, as you saw from the pictures, is a very small lot when you stand there and  
1947 look at it. A lot of it is ditch, going down into Telegraph Road, and if this was reduced by  
1948 road widening, which I don't think it was – I didn't realize it until Mr. Williams said it was  
1949 always that size – at least I gather that from his argument, but if that's the case, when  
1950 the subdivision was made, I think it was obvious that it was not going to be a buildable  
1951 lot. I realize there's been some confusion and letters back and forth, that seem to have  
1952 gone on for a long time, it's a buildable lot, it's not a buildable lot. I don't blame that on  
1953 Mr. Williams; many of us have been down that same road. It's just a very small lot,  
1954 particularly if you're going to put a 2-story house on that, it's going to look very strange  
1955 in this neighborhood. I believe that it would devalue, at least my clients' property,  
1956 because those bushes there, almost at the property line, if it goes indeed down the  
1957 center of this new driveway. We object to having a house built on this property. We  
1958 have a petition signed by my clients, the Wilborns, as well as other neighbors who are  
1959 here today. I'd like to give this to you.  
1960  
1961 Ms. Dwyer - Sir, would your clients object if this were a single story facing  
1962 Virginia Avenue?  
1963  
1964 Mr. Kane - I honestly don't think that would help at all. I believe that if  
1965 you want to look at the fact that he was told, not told, told, not told, that it was a  
1966 buildable lot, I think the compensation for his property should have been obtained when

1967 he sold 1102 to my clients, not to turn around and try to get a buildable lot out of this. I  
1968 realize he's had some confusion on it, and that's sympathetic, but the ordinance is the  
1969 ordinance, and I've had, as the Board well knows, many of us have had experiences  
1970 where a county, whether it was Henrico or some other jurisdiction, gave permission for  
1971 a construction of something, in my case two big road signs on I-64 East, that VDOT  
1972 approved, and then they had to be taken down because they were not grandfathered as  
1973 everybody thought they were grandfathered. The fact that the ordinance, or the letter,  
1974 was incorrect, doesn't really change anything. We do object to granting this variance  
1975 because it would be a diminution of value for my clients' property, and would certainly  
1976 affect, adversely, the entire neighborhood.

1977  
1978 Mr. Blankinship - Can you suggest any other reasonable use for this property  
1979 if it's deprived of the ability to build a dwelling?

1980  
1981 Mr. Kane - I can't, but I think when the subdivision was approved, that  
1982 should have been taken into consideration, and it was "no man's land" then. There's  
1983 always properties that are not buildable, slivers of property here and there.

1984  
1985 Mr. Blankinship - This one was created in 1949 and was a buildable lot under  
1986 that Code.

1987  
1988 Ms. Dwyer - Mr. Williams, before you sold 1102, you owned this property  
1989 and 1102 at the same time.

1990  
1991 Mr. Williams - Yes, I owned them at the same time. I had the Dream  
1992 Realty sign that's in the picture on the right. I had real estate signs on both properties  
1993 when I was selling this. When I sold the property at 1102, the buyers were aware that  
1994 this was being sold as a buildable lot and there was going to be a future building on that  
1995 property.

1996  
1997 Ms. Dwyer - The previous owner, the owner from whom you purchased  
1998 the property, did they own both lots, 1102 and this lot?

1999  
2000 Mr. Williams - These two lots, from 1926, when they were first plotted out,  
2001 and revised in 1949, they've never been part of any other lot.

2002  
2003 Ms. Dwyer - They've always been together?

2004  
2005 Mr. Williams - No, they've always been separate.

2006  
2007 Ms. Dwyer - But they were owned by the same person?

2008  
2009 Mr. Williams - No, they were owned by two different people. The Daniels  
2010 owned the property; they were neighbors of Mrs. Stanley originally. Mrs. Stanley was  
2011 93; she and her husband bought the house in 1949 at 1102. In the '80's, the Daniels  
2012 were moving out of town, or had moved out of town. She was contacted .....

2013  
2014 Ms. Dwyer - I'm just going to stop you there, because I don't need to  
2015 know that. Had these lots been treated separately in the past?  
2016  
2017 Mr. Williams - They've always been separate, and they were owned by two  
2018 different people and were actually two separate contracts and two separate deeds were  
2019 produced.  
2020  
2021 Ms. Dwyer - That's all I need to know. Thank you.  
2022  
2023 Mr. Nunnally - Is that all, Ms. Dwyer. Thank you for appearing. That  
2024 concludes the case. The Board is going to take a 10-minute break.  
2025  
2026 Mr. Nunnally - A-42-2006, Roger Williams.  
2027  
2028 **DECISION**  
2029  
2030 Ms. Harris - I move that we approve. This was a buildable site in 1949;  
2031 this is the one in which the County went back and forth as to whether or not it was  
2032 buildable. The property can be turned so that it will face Telegraph Road.  
2033  
2034 Ms. Dwyer - He hasn't committed to that though.  
2035  
2036 Ms. Harris - He changed the address to the Telegraph Road address; I  
2037 would think that would be an indication that it would face Telegraph Road, rather than  
2038 the Virginia Avenue address.  
2039  
2040 Mr. Kirkland - Mr. Blankinship, could we add a condition that says it faces  
2041 Telegraph Road?  
2042  
2043 Ms. Dwyer - No, because he isn't here to agree to it. He has to agree to  
2044 it for us to add that condition. I understand the address, but there are lots of houses  
2045 that have addresses that are on corner lots where the house is oriented.  
2046  
2047 Ms. Harris - I believe that in testimony that it would be turned to  
2048 Telegraph Road.  
2049  
2050 Mr. Wright - Do you have a second? I second the motion.  
2051  
2052 Mr. Nunnally - Motion by Ms. Harris, second by Mr. Wright that it be  
2053 approved. All in favor say aye. Opposed?  
2054  
2055 Ms. Dwyer - No, and if I may say no, I think if he'd agreed to a single  
2056 story, I would have been okay with this, but I think that there's no assurance that it's  
2057 going to be single story. In fact, I'm sure that it won't be according to plan, as you said.  
2058 I think that's not in keeping with the neighborhood. I think it will have a detrimental

2059 affect on the adjacent property. It will be very close to the house next door, and that a  
2060 two-story house will loom particularly large over that single story lot, and I think that in  
2061 light of the opposition and the fact that we've not specified where the house will be  
2062 oriented, and we've not specified that it would be single story, that it would have a  
2063 detrimental affect on adjacent property, which is one of the bases for denying a variance  
2064 under 24-116.

2065  
2066 Mr. Nunnally - Ruled four to one.

2067  
2068 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
2069 Wright, the Board **granted** application **A-42-2006** for a variance to build a one-family  
2070 dwelling at 1100 Virginia Avenue (Biltmore) (Parcel 784-761-9975). The Board granted  
2071 the variance subject to the following condition:

2072  
2073 1. This variance applies only to the lot width requirement. All other applicable  
2074 regulations of the County Code shall remain in force.

2075  
2076  
2077 Affirmative: Harris, Kirkland, Nunnally, Wright 4  
2078 Negative: Dwyer 1  
2079 Absent: 0

2080  
2081  
2082 Mr. Nunnally - The Board will reconvene the meeting. Call the next case,  
2083 Mr. Blankinship.

2084  
2085 **A-43-2006** **TINA MOXLEY** requests a variance from Section 24-9 to build a  
2086 one-family dwelling at 430 Taylor Road (Parcel 834-721-4177),  
2087 zoned A-1, Agricultural District (Varina). The public street frontage  
2088 requirement is not met. The applicant has 0 feet public street  
2089 frontage, where the Code requires 50 feet public street frontage.  
2090 The applicant requests a variance of 50 feet public street frontage.

2091  
2092 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
2093 please stand and raise your right hand?

2094  
2095 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2096 truth, and nothing but the truth, so help you God?

2097  
2098 Ms. Moxley - Tina M. Moxley. We are requesting a variance from Graves  
2099 Road to the property at 430 Taylor Road.

2100  
2101 Mr. Wright - How much property do you own there?

2102  
2103 Ms. Moxley - 6.06 acres.

2104

2105 Mr. Wright - Is there a dwelling already on there? I see a building there –  
2106 is that on the property? Is that dwelling used as a dwelling?  
2107  
2108 Ms. Moxley - Yes sir, it is, and it is being used.  
2109  
2110 Mr. Wright - And you want to build another dwelling on this property?  
2111  
2112 Ms. Moxley - Yes sir, the house that's on there now is an older house. It  
2113 was built in 1939, and we would like to build a new home on there.  
2114  
2115 Mr. Wright - So you will tear that one down? You'll remove that house?  
2116  
2117 Ms. Moxley - Yes sir.  
2118  
2119 Mr. Wright - What kind of access do you have to this property?  
2120  
2121 Ms. Moxley - We have an easement from Taylor Road.  
2122  
2123 Mr. Wright - How wide is this easement?  
2124  
2125 Ms. Moxley - I am not sure of the width.  
2126  
2127 Ms. Dwyer - Would you plan to gain access to the property from Graves  
2128 Road?  
2129  
2130 Ms. Moxley - I don't want to. If it is necessary, I would like to have that  
2131 opened up. As of right now, there is another home off of the paved Taylor Road, further  
2132 up the driveway, on the right-hand side. I see no problem with any emergency vehicles  
2133 in or out of the property. I would like to leave the Graves Road. There are trees around  
2134 the property. I would like to leave it closed off.  
2135  
2136 Mr. Wright - What is the condition of this road that comes in?  
2137  
2138 Ms. Moxley - It's just a dirt road. There's gravel in certain areas.  
2139  
2140 Mr. Wright - You can't give us any idea of how wide it is? Can two cars  
2141 pass on it?  
2142  
2143 Ms. Moxley - No.  
2144  
2145 Mr. Wright - So it's for one car?  
2146  
2147 Ms. Moxley - Yes sir  
2148  
2149 Ms. Dwyer - Have you read the conditions that would be required of you  
2150 for the case if this variance were passed? Do you agree to all of that?

2151  
2152 Ms. Moxley - Yes I do. I have one question though, about the public water  
2153 and sewage. The new home would have to be served by public water?  
2154  
2155 Ms. Dwyer - That's what it says. Would that be your plan?  
2156  
2157 Ms. Moxley - It already has well and septic on the property. I wasn't  
2158 planning on it.  
2159  
2160 Mr. Kirkland - The conditions kind of contradict that.  
2161  
2162 Ms. Dwyer - Why is # 4 a requirement, Mr. Blankinship, since they  
2163 exceed the 1-acre requirement?  
2164  
2165 Mr. Blankinship - My thinking is they're probably within 300 feet of an existing  
2166 water and sewer line, and normally, when a new dwelling is built within 300 feet of an  
2167 existing line, we require it to be connected. Perhaps we should change that, though, to  
2168 say "shall be served by public water and sewer if required by the Department of Public  
2169 Utilities." Our intent here would just be to reinforce their requirement, not to create a  
2170 new requirement.  
2171  
2172 Mr. Wright - Then you've got to put something in there that if it's not, then  
2173 it has to apply to get the septic tank approved that we normally put in there.  
2174  
2175 Mr. Blankinship - Right, as Mr. Kirkland pointed out, that's in condition # 2  
2176 already. I apologize for not catching that in the review for this report.  
2177  
2178 Ms. Dwyer - Did you say that someone is living in the house that exists  
2179 on the property now?  
2180  
2181 Ms. Moxley - Yes.  
2182  
2183 Ms. Dwyer - Our staff report says that the house has been abandoned  
2184 and because of that, it has lost its nonconforming status. I'm a little confused by those  
2185 two conflicting facts.  
2186  
2187 Ms. Moxley - When I found the house, it was abandoned.  
2188  
2189 Ms. Dwyer - When was that?  
2190  
2191 Ms. Moxley - I'd say six months ago. And as far as I know, I talked to the  
2192 electric company, and the last time service was out there, was three years prior.  
2193  
2194 Ms. Dwyer - When did you acquire the property? Six months ago?  
2195  
2196 Ms. Moxley - We moved in about a month ago. My son's in; we're trying



2197 to do a little work on the place.  
2198  
2199 Mr. Wright - So you're actually living in the property right now?  
2200  
2201 Mr. Blankinship - The nonconforming status would allow them to make repairs,  
2202 but does not allow them to replace – that's the importance of that.  
2203  
2204 Ms. Harris - So you've been the part owner of the property since 1953?  
2205  
2206 Ms. Moxley - I'm sorry?  
2207  
2208 Ms. Harris - I was looking at the statement that the property is owned by  
2209 five siblings, who inherited in 1953. Are you one of the siblings?  
2210  
2211 Ms. Moxley - No ma'am. I'm the new purchaser.  
2212  
2213 Ms. Dwyer - Would you be willing to agree to a condition that only one  
2214 house would be built on the parcel?  
2215  
2216 Ms. Moxley - Yes.  
2217  
2218 Ms. Dwyer - I think that the staff report assumes that access would be  
2219 from Graves Road, and the applicant wants to continue to use the Taylor Road access  
2220 and that also requires an easement to get to the property, so maybe we should add to  
2221 our conditions, the standard language relating to easements.  
2222  
2223 Mr. Blankinship - Which says that at the time of building permit application,  
2224 you have to show evidence that you have a legal access to the property. That is not in  
2225 the recommended conditions now.  
2226  
2227 Ms. Dwyer - Is that all right with you?  
2228  
2229 Mr. Nunnally - Any other questions from the Board or staff? Is anyone here  
2230 in opposition? Thank you for appearing. That concludes the case.  
2231  
2232 Mr. Blankinship - If you'd raise your right hand please, do you swear that the  
2233 testimony you are about to give is the truth, and nothing but the truth, so help you God?  
2234  
2235 Mr. Martin - Yes sir. James W. Martin. I own the adjoining property to  
2236 this young lady. I don't have any opposition. I have two questions. I want to know who  
2237 owns your right-of-way, and can she remodel this house that she's got?  
2238  
2239 Mr. Blankinship - The answer to your second question is "yes," she could  
2240 remodel it, but could not replace or substitute. We don't have in front of us enough  
2241 information to say who owns the easement, that hasn't been submitted, but she'll have  
2242 to submit that at the time of building permit application.

2243  
2244 Mr. Nunnally - Okay? Thank you.  
2245  
2246 Ms. Dwyer - Sir, do you own the property over which the easement  
2247 crosses?  
2248  
2249 Mr. Martin - It runs down beside it.  
2250  
2251 Ms. Dwyer - Beside your property?  
2252  
2253 Mr. Martin - Right, and I've never had it surveyed. I own 22 acres there,  
2254 and the property extends completely where the right-of-way is. It kind of circles around  
2255 my property, but I've never had it surveyed, so I don't know.  
2256  
2257 Ms. Dwyer - You don't know if maybe the easement she's using now  
2258 might encroach on your property, is that your concern?  
2259  
2260 Mr. Martin - That's what I'm saying.  
2261  
2262 Mr. Blankinship - She'll have to determine that when she applies for a building  
2263 permit.  
2264  
2265 Ms. Harris - Mr. Martin, do you also use Taylor Road as a point of  
2266 access?  
2267  
2268 Mr. Martin - Yes ma'am.  
2269  
2270 Mr. Nunnally - How wide is Taylor Road, Mr. Martin?  
2271  
2272 Mr. Martin - Fifty feet, I imagine.  
2273  
2274 Mr. Nunnally - Is that a County road?  
2275  
2276 Mr. Martin - It's a County paved road.  
2277  
2278 Ms. Dwyer - Say for the sake of argument, the variance is granted, but  
2279 then we discover that part of the application for the building permit, that the easement is  
2280 on someone's property, or that there is in fact an illegal easement that's been granted to  
2281 this property, what would the status of the case be at that point?  
2282  
2283 Mr. Blankinship - It would be pending until she was able to acquire legal  
2284 access.  
2285  
2286 Ms. Dwyer She could not require legal access?  
2287  
2288 Mr. Blankinship - She could come back to amend the condition.

2289  
2290 Mr. Kirkland - What happens to what she's got now? Does she have legal  
2291 access now?  
2292  
2293 Mr. Blankinship - That we don't know. She does always have the opportunity  
2294 of coming in off of Graves.  
2295  
2296 Mr. Martin - That was my next question. Could she open up a drive from  
2297 Graves Road into her property? I'm not sure whether her property goes to Graves  
2298 Road or not.  
2299  
2300 Mr. Blankinship - It does. She would need a permit from the Department of  
2301 Public Works to do that, but her property does abut Graves Road, according to this plat.  
2302  
2303 Ms. Harris - Mr. Martin, on this map, where is your property? Can you  
2304 point it out? Can you see it from this map?  
2305  
2306 Mr. Kirkland - What's your address?  
2307  
2308 Mr. Martin - The last one is 377 Taylor Road, home 377-335, and then  
2309 there's a lot in between. When I bought it, it was originally listed under Hanover Road,  
2310 when I purchased it.  
2311  
2312 Mr. Blankinship - I don't know where that is. The dwelling off to the right, Paul.  
2313  
2314 Mr. Martin - At the end of that driveway, it comes off of Taylor Road.  
2315  
2316 Mr. Nunnally - Any other questions from the Board or staff? Thank you for  
2317 appearing. Hearing none, that concludes the case. A-43-2006, Tina Moxley.  
2318  
2319 **DECISION**  
2320  
2321 Ms. Harris - I move that we approve. This is a case where she can  
2322 actually use the public road, Graves Road, or she has the option of continuing to use  
2323 Taylor Road, depending on working with the neighbors.  
2324  
2325 Mr. Kirkland - I'd like to second that, and I'd like to have two conditions  
2326 added – one house on the parcel, and if she does use Taylor Road, she must show she  
2327 has access to the property.  
2328  
2329 Mr. Blankinship - I believe we were also going to amend the condition  
2330 requiring water and sewer to state that was conditional if DPU requires it.  
2331  
2332 Mr. Kirkland - I'll agree with that.  
2333

2334 Mr. Nunnally - Motion by Ms. Harris, second by Mr. Kirkland to approve. All  
2335 in favor say aye. Opposed? It's been approved.

2336  
2337 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
2338 Kirkland, the Board **granted** application **A-43-2006** for a variance to build a one-family  
2339 dwelling at 430 Taylor Road (Parcel 834-721-4177)." The Board granted the variance  
2340 subject to the following conditions:

2341  
2342 1. [AMENDED] This variance applies only to the public street frontage requirement  
2343 for one dwelling only. All other applicable regulations of the County Code shall remain in  
2344 force.

2345  
2346 2. Approval of this request does not imply that a building permit will be issued.  
2347 Building permit approval is contingent on Health Department requirements, including,  
2348 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval  
2349 of a well location.

2350  
2351 3. At the time of building permit application, the applicant shall submit the  
2352 necessary information to the Department of Public Works to ensure compliance with the  
2353 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
2354 water quality standards.

2355  
2356 4. [AMENDED] Any dwelling on the property shall be served by public water and  
2357 sewer if required by the Department of Public Utilities.

2358  
2359 5. Any dwelling built on the property shall be located so that it is at least 50 feet  
2360 from the anticipated location of the concept road.

2361  
2362 6. [ADDED] The applicant shall present proof with the building permit application  
2363 that a legal access to the property has been obtained.

2364  
2365  
2366 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2367 Negative: 0  
2368 Absent: 0

2369  
2370  
2371 The Board granted this request, as it found from the evidence presented that, due to the  
2372 unique circumstances of the subject property, strict application of the County Code  
2373 would interfere with all reasonable beneficial use of the property, and authorizing this  
2374 variance will neither cause a substantial detriment to adjacent property nor materially  
2375 impair the purpose of the zoning regulations.

2376  
2377  
2378 **A-44-2006** **BRENDA Y. CORBETT** requests a variance from Section 24-94 to  
2379 build a one-family dwelling at 2380 Yarnell Road (Parcel 814-697-

2380 7483), zoned A-1, Agricultural District (Varina). The lot width  
2381 requirement is not met. The applicant has 140 feet lot width, where  
2382 the Code requires 150 feet lot width. The applicant requests a  
2383 variance of 10 feet lot width.  
2384

2385 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
2386 please stand and raise your right hand?  
2387

2388 Mr. Blankinship - Are any of you the applicant?  
2389

2390 Mr. Nunnally - Okay, we'll pass it by for a while.  
2391

2392 Ms. Dwyer - Was the applicant here and left? You don't know?  
2393

2394 Mr. Blankinship - We're going to hold the case until the end of the agenda and  
2395 see if the applicant shows up. She may arrive in the next ten minutes, so we'll call the  
2396 case again in a few minutes.  
2397

2398 ***(Board returned to this case following conclusion of UP-44-2006)***  
2399

2400 Ms. Dwyer - Mr. Chairman, there are 3 people who have been sitting in  
2401 the back, waiting for this case, A-44-2006. Apparently the applicant hasn't come, and  
2402 I'm just concerned about the fact that they've been here for almost three hours and may  
2403 not get their day in court, so is there any way we can accommodate them? Maybe hear  
2404 their arguments, so perhaps they wouldn't have to come back – I'm just concerned that  
2405 a person filed a case, doesn't show up. Other people come to speak to the case, and  
2406 they have to sit here all day and don't get to be heard. Can we hear the case in the  
2407 absence of the applicant, if the applicant decides not to show up?  
2408

2409 Mr. Blankinship - I think you have the legal authority to do so. It's not the  
2410 Board's normal practice, of course, but it's not normal that you have three people  
2411 waiting for three hours either.  
2412

2413 Mr. Wright - It's unreasonable to have people come, and they take their  
2414 time to come here to hear a case, and the applicant just doesn't show up, doesn't call.  
2415

2416 Mr. Blankinship - You also have the option of hearing their testimony and  
2417 continuing the case, so that as least they wouldn't have to come back if they chose not  
2418 to. You could act on the case; you could defer on it without hearing it, or you could hear  
2419 it and still defer.  
2420

2421 Mr. Nunnally - All in favor of doing that, hearing the case, letting them  
2422 speak on the case, and then we'll defer it till we hear the applicant, and then we'll make  
2423 a decision then.  
2424

2425 Mr. Wright - I think we ought to hear from them; they're here.

2426  
2427 Ms. Dwyer - If we hear you today, and then maybe one of you can come  
2428 back next month if we decide to defer it.  
2429  
2430 Mr. Wright - If they want to, they don't have to.  
2431  
2432 Mr. Nunnally - Are you all in opposition to this request? Come on down,  
2433 please.  
2434  
2435 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2436 truth, and nothing but the truth, so help you God?  
2437  
2438 Mr. Riley - My name is Michael Riley, and my wife and I are owners of  
2439 the property listed at 6887 Millers Crossing Trail, in Granger Estates. I am actually in  
2440 opposition to permitting a variance, only because I've had first-hand conversations with  
2441 the proposed buyer, Tim Pittman. Our area and development there are built primarily  
2442 with single-family brick ranchers, and he has stated that he plans on putting a trailer on  
2443 his property, so a property value decline is an interest of mine, concern of mine.  
2444  
2445 Mr. Wright - In the first place, we would have to approve that.  
2446  
2447 Mr. Blankinship - Not if it's A-1 zoning.  
2448  
2449 Mr. Wright - A trailer would not be permitted on the property.  
2450  
2451 Mr. Blankinship - If it's A-1 zoning, it .....

2452  
2453 Mr. Riley - Also, the word "modular" has also been used, which is just a  
2454 fancy way of calling it a trailer. I don't know if he meant to tell me he'd be putting a  
2455 trailer out there, but he did. In a recent conversation with him, he kind of alluded to the  
2456 fact of possibly selling some of the front property to a friend for a trailer, so now I don't  
2457 have a subdivision; I have a trailer park. Not that there's anything wrong with a trailer  
2458 park; everyone's got to have somewhere to live.  
2459  
2460 Also what concerns me, is he's trying to acquire some of the VDOT property, which is  
2461 listed to the right of the Miller's Crossing Trail there, which is property that is around a  
2462 retention pond for drainage issues from the 895 highway, and he actually plans on  
2463 "moving his dwelling literally to the point that it's in my back yard, or at the property line  
2464 in my back yard," and that was also a concern.  
2465  
2466 Also, there are some earthworks and some other historical Civil War things out there  
2467 that he has alluded to the fact of burying, demolishing, or pushing over out there. That  
2468 concerns me. There is already an issue with drainage to the other home owners, that  
2469 has arisen since the highway was built, and for him to come out there and put another  
2470 septic system out there just adds to the other strain on the land as it is. I know that  
2471 there are some floodplains on that property, underneath there, where he digs his well

2472 and things like that, he may also cause us some issues or concerns with our wells, and  
2473 things like that. There are just a number of issues that have concerned me. He also  
2474 plans on getting a right-of-way, which would probably put his driveway right at my  
2475 driveway entrance, from someone at VDOT, and he felt pretty confident about getting  
2476 that as a favor exchange issue, so that concerns me also. That's the majority of the  
2477 concerns that I have there, why I would be against the variance.

2478  
2479 Mr. Nunnally - Any questions of Mr. Riley?

2480  
2481 Mr. Kirkland - Mr. Riley, how much land do you own?

2482  
2483 Mr. Riley - My wife and I currently own 2.089 acres there.

2484  
2485 Mr. Kirkland - And your driveway is at the end of that little cul-de-sac?

2486  
2487 Mr. Riley - Yes. A majority of property was taken, I guess, for the  
2488 highway, and my neighbor who couldn't be here, and if I'd known I would be here this  
2489 late, I would have brought her. I told her I didn't think I would be able to get back, since  
2490 I had this appointment. My neighbor is the Jessies, who live at 6893 Miller's Crossing,  
2491 right next to me, and they had some apprehensions to granting the variance also. She's  
2492 elderly and doesn't drive herself, so I didn't think I could bring her.

2493  
2494 Ms. Dwyer - You're at 6887 Miller's Crossing Trail?

2495  
2496 Mr. Riley - Yes ma'am, and she's at 6893.

2497  
2498 Mr. Blankinship - Mr. Riley, some of the concerns that you raised could  
2499 conceivably be addressed by putting a condition on the variance, for example that they  
2500 have to build a site-built home, or a two-story home, or a home with a brick foundation,  
2501 or something along those lines. Do you think we could craft conditions that would  
2502 satisfy all of your concerns, or would you still oppose the variance, even if there were  
2503 conditions crafted to address these?

2504  
2505 Mr. Riley - I am a very workable person; if there were some conditions  
2506 that would possibly allow me to keep the privacy and the reason why I bought the home  
2507 out there and wouldn't necessarily cause any strain on our water well and septic issues,  
2508 then I would possibly be okay with some of those conditions.

2509  
2510 Ms. Dwyer - One of the considerations that we give to each of these  
2511 cases is would it be of substantial detriment to the adjacent property, so that's your  
2512 concern?

2513  
2514 Mr. Riley - From conversations with the proposed buyer and where he  
2515 plans on putting his home, to me they cause considerable detriment to my property  
2516 because my drainfield is in the back, and I already have an issue when it rains. I  
2517 probably could go swimming now when I go back home, and he's planning on putting

2518 his house and well and septic so close to my drainfield now; that's going to add more  
2519 load and burden to it. My kids can't even play in the back yard for the most part, when it  
2520 rains, as it is, and I don't want to make it any worse.

2521  
2522 Mr. Blankinship - But you don't object to use of the property as such; you just  
2523 have specific concerns.

2524  
2525 Mr. Riley - I do have some specific concerns that would probably cause  
2526 some issues with my property value and living ability.

2527  
2528 Mr. Dowdy - I've got the same concerns that he's got.

2529  
2530 Mr. Wright - Where do you live, Mr. Dowdy?

2531  
2532 Mr. Dowdy - Right here where the red and blue run together, up at  
2533 Barnesway, next one over. I'm up at the end of Barnesway, 2531.

2534  
2535 Ms. Dwyer - Did you have anything to add?

2536  
2537 Mr. Dowdy - I just want to speak with the person to find out what his right-  
2538 of-way would be, where he would enter his property from, based on the location of his  
2539 home there now. I can add a little information to that. I was told by the proposed buyer,  
2540 his plans were to get a right-of-way from VDOT to put a driveway at the end of the cul-  
2541 de-sac, and that's how he would enter the property. He kind of told me once he bought  
2542 the property, he plans on doing what he wants to do.

2543  
2544 Ms. Dwyer - I think the problem is, we don't know what he wants to do,  
2545 and so anything he may have told you is hearsay to us, but it doesn't alleviate anyone's  
2546 concern that he might cause detriment to adjoining property.

2547  
2548 Mr. Nunnally - Yes ma'am.

2549  
2550 Ms. Jamroga - My name is Mary Lou Jamroga. I live at 2540 Barnesway  
2551 Lane. It's directly across the street from Mr. Dowdy, and their property is sort of  
2552 adjacent to ours too, and it's all swampland over there, very narrow. I get a lot of water  
2553 coming from their property onto my property.

2554  
2555 Ms. Dwyer - So you have concerns about drainage?

2556  
2557 Ms. Jamroga - Yes, and my well is ten feet out from the front of my house.  
2558 My septic is behind my house, but I don't want any more drainage either. I have a river  
2559 flowing through the front yard right now. It just kind of stands in my yard.

2560  
2561 Mr. Wright - Mr. Blankinship, did the applicant indicate where the house  
2562 would be? I see you have something on the property, but is that just your guess or  
2563 what?



2564  
2565 Mr. Blankinship - No, that was submitted by the applicant.  
2566  
2567 Mr. Wright - But he's showing his residence considerably away from  
2568 these folks.  
2569  
2570 Mr. Blankinship - It's very close to Mr. Dowdy, some distance from Mr. Riley,  
2571 and I guess not too close to Ms. Jamroga.  
2572  
2573 Ms. Jamroga - But if he decides to divide that land, .....

2574  
2575 Mr. Blankinship - Then he'd be back here in front of the Board again. We can  
2576 put a condition on the variance, if they think it's necessary, pinning him down to this or  
2577 any location they find most suitable.  
2578  
2579 Ms. Jamroga - That's like the only open property with a deer run too. I don't  
2580 know how he can possibly put any kind of a building on that property.  
2581  
2582 Ms. Dwyer - Because of what?  
2583  
2584 Ms. Jamroga - There's so many swalls – the water, and trees down; it's  
2585 swampland. I've had trouble with water, and I've had everybody out there, and I've got  
2586 all kinds of .... from a year ago, and a lot of that swampland is over there.  
2587  
2588 Mr. Kirkland - Mr. Blankinship, this shows an access road coming off of  
2589 Lorraine Place, is that correct?  
2590  
2591 Mr. Blankinship - Yes.  
2592  
2593 Mr. Kirkland - Is any of this in floodplain? I don't see any delineations on  
2594 our drawings.  
2595  
2596 Mr. Blankinship - There is, I'm looking at the geographic information system  
2597 now, that's actually hydric soils, so there's some indication that there's wetlands at the  
2598 front of the property, but none of it is shown in either the County floodplain or the FEMA  
2599 floodplain.  
2600  
2601 Mr. Kirkland - So it's just wetlands on the property? **(Male voice from**  
2602 **audience, couldn't understand what he was saying)** Could you come to the mike  
2603 sir, please? Are you saying there's one of those big ponds there?  
2604  
2605 Mr. Dowdy (?) - No sir, it's not a pond; it's a creek, is what it is, and it falls  
2606 under the Chesapeake Bay Act.  
2607  
2608 Mr. Kirkland - It's a protected stream?  
2609

2610 Mr. Dowdy (?) Yes sir, because the gentleman farther down, tried to put  
2611 some timbers in it at one time, and they stopped him because of the Chesapeake Bay  
2612 Act.

2613  
2614 Ms. Dwyer - It sounds like we have a lot of questions and no answers.

2615  
2616 Mr. Dowdy - Just to add other information, he actually had a difficult time  
2617 in trying to procure the property, for many reasons, just the soil barely perking,  
2618 floodplains. He does actually have, or I have seen, some studies, I guess he's paid  
2619 some engineers to do some studies where they have shown quite a bit of natural water  
2620 flow or floodplain, and things like that, and he's had some difficulty, and his mother and  
2621 wife have tried to say maybe it's not the property, but he just seems to be kind of bent  
2622 on it.

2623  
2624 One of the other concerns I have, is he works for one of the local auto body parts, and  
2625 he plans on putting a big garage and working on cars and things like that. I just don't  
2626 think that's fitting for the neighborhood. That's just my word being told to you, but these  
2627 are just some things he's conveyed to me personally in talking to me while he's been  
2628 looking at the property, and it just concerns me that once he gets in there, all these  
2629 things he'll start doing, I won't have any control over once he gets in. I guess that's one  
2630 of the reasons I'm mainly here for opposition.

2631  
2632 There's quite a few, and I'm sure if anybody did a study, it's a pretty nice, what I would  
2633 call, a wildlife refuge and Civil War area. There's quite a few animals, insects, and birds  
2634 that I've seen that nest and habitate in there that would be displaced if he does build.  
2635 I'm sure there are a lot of Civil War issues there, the earthworks and things like that. I  
2636 don't know, can you take them out, do you have to get permission, is it listed as  
2637 historical, a number of questions and concerns that I have, what he would do once he  
2638 bought the property.

2639  
2640 Mr. Blankinship - We did receive comments from the Department of  
2641 Recreation and Parks, that they would like to document the Civil War artifacts that  
2642 remain on the property.

2643  
2644 Ms. Dwyer - Was that in our staff report?

2645  
2646 Mr. Blankinship - Yes ma'am.

2647  
2648 Mr. Kirkland - Are there any documented earthworks or anything on their  
2649 plans?

2650  
2651 Mr. Blankinship - They're asking for permission to document them.

2652  
2653 Mr. Kirkland - So they believe they're there?

2654  
2655 Mr. Blankinship - Right.

2656  
2657 Mr. Dowdy - That little diagram in there that runs by the house is actually  
2658 a pretty good indication of where the earthworks lie.  
2659  
2660 Ms. Dwyer - The blue line, you mean?  
2661  
2662 Mr. Dowdy - Yes ma'am; that is actually how they follow. I'm guessing  
2663 that the previous owners had permission to remove when they added onto the house, or  
2664 maybe because there is a cut between them and the front of my house and behind the  
2665 house where they added on. My realtor told me that was done, and I don't know if that  
2666 was something that was done through the County, but they had to add on, because they  
2667 had children that became paraplegics, and they needed to add on a bigger room to take  
2668 care of their needs.  
2669  
2670 Ms. Dwyer - Where is that?  
2671  
2672 Mr. Dowdy - It's at my property, where the line runs right beside Granger  
2673 Estates, and it's actually cut out there, and there was an addition to the house before I  
2674 moved in. It's really oversize doors and things so you can get wheelchairs and beds in  
2675 there because one of the children became a paraplegic. The drain field in the back, the  
2676 brick truck couldn't go around back in the drain field, so they had to go around the front,  
2677 and they had to cut it out. I don't know if that was achieved, but that's what I was told  
2678 happened by the realtor.  
2679  
2680 Ms. Dwyer - But you didn't do it?  
2681  
2682 Mr. Dowdy - No ma'am. It was that way when I bought it.  
2683  
2684 Ms. Jamroga - We were also told that when we bought our property.  
2685  
2686 Mr. Nunnally - Mr. Riley, who's going to put that modular trailer in there,  
2687 Charles Smith or is it Corbett or who?  
2688  
2689 Mr. Riley - The gentleman who was told he could buy the land, his  
2690 name is Tim Pittman, and I believe his name is on the top of some of the information in  
2691 the booklets out front.  
2692  
2693 Mr. Blankinship - He's the owner; Mr. Smith is the engineer. Ms. Corbett is  
2694 the owner; Mr. Smith is the engineer.  
2695  
2696 Mr. Riley - Tim Pittman is the proposed buyer who's planning on  
2697 building a dwelling.  
2698  
2699 Mr. Nunnally - Any other questions?  
2700

2701 Mr. Dowdy - When you said you could put a trailer on A-1, is there a  
2702 restriction on the number of trailers you can put on it?  
2703  
2704 Mr. Blankinship - This restriction would only allow one.  
2705  
2706 Ms. Jamroga - We were also told when we bought our property; we have  
2707 4.88 acres, that no one could build around it because it was a natural habitat.  
2708  
2709 Mr. Blankinship - I don't know who told you that or what the support is for it.  
2710  
2711 Ms. Jamroga - Real estate.  
2712  
2713 Mr. Wright - Mr. Chairman, before these folks leave, the Board could  
2714 defer this till the next meeting to permit the owner to come in and present there case, in  
2715 which event you would be given another notice, but your testimony we have, certainly  
2716 would be before us, would be written up, and we'll have it to consider when we hear  
2717 what the owner has to say. That's one of the options. The Board could also decide to  
2718 deny the case right here. I don't know what the Board's going to do, but I just want to  
2719 acquaint you with, if it is continued to the next month, you would receive notice.  
2720  
2721 Mr. Blankinship - If it is continued also, Mr. Wright, I'm going to strongly  
2722 recommend to the applicant that he get in touch with these people and work these  
2723 issues out in advance, because it would be foolish for them to walk in without solutions  
2724 to these problems.  
2725  
2726 Mr. Wright - The next meeting of the Board would be December 21, if it  
2727 were continued.  
2728  
2729 Mr. Nunnally - Yes, I guess you could continue it.  
2730  
2731 Mr. Dowdy - I know usually, you always try to make your court dates. If  
2732 you weren't here, I guess you weren't real interested in the first place.  
2733  
2734 Mr. Blankinship - The Board does have the authority to deny it in their  
2735 absence.  
2736  
2737 Mr. Wright - We never know whether there might have been an accident  
2738 trying to get here. You never know what happens to folks, so we try to give them the  
2739 benefit of the doubt. We don't like to do something that would cause you some  
2740 difficulty.  
2741  
2742 Ms. Dwyer - Given the questions in this case, while you have testified  
2743 today, you might consider very carefully whether you want to come back next month,  
2744 because he may have a lot of solutions to the questions that you have raised. Then you  
2745 might still want to respond to those.  
2746

2747 Ms. Jamroga - I'm sure he'll find some answers. Everybody does when  
2748 they want something bad enough.  
2749

2750 Mr. Wright - And also, it would be the first case on the docket, so you  
2751 wouldn't have to sit through three hours of other stuff. If it is deferred, it would be at  
2752 9:00 o'clock; it would be the first case on the docket, so you would be in and out.  
2753

2754 Ms. Jamroga - What happens if they don't show up at all?  
2755

2756 Mr. Blankinship - If it is continued to next month, and they don't show up, it will  
2757 have to be denied. The Board can't continue it beyond 60 days without the applicant's  
2758 request.  
2759

2760 Ms. Jamroga - And then they can't sell that property?  
2761

2762 Mr. Blankinship - And then it would be a year before they could reapply. They  
2763 can't build on the property; they could sell it, but they couldn't even apply for  
2764 substantially the same variance for a year.  
2765

2766 Mr. Nunnally - You can check back with Mr. Blankinship later on this  
2767 afternoon to find out whether it's been deferred or denied or whatever.  
2768

2769 Ms. Jamroga - If we go into the website, we don't have to pay to go into the  
2770 website, do we?  
2771

2772 Mr. Blankinship - Oh no. You've already paid.  
2773

2774 Mr. Nunnally - We thank you, and we're sorry we kept you so long. A-44-  
2775 2006. What are we going to do on that?  
2776

2777 **DECISION**  
2778

2779 Mr. Blankinship - There hasn't been a motion on it.  
2780

2781 Mr. Nunnally - Could I have a motion on that whether we're going to defer  
2782 it, deny?  
2783

2784 Ms. Harris - I move this case be deferred to the next meeting .  
2785

2786 Mr. Kirkland - Second.  
2787

2788 Mr. Nunnally - Motion by Ms. Harris, second by Mr. Kirkland, that it be  
2789 deferred until the next meeting. All in favor, say aye.  
2790

2791 Mr. Kirkland - Mr. Blankinship. You will be getting in touch with the  
2792 applicant to tell him to address some of the questions?

2793  
2794 Mr. Blankinship - Yes, I will.

2795  
2796 Upon a motion by Ms. Harris, seconded by Mr. Kirkland, the Board **deferred** application  
2797 **A-44-2006** for a variance to build a one-family dwelling at 2380 Yarnell Road (Parcel  
2798 814-697-7483). The Board deferred your request from the November 16, 2006, until the  
2799 December 21, 2006, meeting, because no one attended the hearing to present your  
2800 case.

2801  
2802  
2803 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2804 Negative: 0  
2805 Absent: 0

2806  
2807  
2808 **UP-43-2006** **ST MARYS HOSPITAL** requests a temporary conditional use  
2809 permit pursuant to Section 24-116(c)(1) to operate a temporary CT  
2810 system trailer at 5811 Bremono Road (Parcel 769-737-3039), zoned  
2811 O-3, Office District (Three Chopt).

2812  
2813 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
2814 please stand and raise your right hand?

2815  
2816 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2817 truth, and nothing but the truth, so help you God?

2818  
2819 Ms. Rosen - Mr. Chairman, Members of the Board, my name is Jen  
2820 Rosen, from the law firm of Hirschler, Fleischer, and I'm here today on behalf of your  
2821 applicant, Bon Secours St. Mary's Hospital, along with Tom Koenig from the hospital.  
2822 This is a request for a temporary conditional use permit for a mobile CT Scan Unit to be  
2823 located adjacent to the hospital's emergency room. St. Mary's Hospital maintains one  
2824 of the busiest CT operations in the metropolitan area. Currently the hospital uses two  
2825 CT scanners, which are located adjacent to, and largely serve, the emergency room.

2826  
2827 The hospital has a need for a third scanner and has obtained a license for one. The  
2828 hospital is undergoing renovations to accommodate the third scanner, but will need to  
2829 replace one of the existing scanners at a time while the renovations are underway. In  
2830 order for the hospital to maintain a continuous level of high quality healthcare for its  
2831 patients, and also to limit the impact the renovations may have on the hospital's ability  
2832 to effectively serve its patients, we are requesting this temporary use permit to insure  
2833 smooth operations within the hospital during the time of transition.

2834  
2835 A few key points to note about the mobile unit. It will only be needed for six months and  
2836 will be in use during normal daytime hours of operation. It will be tucked away behind  
2837 the hospital and will fit into the character of the surrounding area, which currently has  
2838 other mobile units in the vicinity due to the ongoing construction. And it will be buffered

2839 from the public view by the other mobile units, also by a six-foot high, green vision  
2840 barrier, and existing landscaping on the property.

2841  
2842 I would also like to point out, pursuant to the Code, that the temporary use will not  
2843 adversely affect the health, safety or welfare of people on the premises or in the  
2844 adjacent neighborhood. In fact, it will promote the health, safety and welfare of such  
2845 people by allowing the hospital to continue providing this particular healthcare service  
2846 without interruption. A temporary use will not unreasonably impair an adequate supply  
2847 of light and air to adjacent property or increase traffic in the streets. In fact, the mobile  
2848 unit will have a minimal impact on the site by its location in an area that will not upset  
2849 traffic flow, parking, handicap access, or landscaping. The temporary use will not  
2850 increase public danger from fire or otherwise unreasonably affect public safety. The  
2851 temporary use will not impair the character of the district or adjacent district, nor impair  
2852 the value of the building or property in the surrounding area. On the contrary, the  
2853 mobile unit will fit into an area of ongoing construction. Finally, the temporary use will  
2854 not be incompatible with the general plans and objectives of the official land use plan of  
2855 the County. At this time, I respectfully request that you approve this case for a  
2856 temporary conditional use permit. The applicant has read the staff report and agrees  
2857 with the suggested conditions. I'll be happy to answer any questions.

2858  
2859 Ms. Harris - How close would this trailer be to the trailer that we see in  
2860 the photo?

2861  
2862 Ms. Rosen - It's nearby, but it's not the exact location. I think if you look  
2863 at the A1 Overall Site Plan, I think that trailer is to the right.

2864  
2865 Mr. Wright - What is the trailer that we see in this photo?

2866  
2867 Ms. Rosen - It is a PET Scan trailer. It's a different type of unit from what  
2868 we're putting in, but it will be similar. It's not identical.

2869  
2870 Mr. Wright - We approved the location of that trailer?

2871  
2872 Ms. Rosen - That's actually a roving trailer, if you will. It moves around  
2873 weekly. It's not there permanently, or for any length of time at all.

2874  
2875 Mr. Kirkland - Will you have to put any type of canopy or awning to access  
2876 this trailer, so the patients won't get wet, or do they just walk up to it?

2877  
2878 Ms. Rosen - Not to my knowledge. I don't think there's any kind of  
2879 canopy. It is flush against the building.

2880  
2881 Mr. Wright - Have you read the conditions?

2882  
2883 Ms. Rosen - Yes.

2884

2885 Mr. Wright - You're in accord with those?  
2886  
2887 Ms. Rosen - Yes sir.  
2888  
2889 Ms. Harris - I think she asked us to look at the site map, which shows  
2890 Monument Avenue. No, that's not it.  
2891  
2892 Mr. Blankinship - It's in your package, but it's not in the presentation.  
2893  
2894 Mr. Kirkland - Right next to the lunch trailer.  
2895  
2896 Ms. Harris - So it would be close to Monument Avenue, or Bremo Road,  
2897 or Libbie Avenue?  
2898  
2899 Ms. Rosen - It's really behind the hospital, so it's between Bremo and  
2900 Libbie.  
2901  
2902 Mr. Nunnally - Any other questions of Ms. Rosen? Anyone else want to  
2903 speak for it? Anybody against it? Hearing none, that concludes the case. Thank you  
2904 for coming. UP-43-2006.  
2905  
2906 **DECISION**  
2907  
2908 Mr. Wright - Move we approve it.  
2909  
2910 Ms. Harris - Second the motion.  
2911  
2912 Mr. Wright - Because it's a conditional use permit, I don't think it will  
2913 cause any detriment to surrounding properties.  
2914  
2915 Mr. Nunnally - Motion by Mr. Wright, second by Ms. Harris, that it be  
2916 approved. All those in favor, say aye. Opposed? It's been approved.  
2917  
2918 After an advertised public hearing and on a motion by Mr. Wright, seconded by Ms.  
2919 Harris, the Board **granted** application **UP-43-2006**) for a temporary conditional use  
2920 permit to operate a temporary CT system trailer at 5811 Bremo Road (Parcel 769-737-  
2921 3039)." The Board granted the use permit subject to the following conditions:  
2922  
2923 1. Only the improvements shown on the plan filed with the application may be  
2924 constructed pursuant to this approval. Any additional improvements shall comply with  
2925 the applicable regulations of the County Code. Any substantial changes or additions  
2926 may require a new use permit.  
2927  
2928 2. The trailer shall be removed from the property on or before November 16, 2007,  
2929 at which time this permit shall expire.  
2930



2931 3. This approval is subject to all conditions on the approved plan of development  
2932 and lighting and landscaping plan.

2933  
2934 4. The trailer shall be located and operated such that it does not interfere with sight  
2935 distance or required parking.

2936  
2937  
2938 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2939 Negative: 0  
2940 Absent: 0

2941  
2942  
2943 The Board granted the request because it found the proposed use will be in substantial  
2944 accordance with the general purpose and objectives of Chapter 24 of the County Code.

2945  
2946 **UP-44-2006 POUNCEY TRACT PROPERTIES, INC** requests a conditional use  
2947 permit pursuant to Section 24-12(c) to operate a sewage pumping  
2948 station at 5600 Pouncey Tract Road (Henley) (Parcel 733-775-  
2949 7627), zoned A-1, Agricultural District (Three Chopt).

2950  
2951 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
2952 please stand and raise your right hand?

2953  
2954 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2955 truth, and nothing but the truth, so help you God?

2956  
2957 Ms. Nadal - My name is Caroline Nadal, and I am with the law firm of  
2958 Herschler Fleischer, and I am here today on behalf of the applicant, Pouncey Tract  
2959 Properties, Inc. I also have with me from Pouncey Tract Properties, Mr. Rick Melchor.  
2960 Pouncey Tract Properties has applied for a temporary conditional use permit for the  
2961 installation and operation of a pump station. Pouncey Tract owns property along  
2962 Pouncey Tract Road that it intends to develop as a residential subdivision entitled  
2963 Henley. Sections of Henley are not presently served by the County's sewage system.  
2964 Therefore, a private pump station would provide temporary service to the property.  
2965 Pouncey Tract is planning to have the pump station serve approximately 89 residential  
2966 lots. Sixty-nine of those lots are located in the subdivision of Henley. The other 20 lots  
2967 are intended to serve as the southern residential subdivision entitled Stonehurst.  
2968 Stonehurst is owned by Windsor Properties, and we're currently negotiating a contract  
2969 for a shared service of the pump station.

2970  
2971 Ms. Dwyer - It will serve 89 lots, did you say?

2972  
2973 Ms. Nadal - Yes ma'am, 89 lots.

2974  
2975 Ms. Dwyer - Including this subdivision and another subdivision?  
2976

2977 Ms. Nadal - Sixty-nine in this subdivision, and twenty in the Stonehurst  
2978 Subdivision.

2979  
2980 Ms. Dwyer - So Section B of Henley has 69 lots?  
2981

2982 Ms. Nadal - No ma'am, it actually has about 35 lots. There is a Henley  
2983 Section C that the private pump station will also service. I believe it will be about a  
2984 difference of 34 lots. The remainder of those lots in Section C of Henley, and also there  
2985 is a Section A, are actually serviced by the County system.  
2986

2987 Ms. Dwyer - The name of the other subdivision is what?  
2988

2989 Ms. Nadal - Stonehurst. Once the County has extended the public sewer  
2990 system to within the perimeter of the property, where there can be gravity flow, then  
2991 Pouncey Tract shall connect to the County system. Pouncey Tract is also wanting to  
2992 remove the pump station within one year of the public sewer's availability, as suggested  
2993 in the staff report. Pouncey Tract has over the past month, worked diligently with the  
2994 County Manager and the Department of Public Utilities, to ensure that the County  
2995 requirements are satisfied with respect to the pump station. In fact, we are currently  
2996 finalizing a private pump station agreement with the County, which details Pouncey  
2997 Tract's obligations to fund, construct, operate and maintain the pump stations. Among  
2998 other things, Pouncey Tract plans to post a bond with the Department of Public Utilities  
2999 to cover all costs that may be incurred by the County, should the County determine that  
3000 the pump station isn't being properly maintained and there is collective action needed.  
3001 In addition, Pouncey Tract is obtaining necessary state permitting, one of which they  
3002 have already obtained from the Virginia Department of Environmental Quality for the  
3003 construction of the pump station. Obtaining this temporary use permit is the next  
3004 important step in our completing the process of getting the pump station up and  
3005 operational. With respect to the station itself, Pouncey Tract intends to construct the  
3006 station on the rear of one of the residential lots, within the Henley development. It is up  
3007 against the Stonehurst development to the south. The design and the appearance of  
3008 the pump station will be unobtrusive and of complimentary nature to the home that is  
3009 ultimately built on that lot. In addition, it will be secured by an approximately 7-foot  
3010 chain link fence around the station, and as in the suggested condition, we are willing to  
3011 plant evergreens along the southern side of the pump station to screen it from view of  
3012 the adjacent property. Approval of this permit will not adversely affect the health, safety  
3013 or welfare of persons residing in the neighborhood, as the station will be secured by a  
3014 fence. It will be installed per County approved plans and will be subject to the oversight  
3015 and corrective action, if necessary, of the County. The temporary use permit will not  
3016 unreasonably impair an adequate supply of light and air to any adjacent property owner,  
3017 as it is a low-lying, unobtrusive small building about the size of a storage shed. It's not  
3018 located near or on any street, so therefore, it will have no impact on street congestion.  
3019 It will not measurably increase public danger from fire or otherwise unreasonably affect  
3020 public safety, for reasons I've already mentioned. It will not impair the character of the  
3021 district, as again, it will be constructed in an unobtrusive manner and screened from  
3022 view. It is not incompatible with general plans and objectives of the land use plan, and it

3023 will not likely reduce or impair the value of building or properties in the surrounding area.  
3024 In fact, the pump station will be servicing all the areas that surround it, and certainly a  
3025 pump station is a preferred alternative to septic.  
3026

3027 Finally, I just want you to know that Pouncey Tract is willing to comply with all  
3028 suggested conditions in the staff report. For these reasons, I respectfully request the  
3029 Board approve Pouncey Tract's request for a temporary use permit to install and  
3030 operate a private pump station. I am happy to answer your questions.  
3031

3032 Ms. Harris - The dimensions of the building?

3033  
3034 Ms. Nadal - Yes, there is a picture; I'm not sure if it's loaded.  
3035

3036 Mr. Blankinship - Mr. Melchor might know.  
3037

3038 Ms. Nadal - Yes, I'm going to have Mr. Melchor speak to the dimensions.  
3039

3040 Mr. Melchor - My name is Rick Melchor, Pouncey Tract Properties. The  
3041 actual generator building is 12 by 10. The entire pad is approximately 50 by 50, and all  
3042 of the pumps and operations are actually underground. The only thing above ground is  
3043 the generator and the fuel tank for the generator.  
3044

3045 Ms. Harris - Height of the building?

3046  
3047 Mr. Melchor - The height is standard; it looks basically like a storage shed.  
3048 It's a standard, about 8 feet.  
3049

3050 Mr. Kirkland - Will there be any excess noise created by the generator?  
3051

3052 Mr. Melchor - If the generator's on, there will be noise associated with the  
3053 generator. If the generator's on, everybody in the neighborhood is not going to have  
3054 power, so they would be able to hear it. The generator only cuts on in an emergency  
3055 situation. The pump station's run by regular electricity, and the generator kicks in if the  
3056 power goes out in the community, so the pump station's always operational.  
3057

3058 Mr. Kirkland - How about access to the site?  
3059

3060 Mr. Melchor - Access to the site – there is a gravel road that will come off  
3061 of Ellaberry Lane cul-de-sac, and it's 180 feet back to the pump station.  
3062

3063 Mr. Kirkland - After the construction begins, and the lots are divided up,  
3064 and the houses get started on Lot 11, will that interfere with your project of getting back  
3065 there to the pump station?  
3066

3067 Mr. Melchor - No, the driveway will be all contained on Lot 12. All these  
3068 lots are over an acre, so they're large lots, and it will not interfere with the lot.

3069  
3070 Mr. Kirkland - Is this a regularly serviced situation?  
3071  
3072 Mr. Melchor - Yes, this is under a new policy provided by the Department  
3073 of Public Utilities and the County Manager's Office, and we have a maintenance  
3074 contract with a company that will maintain the pump station on a regular basis, just like  
3075 any County facility would be maintained, and under the similar standards.  
3076  
3077 Ms. Dwyer - Did you say you're still negotiating with the County on a  
3078 contract that would fill out the terms of the building maintenance and the construction of  
3079 the pump station.  
3080  
3081 Mr. Melchor - There are approximately three different agreements with the  
3082 County. One's an escrow agreement that is for the removal of the station in connection  
3083 to the gravity sewer in the future. The other agreement is actually a maintenance  
3084 contract with the County where everything is stipulated that we are the private  
3085 individuals who own the station, which would ultimately be the homeowners'  
3086 association. We are required to do that. The only thing we have now is we're making  
3087 sure that the property is served, which included Mr. Windsor's property to the south of  
3088 us, is referenced in the agreement. That's where the negotiation is now. All the other  
3089 components of the agreement have been approved by Mr. Tokarz and Mr. Petrini.  
3090  
3091 Ms. Dwyer - The County is satisfied as far as all those details? Those  
3092 were all my questions as to when you'd be connecting and your obligations to connect,  
3093 and setting money aside in escrow.  
3094  
3095 Mr. Melchor - We're required by the County policy to connect when the  
3096 gravity lies within 1,000 feet of the property.  
3097  
3098 Ms. Dwyer - Do we know when that will be?  
3099  
3100 Mr. Melchor - There have been guesses, anywhere from five to ten years.  
3101 There is a gravity line plan to come all the way from West Broad Street, up to this area.  
3102 In the future, some of it is connected to the school site; some of it's connected to other  
3103 phase development.  
3104  
3105 Ms. Harris - How do you spell your last name?  
3106  
3107 Mr. Melchor - Melchor.  
3108  
3109 Mr. Nunnally - Any other questions from the Board or staff? Is anyone here  
3110 in opposition? Thank you for appearing. That concludes the case. UP-44-2006,  
3111 Pouncey Tract Properties.  
3112  
3113 **DECISION**  
3114

3115 Mr. Wright - Move we approve it.  
 3116  
 3117 Mr. Nunnally - Motion by Mr. Wright that we approve it. Do I hear a  
 3118 second?  
 3119  
 3120 Mr. Kirkland - Second.  
 3121  
 3122 Mr. Nunnally - Second by Mr. Kirkland. All in favor, say aye. Opposed?  
 3123 It's approved.  
 3124

3125 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
 3126 Kirkland, the Board **granted** application **UP-44-2006** for a conditional use permit to  
 3127 operate a sewage pumping station at 5600 Pouncey Tract Road (Henley) (Parcel 733-  
 3128 775-7627). The Board granted the use permit subject to the following conditions:  
 3129

3130 1. Only the improvements shown on the plan filed with the application may be  
 3131 constructed pursuant to this approval. Any additional improvements shall comply with  
 3132 the applicable regulations of the County Code. Any substantial changes or additions  
 3133 may require a new conditional use permit.  
 3134

3135 2. The developer shall remove the pump station and all above-ground  
 3136 appurtenances from the property within one year of the provision of gravity sewer to the  
 3137 property, at which time this permit shall expire.  
 3138

3139 3. The pump station shall be shielded from view from the property to the south by a  
 3140 double staggered row of evergreens. The evergreens may be planted on the adjoining  
 3141 property, if the owner of that property agrees. A landscaping plan shall be submitted to  
 3142 the Planning Department for review and approval prior to operation of the pumping  
 3143 station.  
 3144

3145  
 3146 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
 3147 Negative: 0  
 3148 Absent: 0  
 3149

3150  
 3151 The Board granted the request because it found the proposed use will be in substantial  
 3152 accordance with the general purpose and objectives of Chapter 24 of the County Code.  
 3153

3154 Mr. Blankinship - Mr. Chairman, the next two cases are companions, and I'll  
 3155 call them together.  
 3156

3157 **A-46-2006** **HANOVER LOTS CORPORATION** requests a variance from  
 3158 Sections 24-95(c)(4) and 24-95(b)(5) to allow a one-family dwelling  
 3159 to remain at 708 La Von Drive (Lakeside Terrace) (Parcel 786-752-  
 3160 2233 (part)), zoned R-3, One-family Residence District (Fairfield).

3161 The front yard setback and total lot area requirement are not met.  
3162 The applicant has 7,354 square feet total lot area and 20 feet front  
3163 yard setback, where the Code requires 8,000 square feet total lot  
3164 area and 35 feet front yard setback. The applicant requests a  
3165 variance of 646 square feet total lot area and 15 feet front yard  
3166 setback.

3167  
3168 **A-47-2006 HANOVER LOTS CORPORATION** requests a variance from  
3169 Section 24-95(b)(5) to build a one-family dwelling at 706 La Von  
3170 Drive (Lakeside Terrace) (Parcels 786-752-2233 (part) and 2933),  
3171 zoned R-3, One-family Residence District (Fairfield). The total lot  
3172 area requirement is not met. The applicant has 7,354 square feet  
3173 total lot area, where the Code requires 8,000 square feet total lot  
3174 area. The applicant requests a variance of 646 square feet total lot  
3175 area.

3176  
3177 Mr. Nunnally - Is anyone else here interested in these cases? If so, would  
3178 you please stand and raise your right hand?

3179  
3180 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
3181 truth, and nothing but the truth, so help you God?

3182  
3183 Mr. Hopper - Cameron Hopper, and basically, what we're requesting is we  
3184 have taken 7 lots that were in the Lake Terrace Subdivision, and we plan on starting  
3185 right down the middle of the 7 lots, so it would be three and a half lots on each side, so  
3186 in doing that request, what ends up happening is the existing home becomes  
3187 nonconforming as far as the front setback and the square footage. What we're  
3188 intending to do is to improve, through renovation, we're not going to change the size of  
3189 the original structure, and then we are going to remove the two ancillary structures that  
3190 you see on the other 3 ½ lots and put up a single-family dwelling. For that particular  
3191 one, we intend on maintaining all the property setbacks as required by the Code.  
3192 What's interesting about these properties is that most of the properties next to it are all  
3193 about the same size, so we would not be any different than a lot of the others, as far as  
3194 the square footage goes. There are several properties that don't have that square  
3195 footage of 8,000 square feet, so we feel that these particular lots will fit in very nicely  
3196 with the existing neighborhood.

3197  
3198 Ms. Harris - Do you know when the house was built that's 708 – was it in  
3199 the '50's? I notice that we were talking about the setback requirements in the front yard  
3200 not being met. Are you familiar with the fact that there might be other homes in the  
3201 same area on the same street with the same problem of setback not being met. How  
3202 was this discovered?

3203  
3204 Mr. Hopper - I think the current house under the previous subdivision  
3205 requirements, I believe met the setbacks. It's only since then, that under the new  
3206 ordinance, that it doesn't meet it. So when we go to split the property, it reverts back to

3207 us having to go to the newer requirements, which again would make it not meet the  
3208 requirements. I believe that's the case.

3209  
3210 Ms. Dwyer - But these lots, 10 through 16, have been maintained in  
3211 common ownership since 1967, according to our staff report. If this variance were  
3212 denied, the existing house would be fine. It wouldn't have to get a variance because it  
3213 would simply be a nonconforming structure. The only reason you're coming for a  
3214 variance is because you want to get two lots out of this property. That makes the  
3215 existing house and the new lot require a variance, because neither of them meet the  
3216 standards.

3217  
3218 Mr. Hopper - Yes, but the new lot doesn't meet the standard because it's  
3219 under the 8,000 square feet.

3220  
3221 Ms. Dwyer - They don't meet it for different reasons, but they still don't  
3222 meet the ordinance requirements.

3223  
3224 Mr. Hopper - Yes, that's correct.

3225  
3226 Ms. Dwyer - Again, if we didn't do anything, the house would be fine.  
3227 Some cases we get would require the structure to be torn down. This is not one of  
3228 those cases. The house would be fine if we did nothing.

3229  
3230 Mr. Hopper - That's right.

3231  
3232 Mr. Nunnally - Any other questions from the Board or staff? Anyone else to  
3233 speak for it? Is anyone here in opposition? Thank you for appearing. That concludes  
3234 the case. A-46-2006 Hanover Lots Corporation.

3235  
3236 **DECISION**

3237  
3238 Ms. Dwyer - Are we going to take these together?

3239  
3240 Mr. Nunnally - I think we have to take them separate.

3241  
3242 Mr. Blankinship - I'd like to have the vote separate, if it's okay with the Board.

3243  
3244 Ms. Harris - I move that we approve this case. We look at the origin of  
3245 these sites in this neighborhood. If we're going to upgrade this neighborhood, I feel that  
3246 this is the way. This is a problem that we're going to run into.

3247  
3248 Mr. Nunnally - Moved by Ms. Harris that it be approved. Is there a second?

3249  
3250 Mr. Kirkland - Second.

3251  
3252 Mr. Nunnally - Second by Mr. Kirkland. All in favor say aye. Opposed?

3253  
3254 Ms. Dwyer - No, and my reason for the “no” is that the property’s been  
3255 held in common since 1967. Taken as a whole, it has reasonable, beneficial use under  
3256 Cochran and Cherrystone. The owner of the total parcel wants to come in and  
3257 subdivide it, and they create, out of one parcel that meets the ordinance, create two that  
3258 do not.

3259  
3260 Mr. Wright - I vote no, in favor of that same explanation. I hate to do it.

3261  
3262 Mr. Nunnally - A-46-2006 has been approved, 3 to 2.

3263  
3264 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
3265 Kirkland, the Board **granted** application **A-46-2006** for a variance to allow a one-family  
3266 dwelling to remain at 708 La Von Drive (Lakeside Terrace) (Parcel 786-752-2233  
3267 (part)).” The Board granted the variance subject to the following conditions:

3268  
3269 1. This variance applies only to the front yard setback and total yard area  
3270 requirements. All other applicable regulations of the County Code shall remain in force.

3271  
3272  
3273 Affirmative: Harris, Kirkland, Nunnally 3  
3274 Negative: Dwyer, Wright 2  
3275 Absent: 0

3276  
3277  
3278 Mr. Nunnally - A-47-2006.

3279  
3280 **DECISION**

3281  
3282 Ms. Harris - I move that we approve this. There is no house at all on this  
3283 lot; it’s vacant. The only way it can be used is if we allow them to build as it is stated  
3284 here. I know that back in the ‘50’s, this was one site, or they were joined lots, but  
3285 frankly, this is vacant except for some sheds that will be torn down. I feel that we can  
3286 construct this property. Otherwise, it’s unbuildable.

3287  
3288 Mr. Nunnally - Motion by Ms. Harris that it be approved. Do I have a  
3289 second?

3290  
3291 Mr. Kirkland - I’ll second.

3292  
3293 Mr. Nunnally - Second by Mr. Kirkland. All in favor say aye. Opposed?

3294  
3295 Mr. Wright - No.

3296  
3297 Ms. Dwyer - No, for the same reasons stated for the previous case, that  
3298 we’re creating two lots that don’t meet the required standards, out of one that does.



3299  
3300 Mr. Nunnally - A-47-2006 has been approved, 3 to 2.  
3301

3302 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
3303 Kirkland, the Board **granted** application **A-47-2006** for a variance to build a one-family  
3304 dwelling at 706 La Von Drive (Lakeside Terrace) (Parcels 786-752-2233 (part) and  
3305 2933). The Board granted the variance subject to the following conditions:  
3306

3307 1. This variance applies only to the minimum lot area requirement. All other  
3308 applicable regulations of the County Code shall remain in force.  
3309

3310 2. Only the improvements shown on the plan filed with the application may be  
3311 constructed pursuant to this approval. Any additional improvements shall comply with  
3312 the applicable regulations of the County Code. Any substantial changes or additions  
3313 may require a new variance.  
3314

3315 3. The dwelling shall be constructed on a brick foundation with crawl space or  
3316 basement. Any chimneys, bay windows or similar features shall also have a brick base  
3317 and shall not be cantilevered.  
3318

3319  
3320 Affirmative: Harris, Kirkland, Nunnally 3  
3321 Negative: Dwyer, Wright 2  
3322 Absent: 0  
3323

3324  
3325 **UP-45-2006** **RYAN HOMES** requests a temporary conditional use permit  
3326 pursuant to Section 24-116(c)(1) to operate a temporary sales  
3327 trailer at 7595 Doran Road (Castleton) (Parcel 825-692-8035),  
3328 zoned R-2AC, One-family Residence District (Conditional) (Varina).  
3329

3330 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
3331 please stand and raise your right hand?  
3332

3333 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
3334 truth, and nothing but the truth, so help you God?  
3335

3336 Mr. Lanphear - I do. My name is Rob Lanphear, representing Ryan Homes.  
3337 I'm here to request the permission to operate a temporary sales trailer in the Castleton  
3338 neighborhood, on the east side of Doran Road, just south of Darbytown Road. As with  
3339 the prior case, this will be a temporary facility, to be removed prior to December 1,  
3340 2007. I believe that you have all of the specs for the trailer and for the landscaping and  
3341 the parking in your package. We agree to all of the suggested conditions from the  
3342 Planning staff, and would be happy to answer any questions you might have at this  
3343 time.  
3344

3345 Mr. Blankinship - Is this again going to have the same sort of septic system  
3346 that you described before?

3347  
3348 Mr. Lanphear - Correct.

3349  
3350 Ms. Harris - How large a development will Castleton be?

3351  
3352 Mr. Lanphear - Castleton, I believe is approximately 500 homes in total.  
3353 Ryan Homes, at this point, intends to build approximately 160 homes.

3354  
3355 Mr. Blankinship - If I can refresh your memory, this is one of our mining  
3356 reclamation success stories. This is an old mining site that's being reclaimed as a  
3357 subdivision.

3358  
3359 Ms. Dwyer - Have you read the conditions suggested by staff?

3360  
3361 Mr. Wright - He said he did.

3362  
3363 Mr. Nunnally - Any other questions from the Board or staff? Is anyone here  
3364 in opposition? Thank you for appearing. Hearing none, that completes the case. UP-  
3365 45-2006.

3366  
3367 **DECISION**

3368  
3369 Ms. Harris - I move that we approve.

3370  
3371 Ms. Dwyer - Second.

3372  
3373 Mr. Nunnally Motion by Ms. Harris, second by Ms. Dwyer, that it be  
3374 approved. All in favor, say aye. Opposed? It's approved.

3375  
3376 After an advertised public hearing and on a motion by Ms. Harris, seconded by Ms.  
3377 Dwyer, the Board **granted** application **UP-45-2006** for a temporary conditional use  
3378 permit to operate a temporary sales trailer at 7595 Doran Road (Castleton) (Parcel 825-  
3379 692-8035). The Board granted the use permit subject to the following conditions:

3380  
3381 1. Only the improvements shown on the plan filed with the application may be  
3382 constructed pursuant to this approval. No substantial changes or additions to the layout  
3383 may be made without the approval of the Board of Zoning Appeals. Any additional  
3384 improvements shall comply with the applicable regulations of the County Code.

3385  
3386 2. The trailer shall be skirted on all sides with a durable material as required by the  
3387 building code for a permanent installation.

3388  
3389 3. A detailed landscaping and lighting plan shall be submitted to the Planning  
3390 Department with the building permit for review and approval. Approved landscaping

3391 shall be installed as soon as the weather permits. All landscaping shall be maintained  
3392 in a healthy condition at all times. Dead plant materials shall be removed within a  
3393 reasonable time and replaced during the normal planting season.

3394  
3395 4. The trailer shall be removed from the property on or before December 1, 2007, at  
3396 which time this permit shall expire.

3397  
3398 5. Any portable toilet or holding tank placed on the site shall be located underneath  
3399 or behind the sales trailer and shall be screened from view.

3400  
3401 6. The applicant shall satisfy the Department of Public Works that adequate sight  
3402 distance has been provided entering onto Doran Road and adequate parking has been  
3403 provided on the site.

3404  
3405 7. If construction plans show more than 2,500 square feet of land disturbance , the  
3406 applicant shall submit an Erosion and Sediment Control plan to the Department of  
3407 Public Works for review and approval. Plans may be submitted with construction plans  
3408 or separately.

3409  
3410 8. The construction plans for Castleton subdivision shall be approved prior to the  
3411 issuance of a building permit for the temporary sales trailer.

3412  
3413  
3414 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
3415 Negative: 0  
3416 Absent: 0

3417  
3418  
3419 The Board granted the request because it found the proposed use will be in substantial  
3420 accordance with the general purpose and objectives of Chapter 24 of the County Code.

3421  
3422  
3423 **A-48-2006 SANDRA KING** requests a variance from Section 24-95(b)(5) to  
3424 build a one-family dwelling at 211 N Virginia Avenue (Bungalow  
3425 City) (Parcel 817-728-0790), zoned R-3, One-family Residence  
3426 District (Varina). The lot width requirement and total lot area  
3427 requirement are not met. The applicant has 6,500 square feet total  
3428 lot area and 50 feet of lot width, where the Code requires 8,000  
3429 square feet total lot area and 65 feet of lot width. The applicant  
3430 requests a variance of 1,500 square feet total lot area and 15 feet  
3431 of lot width.

3432  
3433 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
3434 please stand and raise your right hand?

3435  
3436 Mr. Blankinship - Do you swear that the testimony you are about to give is the

3437 truth, and nothing but the truth, so help you God?  
3438  
3439 Mr. Townes - I do. My name is Wayne Townes, and I'm here representing  
3440 Sandra King. We're asking that the lot at 211 North Virginia Avenue, which is only 50  
3441 feet wide, it was adequate at the time that the lot was divided, but now the Code  
3442 requires 65-foot road frontage. Also, it doesn't meet the 8,000 square feet total lot area,  
3443 so we're asking for a variance on those two issues.  
3444  
3445 Mr. Kirkland - Is lot 213 vacant at this time?  
3446  
3447 Mr. Townes - The adjacent?  
3448  
3449 Mr. Blankinship - To the north.  
3450  
3451 Mr. Kirkland - Have you made any attempts to purchase that?  
3452  
3453 Mr. Townes - Yes, I've regularly been making contact with the owner of  
3454 that property, but the letters either get returned, or we never get any phone calls back,  
3455 and I've been calling them now since 2001. They're elderly people, and I haven't had  
3456 any response from them.  
3457  
3458 Ms. Dwyer - Where do they live?  
3459  
3460 Mr. Townes - They list that physical house as their address, but no one is  
3461 ever there.  
3462  
3463 Mr. Blankinship - There is no house there.  
3464  
3465 Ms. Dwyer - We're talking about the empty lot.  
3466  
3467 Mr. Townes - The people on Evergreen are the ones who actually own the  
3468 lot behind them.  
3469  
3470 Mr. Kirkland - The people on Evergreen own it?  
3471  
3472 Ms. Dwyer - They own 213, the empty lot?  
3473  
3474 Mr. Townes - Right, they own the lot directly behind them.  
3475  
3476 Ms. Dwyer - Have you asked them about purchasing that lot?  
3477  
3478 Mr. Townes - We've attempted to talk to them several times. I've written  
3479 them letters and actually called and physically been by there, but there's never an  
3480 answer. I've been doing that, off and on, since 2001.  
3481  
3482 Mr. Nunnally - You say you've physically been there and nobody's ever at

3483 home? Do you suppose somebody's living in that house?  
3484  
3485 Mr. Townes - I see a car there from time to time, but it could be that they're  
3486 elderly and just decided not to come to the door.  
3487  
3488 Mr. Kirkland - Have you sent any of the letters certified to them?  
3489  
3490 Mr. Townes - No, we haven't.  
3491  
3492 Ms. Harris - Are you the contractor, Mr. Townes, or builder?  
3493  
3494 Mr. Townes - Yes ma'am, I possibly would be the builder.  
3495  
3496 Mr. Wright - Are there any other lots in the area the same size as this lot,  
3497 upon which resident's houses have been built?  
3498  
3499 Mr. Townes - Yes, there are right many. In this particular neighborhood,  
3500 there are a lot of mixed lot sizes such as these. It's not uncommon to have houses on a  
3501 50-foot lot.  
3502  
3503 Mr. Wright - 208 looks like about the same size.  
3504  
3505 Ms. Dwyer - The staff report says there are thirty 50-foot lots in Bungalow  
3506 City, but that's out of how many?  
3507  
3508 Mr. Kirkland - What's (lot) 125?  
3509  
3510 Mr. Blankinship - Well over 100 (lots). 125 appears to be 50 feet.  
3511  
3512 Ms. Dwyer - Well over 100 lots?  
3513  
3514 Mr. Kirkland - And it has a residence on it, is that what it is, or is that a split  
3515 where 25 and 23 are together?  
3516  
3517 Mr. Blankinship - Hard to tell. Most of them are either 65 or 75, 65 being the  
3518 exception standard, but there are some 50's and some 100's, all sorts of things.  
3519  
3520 Mr. Wright - How many are there that have not been built upon? 50-foot  
3521 lots.  
3522  
3523 Mr. Blankinship - Is it stated in the report? I did a lot of counting when I wrote  
3524 the report.  
3525  
3526 Mr. Wright - I thought it said something like that.  
3527  
3528 Ms. Dwyer - It just says there are thirty 50-foot lots.

3529  
3530 Mr. Wright - Still, thirty 50-foot lots which have not been built upon.  
3531  
3532 Mr. Nunnally - "There are approximately thirty 50-foot lots in Bungalow City,  
3533 and several larger lots that could be divided into 50-foot lots.  
3534  
3535 Mr. Blankinship - That would indicate vacant lots, thirty vacant 50-foot lots.  
3536  
3537 Ms. Dwyer - Thirty variance cases in our future.  
3538  
3539 Mr. Nunnally - What size home are you planning on?  
3540  
3541 Mr. Townes - We're planning a two-story home that's going to be 32 feet  
3542 wide. We'll meet all the other setbacks. Even if it were a bigger lot, with the houses  
3543 that are built, we'll still meet those setbacks.  
3544  
3545 Ms. Dwyer - How many homes in Bungalow City would you say are two-  
3546 story? More than half?  
3547  
3548 Mr. Townes - I wouldn't say more than half. I would say maybe a third  
3549 now, and on one of the other streets, they have townhouses that are two-story.  
3550  
3551 Ms. Dwyer - That's different from single family.  
3552  
3553 Mr. Townes - It's a good number.  
3554  
3555 Ms. Harris - But the older homes that are around, are all one-story?  
3556  
3557 Mr. Townes - Right, the majority of the older homes are one-story.  
3558  
3559 Ms. Dwyer - The impact of a two-story home is going to be much greater,  
3560 especially to homes on a small lot, than a single story would be.  
3561  
3562 Mr. Wright - The problem is, it's difficult to get any area with a one-story  
3563 house on a small lot.  
3564  
3565 Ms. Dwyer - Given that it's a small lot, there are going to be some issues,  
3566 I guess.  
3567  
3568 Mr. Nunnally - Who was that gentleman, Mr. Williams, he was at Bungalow  
3569 City too, right?  
3570  
3571 Mr. Blankinship - No, they're both on Virginia Avenue, but they're on opposite  
3572 ends of the County.  
3573  
3574 Mr. Kirkland - Really? One's in Fairfield; one's Varina.

3575  
3576 Ms. Harris - The case A-40, Matthew Robinson, I think that was closer  
3577 than the other.  
3578  
3579 Mr. Kirkland - That's an estate subdivision.  
3580  
3581 Mr. Townes - Actually, right now there's an approval at 206, right across  
3582 the street. They're proposing a two-story house. They're getting ready to build a two-  
3583 story house there, so it won't be the only one even on the block.  
3584  
3585 Ms. Dwyer - Is that a 50-foot lot though?  
3586  
3587 Mr. Blankinship - I think that's a 75.  
3588  
3589 Mr. Townes - It's a lot bigger, but still, it's a two-story house.  
3590  
3591 Ms. Dwyer - I guess what I'm saying is, when you jam houses really close  
3592 together on 50-foot lots, the impact of a two-story has a greater impact on the  
3593 surrounding lots than if you got 75 feet. You've got two stories, but you've got a lot  
3594 more space around it, so you're not affecting your neighbors quite so much. If the  
3595 Board decided that it would grant the variance only if a single story were allowed, would  
3596 you agree to that condition?  
3597  
3598 Mr. Townes - Well, in order to get a single story with a nice square  
3599 footage, and I'm saying 1200 square feet, you need it to be 40-42 feet wide, and that  
3600 really would impact the lot, so then you'd be closer to the neighbors, where we're  
3601 proposing 30 feet, and you'd still have a little more than 15 feet on each side of the  
3602 neighbors. If you went to a single story house, you'd be even closer to your neighbor.  
3603  
3604 Ms. Dwyer - It depends. You could build a bigger two-story house and  
3605 take up the maximum space.  
3606  
3607 Mr. Townes - No, we're proposing to build what we submitted. We already  
3608 have the plans for it.  
3609  
3610 Ms. Dwyer - Do we have those plans?  
3611  
3612 Mr. Blankinship - Did you submit plans?  
3613  
3614 Mr. Townes - No, I mean the dimensions for it. I do have a copy of the  
3615 plans here, but .....  
3616  
3617 Ms. Dwyer - Thirty by twenty-eight?  
3618  
3619 Mr. Townes - Right, and like you said, your suggestion was, if we build a  
3620 single story house, in order to get that same square footage, it would need to be at least

3621 40-42 feet, and that would put you even closer to the neighbors.  
3622  
3623 Ms. Dwyer - What's the minimum side yard, Mr. Blankinship?  
3624  
3625 Mr. Blankinship - Seven feet on each and a sum of fifteen.  
3626  
3627 Ms. Dwyer - We could make it deeper, instead of wider, single story.  
3628  
3629 Mr. Townes - You mean orient it the other way?  
3630  
3631 Ms. Dwyer - No, just have a house that's deeper than it is wide. Keep it  
3632 the dimension and width, just make it deeper to get more square footage.  
3633  
3634 Ms. Dwyer - Was that a "no"?  
3635  
3636 Mr. Townes - I would say a two-story would be preferred, only because of  
3637 the fact that if we did do a two-story, that would still allow us enough room to go around  
3638 and use some of the back yard. If I put a single story house there, it would take up so  
3639 much of the lot that they wouldn't even be able to use the back yard.  
3640  
3641 Ms. Dwyer - I know. I need a definite "yes" or "no."  
3642  
3643 Mr. Townes - I would say probably "no."  
3644  
3645 Mr. Nunnally - Any other questions from the Board or staff? Thank you for  
3646 appearing. That concludes the case. Let's start at the front.  
3647  
3648 Mr. Nunnally - A-48-2006.  
3649  
3650 **DECISION**  
3651  
3652 Mr. Wright - I move it be approved.  
3653  
3654 Ms. Harris - Second.  
3655  
3656 Mr. Wright - The basis for my motion is there is no reasonable, beneficial  
3657 use of the property. The man said he's tried since 2001, to acquire the property next  
3658 door. He can't do it, and there are other lots in that subdivision, 50-foot lots on which  
3659 houses have been built. I think it would be denying him the use of his property.  
3660  
3661 Mr. Nunnally - All right. Move to approve by Mr. Wright, second by Ms.  
3662 Harris. All in favor, say aye. Opposed?  
3663  
3664 Ms. Dwyer - No, and the basis for my no is he had not agreed to the  
3665 condition; I think the house built on this very small lot needs to be a small house. It  
3666 needs not to be a two-story house that will be overbuilt for the community and the lot.



3667  
3668 Mr. Nunnally - A-48-2006 has been approved, four to one.  
3669

3670 After an advertised public hearing and on a motion by Mr. Wright, seconded by Ms.  
3671 Harris, the Board **granted** application **A-48-2006** for a variance to build a one-family  
3672 dwelling at 211 N Virginia Avenue (Bungalow City) (Parcel 817-728-0790). The Board  
3673 granted the variance subject to the following conditions:

3674  
3675 1. This variance applies only to the minimum lot width and total lot area  
3676 requirements. All other applicable regulations of the County Code shall remain in force.

3677  
3678 2. Any dwelling on the property shall be served by public water and sewer.  
3679

3680  
3681 Affirmative: Harris, Kirkland, Nunnally, Wright 4  
3682 Negative: Dwyer 1  
3683 Absent: 0  
3684

3685  
3686 Mr. Nunnally - Minutes.  
3687

3688 Mr. Wright - These are not minutes; these are hours.  
3689

3690 Ms. Dwyer - Are we taking April 27, 2006? I have a couple of changes.  
3691 On page 22, I think the phrase, "view, without whether or not" is misplaced, and so I  
3692 think it should read "50 feet of your property, I'm not concerned about how you might  
3693 become" – sounds kind of harsh, doesn't it. Line 956, just remove those words – they  
3694 seem extraneous. Line 956, page 22. Then on page 87, it seems to me that we had  
3695 agreed to a condition that wasn't listed in the conditions, and it had to do with reserving  
3696 the 50-foot right-of way, and that was for – go back and check and look at the  
3697 commentary and the agreement. I believe the applicant agreed to reserve a 50-foot  
3698 right-of-way, and that was not included in the conditions. That would be case A-18-  
3699 2006. That's not a word change; I think it's an omission.  
3700

3701 Mr. Kirkland - You just want to make sure the condition was put in, Ms.  
3702 Dwyer?  
3703

3704 Ms. Dwyer - We asked for the condition, that they reserve right-of-way,  
3705 and they agreed, and then it wasn't included. Then on 105, line 4761, instead of "thing,"  
3706 I think I said "is saying, " so maybe it sounded like "thing." "The staff is saying you can't  
3707 apply," instead of "staff thing you can't apply."  
3708

3709 Mr. Nunnally - Anything else?  
3710

3711 Mr. Wright - Yes, I've got a lot of them. Page 17, line 758, I'm sure I  
3712 didn't say "I vote we approve it," but "I move that we approve it." Secondly, and this

3713 happens throughout this, we have no basis stated for the approval.  
3714  
3715 Mr. Blankinship - Okay, these were sent out to the transcriptionist, and they  
3716 didn't know when certain things .....

3717  
3718 Mr. Wright - I think you've got to have something in here, some basis for  
3719 approval, but if you'll notice on page 17, there's no reason for the approval. The vote is  
3720 there on the next page, but we don't have a basis at all. Page 29, same thing. I don't  
3721 find any basis for reason.  
3722

3723 Ms. Dwyer - I guess we need to ask staff to check all of them.  
3724

3725 Mr. Blankinship - Yes, we'll do that.  
3726

3727 Mr. Wright - Because I've got a number of them, all throughout. I just  
3728 picked up on that. I think it's important. I think the rest of mine are for that reason.  
3729

3730 Ms. Dwyer - I move we approve the April 27, 2006 minutes as amended.  
3731

3732 Mr. Kirkland - Second.  
3733

3734 Mr. Nunnally - Moved by Ms. Dwyer, second by Mr. Kirkland, that they be  
3735 approved by correction. All in favor, say aye. Been approved.  
3736

3737 On a motion by Ms. Dwyer, seconded by Mr. Kirkland, the Board **approved as**  
3738 **amended**, the Minutes of the **April 27, 2006**, Henrico County Board of Zoning  
3739 Appeals meeting.  
3740

3741 Mr. Nunnally - Now what have we got?  
3742

3743 Ms. Harris - The minutes of September 28, no October 5. The meeting  
3744 was on October 19, right? I move that we approve the minutes.  
3745

3746 Mr. Wright - I think we need to correct this. I don't think we show a basis  
3747 for decision on the first case. It just says the decisions and then gives a vote. Page 3.  
3748

3749 Mr. Gidley - Mr. Kirkland, on page 4, line 124, gave the reasons.  
3750

3751 Mr. Wright - Okay, that one's okay.  
3752

3753 Ms. Harris - I move that we approve the minutes of October 19.  
3754

3755 Ms. Dwyer - Second.  
3756

3757 Mr. Nunnally - Moved by Ms. Harris, seconded by Ms. Dwyer, that the  
3758 minutes be approved. All in favor, say aye. Approved.

3759  
3760 On a motion by Ms. Harris, seconded by Ms. Dwyer, the Board **approved** the  
3761 Minutes of the **October 19, 2006**, Henrico County Board of Zoning Appeals  
3762 meeting.  
3763  
3764 Ms. Harris - What are we going to do with these "Guidelines"? Are we  
3765 going to discuss these at another meeting?  
3766  
3767 Mr. Kirkland - Are we going to discuss these next month?  
3768  
3769 Mr. Blankinship - That would be my preference.  
3770  
3771 Mr. Kirkland - What's the agenda for next month, Ben? How does it look?  
3772  
3773 Mr. Blankinship - As of yesterday, there were only a couple, but today's the  
3774 deadline.  
3775  
3776 Mr. Wright - That will give us adequate time to discuss these Guidelines.  
3777  
3778 Mr. Blankinship - Hopefully, yes.  
3779  
3780 Ms. Dwyer - Move we adjourn.  
3781  
3782 Mr. Wright - Second that motion.  
3783  
3784 There being no further business, and on a motion by Ms. Dwyer, seconded by  
3785 Mr. Wright, the Board adjourned until **December 21, 2006**, at 9:00 am.  
3786  
3787  
3788  
3789  
3790 James W. Nunnally,  
  
3791 Chairman  
  
3792  
  
3793  
  
3794 Benjamin Blankinship, AICP  
  
3795 Secretary  
  
3796