

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
2 **HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**
3 **HENRICO COUNTY GOVERNMENT COMPLEX, ON THURSDAY, SEPTEMBER 20,**
4 **2001, AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND**
5 **TIMES-DISPATCH ON AUGUST 30 AND SEPTEMBER 6, 2001.**
6
7

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

Absent R A Wright, Vice-Chairman

Also Present: Benjamin Blankinship, Secretary
Susan W. Blackburn, County Planner II
Priscilla M. Parker, Recording Secretary

8
9 Mr. Kirkland - Welcome, ladies and gentlemen, to the September meeting
10 of the Board of Zoning Appeals. Before we get started, I'll have the Secretary read the
11 rules.
12

13 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies
14 and gentlemen. The rules for this meeting are as follows. The Secretary, myself, will
15 call each case. Then the applicant will come to the podium to present the case. At that
16 time I'll ask all those who intend to speak, in favor or opposition, to stand, and they will
17 be sworn in. The applicants will then present their testimony. When the applicant is
18 finished, anyone else will be given an opportunity to speak. After everyone has spoken,
19 the applicant, and only the applicant, will be given the opportunity for rebuttal. After
20 hearing the case, and asking questions, the Board will take the matter under
21 advisement. They will render a decision at the end of the meeting. If you wish to know
22 what their decision is, you may stay until the end of the meeting, or you may call the
23 Planning Office at the end of the day. This meeting is being tape recorded, so we will
24 ask everyone who speaks, to speak directly into the microphone on the podium, and to
25 state your name for the record. Out in the foyer, there are two binders, which have the
26 staff reports for each case, including the conditions suggested by the staff.
27

28 Mr. Blankinship- We have one request for deferral on the 9 am agenda.
29

30 Mr. Balfour- Which one is that?
31

32 Mr. Blankinship- It is A-119-2001.
33

September 20, 2001

34 **A -119-2001:** **JAMES AND JOYCE CLIFTON** appeal a notice of violation
35 pursuant to Section 24-116(a) of Chapter 24 of the County Code
36 with respect to tents erected at 2900 Mountain Road (Tax Parcel
37 31-A-46 and -47A), zoned R-2A One-Family Residence District
38 (Brookland).

39
40 Mr. Balfour Do I hear a motion?

41
42 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
43 Kirkland, the Board **granted** the request for deferral to the October 18, 2001 meeting.

44
45 Affirmative: Balfour, Kirkland, McKinney, Nunnally, 4
46 Negative: 0
47 Absent: Wright 1

48
49 Mr. Balfour Any other motions for deferral or withdrawals?

50
51 Mr. Blankinship- No sir.

52
53 **A -118-2001:** **Samuel H. and Joyce Y. Turner** request a variance from Section
54 24-95(i)2 of Chapter 24 of the County Code to build a detached
55 garage at 206 Colony Lake Drive (Riverlake Colony) (Tax Parcel
56 99-13-A-13), zoned R-0, One-family Residence District (Tuckahoe).
57 The accessory structure location requirement is not met. The
58 applicants wish to build a detached garage in the side yard, where
59 the Code permits accessory structures in the rear yard.

60
61 Mr. Blankinship- Do you swear the testimony you are about to give is the
62 truth, the whole truth and nothing but the truth so help you God?

63
64 Mr. Turner- I do. We propose to build a stand-alone garage,

65
66 Mr. Balfour- Please state your name and address.

67
68 Mr. Turner Samuel H. Turner, 206 Colony Lake Drive. In developing
69 the site, we were aware of all the rules of the County and are compliant on all issues
70 like the offset on the side lot, as I understand the county rule is that the garage must be
71 behind the rear of the house. The proposed site is behind the rear plain of the main
72 body of the house. Our kitchen obviously extends a little farther out. To comply with
73 the county rules would have a material environmental impact in that we would have to
74 take out about 50 additional trees and would also make the structure much more visible
75 to the lot behind us. We are asking you to approve approximately 14-15 feet variance
76 and setback from the road. As you can see from this picture there are woods in the
77 front so either of the proposed sites would not be visible from the front.

78

79 Mr. Balfour- Any questions from the members of the Board? Appears to
80 be none. Thank you.

81
82 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
83 McKinney, the Board **granted** the variance request subject to the following conditions:

84
85 1. Only the improvements shown on the plan filed with the application may be
86 constructed pursuant to this approval. Any additional improvements shall comply with
87 the applicable regulations of the County Code.

88
89 Affirmative: Balfour, Kirkland, McKinney, Nunnally, 4
90 Negative: 0
91 Absent: Wright 1

92
93 The Board granted this request, as it found from the evidence presented that, due to the
94 unique circumstances of the subject property, strict application of the County Code
95 would produce undue hardship not generally shared by other properties in the area, and
96 authorizing this variance will neither cause a substantial detriment to adjacent property
97 nor materially impair the purpose of the zoning regulations.

98
99 **A -120-2001:** **Margaret Loda and Brent Boger** request a variance from Section
100 24-95(q)5 of Chapter 24 of the County Code to build a screened
101 porch at 9712 Needles Way (Bridgewood) (Tax Parcel 38-4-B-1),
102 zoned R-3, One-family Residence District (Brookland). The rear
103 yardsetback is not met. The applicants have 30 feet rear yard
104 setback, where the Code requires 35 feet rear yard setback. The
105 applicants request a variance of 5 feet rear yard setback.

106
107 Mr. Balfour- Any others to testify on this case besides the applicant?
108 Please raise your right hand and be sworn in.

109
110 Mr. Blankinship- Do you swear the testimony you are about to give is the
111 truth, the whole truth and nothing but the truth so help you God?

112
113 Ms. Loda- I do. My name is Margaret Loda, and I live at 9712 Needles
114 Way. What we are asking for is a variance; we are trying to add a screen porch addition
115 to the back of the house. Currently there is no door to the back; it is the larger of the
116 two windows (picture), and the porch would be 12 feet wide and extend 16 feet back.
117 But we would be 5 feet closer to the back property line than is allowed by code. So
118 what we are asking for is the 5-foot variance. We would like the additional space,
119 because we think it would be a more useful space for traffic flow. As you can see in the
120 picture, we would not need to cut any trees. The space that is there is all grass.

121
122 Mr. Balfour- Any questions of Ms. Loda?

123
124 Mr. McKinney- What is to the rear of your property?

125
126 Ms. Loda - Behind the fence is the neighbor's driveway and then the
127 house. They do not have any windows on the sides that would look out onto our house.

128
129 Mr. McKinney Thank you.

130
131 Mr. Balfour Any other questions? Thank you Ms. Loda.

132
133 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
134 McKinney, the Board **granted** the variance request subject to the following conditions:

135
136 1. Only the improvements shown on the plan filed with the application may be
137 constructed pursuant to this approval. No substantial changes or additions to the layout
138 may be made without the approval of the Board of Zoning Appeals. Any additional
139 improvements shall comply with the applicable regulations of the County Code.

140
141 Affirmative: Balfour, Kirkland, McKinney, Nunnally, 4
142 Negative: 0
143 Absent: Wright 1

144
145 The Board granted this request, as it found from the evidence presented that, due to the
146 unique circumstances of the subject property, strict application of the County Code
147 would produce undue hardship not generally shared by other properties in the area, and
148 authorizing this variance will neither cause a substantial detriment to adjacent property
149 nor materially impair the purpose of the zoning regulations.

150
151 **A -121-2001:** **Louie C. Schweickert** requests a variance from Section 24-94 of
152 Chapter 24 of the County Code to build enclosure on existing deck
153 at 2418 Gurley Road (Skipwith Heights) (Tax Parcel 70-2-F-4),
154 zoned R-3, One-family Residence District (Three Chopt). The rear
155 yard setback is not met. The applicant has 30 feet rear yard
156 setback, where the Code requires 40 feet rear yard setback. The
157 applicant requests a variance of 10 feet rear yard setback.

158
159 Mr. Balfour- Any others to testify on this case besides the applicant?
160 Please raise your right hand and be sworn in.

161
162 Mr. Blankinship- Do you swear the testimony you are about to give is the
163 truth, the whole truth and nothing but the truth so help you God?

164
165 Mr. Balfour- State your name and address please.

166
167 Mr. Lacy- I am Jim Lacy employed by Patio Enclosures; I am the
168 contractor to do the job for Louise Schweickert at 2418 Gurley Road. He has an

169 existing deck, the house has an enormous amount of privacy and he has a privacy
170 fence around the property line. One corner of the deck falls into the plan of the 40-foot
171 setback for this location. We have an elderly couple here that has lung problems and
172 they cannot go out into the yard. They are trying to have an area that they can sit in
173 and still enjoy the outdoors. It is the right hand corner that falls into the setback.

174
175 Mr. Nunnally- Is this sunroom going to be the same size as the deck?
176

177 Mr. Lacy- Yes sir.
178

179 Mr. Nunnally- It is not going to be increased at all?
180

181 Mr. Lacy- No sir.
182

183 Mr. Balfour- Any other questions by members of the Board? If not, thank
184 you Mr. Lacy.
185

186 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
187 Kirkland, the Board **granted** the variance request subject to the following conditions:
188

189 1. Only the improvements shown on the plan filed with the application may be
190 constructed pursuant to this approval. Any additional improvements shall comply with
191 the applicable regulations of the County Code.
192

193 Affirmative:	Balfour, Kirkland, McKinney, Nunnally,	4
194 Negative:		0
195 Absent:	Wright	1

196
197 The Board granted this request, as it found from the evidence presented that, due to the
198 unique circumstances of the subject property, strict application of the County Code
199 would produce undue hardship not generally shared by other properties in the area, and
200 authorizing this variance will neither cause a substantial detriment to adjacent property
201 nor materially impair the purpose of the zoning regulations.
202

203 **A -122-2001:** **Kimco Richmond 800, Inc.** requests a variance from Sections 24-
204 101(e)(2) and (4) of Chapter 24 of the County Code to build a
205 restaurant at 6301 W Broad Street (Tax Parcel 92-A-47), zoned B-
206 2, Business District (Three Chopt). The rear yard setback and site
207 coverage ratio are not met. The applicant has 39.49 feet rear yard
208 setback and 26.9% site coverage ratio, where the Code requires 50
209 feet rear yard setback and permits 25% site coverage ratio. The
210 applicant requests a variance of 10.51 feet rear yard setback and
211 1.9% site coverage ratio.
212

213 Mr. Balfour- Any others to testify on this case besides the applicant?
214 Please raise your right hand and be sworn in

215
216 Mr. Blankinship- Do you swear the testimony you are about to give is the
217 truth, the whole truth and nothing but the truth so help you God?

218
219 Mr. Balfour- State your name and address please.

220
221 Mr. Weinberg- I am Jay Weinberg, and I represent O'Charley's and Kimco
222 the applicant in this appeal. With me this morning is Joey Smith, the director of real
223 estate for O'Charley's, and also Mr. David Smith from Morton G. Thalhimers, who
224 selects sites for them. This is a request for a variance from Section 24.101(a)(2) and
225 (4) of the County Code to build an O'Charley's restaurant at 6301 W. Broad Street on
226 business zoned property. Specifically 2 variances that we request are first a 10.5-foot
227 rear yard variance at the very southwest corner of the existing Burlington Building and a
228 1.9- percent site coverage ratio. That rear yard is just at that corner because we have
229 70 feet at one point and it narrows down to 39 feet.

230
231 As the staff report indicates, the present Burlington Coat Factory building was originally
232 constructed approximately 40 years ago. I must say it was one of the first rezoning
233 cases that I ever tried. It was a single user department store by the name of the
234 Carousel. It was the forerunner of the "Big Boxes." When the building was built, it was
235 in complete compliance with the then applicable zoning ordinances including the
236 setbacks on all sides. It is perfectly legal today as a non-conforming use.
237 Subsequently, Two Guys purchased the building from Harrisonburg, and since it had
238 more than one use, it got converted from retail space to a shopping center, which
239 imposed a different set of rules. Since the building was in complete compliance with
240 zoning ordinance and received a valid certificate of occupancy, it is in fact a non-
241 conforming use and perfectly legal.

242
243 However as the staff and Board knows, being a non-conforming use has many
244 drawbacks including being a cloud on title and prohibitive if not costly factor in
245 refinancing property since it precludes rebuilding in certain cases of destruction.
246 Accordingly, we would like to regain our status as a legally conforming building, which
247 can only be done by the granting of the rear yard variance. The second request is for a
248 1.9-% site coverage variance. Here again a very unusual and atypical set of
249 circumstances exists. Because under B-2 zoning, if we were not classified as a
250 shopping center, we would have more than the required square footage on both
251 parcels.

252
253 As everyone familiar with this site recognizes, this is one of the most under-utilized
254 parking lots in Henrico County. Mr. Smith took a number of photos of the week before
255 Christmas of this particular site to show that the corner where the O'Charley's is going
256 to be built is empty. These photos were not taken for this case they were taken to
257 convince O'Charley's that there was more than enough parking on that site.

258
259 Again, thinking back some 40 years ago, we would not have been requesting this
260 variance if it had not been for the widening of Broad Street, which resulted in the

261 takeover of $\frac{3}{4}$ of an acre on the south side of Broad and the west side of Horsepen
262 adjacent to this site. I think some of you gentlemen will also recall this was a very
263 unusual condemnation because the entire take was on the southern side of the
264 property. Instead of being half on each side. If it had been a regular condemnation,
265 half would have come off of us and half on the other side; and we would have been in
266 compliance.

267
268 I respectfully submit that the requested variance comply with the all applicable
269 jurisdictional conditions preceding for the Board of Zoning Appeals to grant the relief
270 requested for the following reasons. At the time that the original building was built, the
271 rear yard was in compliance with the then applicable provisions of the ordinance. It was
272 only because of subsequent changes, over which we had no control, that it was
273 rendered non-conforming use which we specifically submit is an exceptional situation. If
274 literally enforced, it would we require us to take down 11 feet of the southwest corner of
275 the building, which I submit to you would be confiscatory. It should also be noted that
276 we have more than 70 feet of rear yard on the other end of the building, which gives us
277 more than 50-foot average. We also submit that the 1.9% site coverage variance which
278 we seek, would not have been required if had the condemnation by VDOT for the
279 widening of Broad Street had not occurred, and especially all on our side. Further, we
280 think it is an extremely unusual and exceptional situation because the overwhelming
281 majority of takes are from the centerline on each side of the property. Finally, we would
282 submit that the variances we seek are clearly in harmony with the intended spirit and
283 purpose of the zoning ordinance, and authorizing the variance would not be in
284 substantial detriment to adjacent property and will not materially impair the purpose of
285 this chapter or the public interest but will enhance it.

286
287 As the staff report states, O'Charley's is an extremely attractive restaurant with 2 other
288 locations in Henrico County. The new construction will comply with all the current
289 standards of the zoning ordinance and will have a positive esthetic impact on the area.
290 There will be substantial foundation planting and parking lot landscaping, none of which
291 was required or is present on the site today. I might add that the Plan of Development
292 is coming before the Planning Commission, where we have already reached an
293 agreement on that landscaping and upgrading of this area. We further agree with the
294 staff report, that these variances are not of a general or recurring nature and therefore
295 an amendment to the Code is not necessary at this time. In short, the granting of these
296 two variances will alleviate a clearly demonstrative hardship, which was not self-
297 imposed, but resulted in changes in the ordinance and road widenings and will result in
298 an enhanced quality of development at this critical location. Finally, please note that the
299 subject property is surrounded on all for sides by business zoning, and accordingly this
300 request will have no adverse affect on adjoining properties. We have reviewed the two
301 conditions recommended by staff and find them in proper order and acceptable and
302 agreeable by the applicant. For all the forgoing reasons, Mr. Chairman, we respectfully
303 request that you grant the variances, and I will be happy to answer any questions that
304 you may have.

305
306 Mr. McKinney- Do you have an architectural rendering of this restaurant?

307
 308 Mr. Weinberg- Yes, I have a photograph.
 309
 310 Mr. McKinney- What is the material going to be?
 311
 312 Mr. Weinberg- Red brick. It is an all brick restaurant.
 313
 314 Mr. Balfour- Any other questions for Mr. Weinberg? I noticed that he did
 315 find the conditions in order. So I guess we have to decide if the conditions are in order
 316 as well. Thank you Mr. Weinberg.
 317

318 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
 319 Nunnally, the Board **granted** the variance request subject to the following conditions:
 320

- 321 1. This approval is subject to all conditions that may be placed on the proposed Plan of
 322 Development by the Planning Commission.
 323
- 324 2. This variance applies only to the site coverage and rear yard setback requirement.
 325 All other applicable regulations of the County Code shall remain in force.
 326

327 Affirmative:	Balfour, Kirkland, McKinney, Nunnally,	4
328 Negative:		0
329 Absent:	Wright	1

330
 331 The Board granted this request, as it found from the evidence presented that, due to the
 332 unique circumstances of the subject property, strict application of the County Code
 333 would produce undue hardship not generally shared by other properties in the area, and
 334 authorizing this variance will neither cause a substantial detriment to adjacent property
 335 nor materially impair the purpose of the zoning regulations.
 336

337 **A -123-2001:** **Arnold and Barbara Lowenstein** request a variance from Section
 338 24-94 of Chapter 24 of the County Code to build an addition at
 339 7700 Yardley Court (Williamsburg Park) (Tax Parcel 70-4-B-22),
 340 zoned R-3, One-family Residence District (Three Chopt). The rear
 341 yard setback is not met. The applicants have 14.1 feet rear yard
 342 setback, where the Code requires 40 feet rear yard setback. The
 343 applicants request a variance of 25.9 feet rear yard setback.
 344

345 Mr. Balfour- Any others to testify on this case besides the applicant?
 346 Please raise your right hand and be sworn in
 347

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

351 Ms. Lowenstein- I do.
 352

353 Mr. Balfour- State your name and address please.
354
355 Ms. Lowenstein - Barbara Lowenstein. After 33 years of living in this tri-level
356 home, we want to put an addition of two bedrooms going out of the kitchen with some
357 family room added. This is to accommodate the possibility of a 98-year-old mother-in-
358 law moving in with us and out-of-town family coming to visit and not having a place to
359 stay. We have decided that we want to stay in the house and build this addition. We
360 are in the apex of the court. No one can see the addition from the street, except for the
361 houses on either side. One of them has already built on, and the other is planning to
362 add on. I have letters that have no objections at all to this construction. Behind the
363 back of the house, where we plan to add on is an easement which has been bought by
364 ourselves and the neighbor at 7701 Yardley. We also have that property which is not
365 buildable because it is a power easement, but we do own it. We meet all the
366 requirements of the Power Company; we just don't meet the setback requirement. I
367 noticed from the papers you sent me, you also show the development which we back up
368 to, Thousands Oaks. Your lists show two houses that are directly behind us, which I do
369 not have a letter from. I have since gone to them and gotten a letter that they have no
370 objections. That covers everybody that is anywhere around us. Between us and
371 Thousands Oaks, there is a small strip of undeveloped land that cannot be developed
372 on. We have room for that, room for the Power Company, and we feel that it won't
373 hinder anyone to build this addition.
374
375 Mr. Balfour- Any questions?
376
377 Mr. Blankinship- Did you say that you are part owner of the property between
378 you and Thousands Oaks?
379
380 Ms. Lowenstein - There is a power easement, and my neighbor next and I
381 bought that approximately 25 years ago.
382
383 Mr. Kirkland- Would that be the lot 70-4-B-36?
384
385 Mr. Blankinship- Yes sir.
386
387 Mr. McKinney- Ms. Lowenstein, do you have any plans for this addition?
388
389 Ms. Lowenstein - Mr. Ford has the plans; we have a rough plan.
390
391 Mr. McKinney- That is the plot plan; I mean for the material it is supposed to
392 be built out of?
393
394 Mr. Ford- I am Buddy Ford; I am with James A. Ford Construction
395 Company.
396
397 Mr. McKinney- What is the addition to built out of?
398

399 Mr. Ford- It will match the house, it's brick and aluminum siding.
 400
 401 Mr. McKinney- The siding will on the gable ends like the house?
 402
 403 Mr. Ford- Yes sir.
 404
 405 Mr. Balfour- Any other questions of Ms. Lowenstein or Mr. Ford? Thank
 406 you.

407
 408 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
 409 Nunnally, the Board **granted** the variance request subject to the following conditions:

- 410
 411 1. Only the improvements shown on the plan filed with the application may be
 412 constructed pursuant to this approval. No substantial changes or additions to the layout
 413 may be made without the approval of the Board of Zoning Appeals. Any additional
 414 improvements shall comply with the applicable regulations of the County Code.
 415
 416 2. At the time of building permit application, the applicant shall submit the necessary
 417 information to the Department of Public Works to ensure compliance with the
 418 requirements of the Chesapeake Bay Preservation Act and the code requirements for
 419 water quality standards.

420
 421 Affirmative: Balfour, Kirkland, McKinney, Nunnally, 4
 422 Negative: 0
 423 Absent: Wright 1

424
 425 The Board granted this request, as it found from the evidence presented that, due to the
 426 unique circumstances of the subject property, strict application of the County Code
 427 would produce undue hardship not generally shared by other properties in the area, and
 428 authorizing this variance will neither cause a substantial detriment to adjacent property
 429 nor materially impair the purpose of the zoning regulations.

430
 431 **A -124-2001:** **Centex Homes** requests a variance from Sections 24-95(r)(3) and
 432 (5) of Chapter 24 of the County Code to build a single family home
 433 at 931 Ward Road (Stonewall Glen) (Tax Parcel 33-7-A-6), zoned
 434 R-2A, One-family Residence District (Fairfield). The lot width
 435 requirement and public street frontage requirement are not met.
 436 The applicant has 69.3 feet lot width and 17.39 feet public road
 437 frontage, where the Code requires 80 feet lot width and 20 feet
 438 public road frontage. The applicant requests a variance of 10.7 feet
 439 lot width and 2.61 feet public road frontage.

440
 441 Mr. Balfour- Any others to testify on this case besides the applicant?
 442 Please raise your right hand and be sworn in
 443

444 Mr. Blankinship- Do you swear the testimony you are about to give is the
445 truth, the whole truth and nothing but the truth so help you God?
446
447 Mr. Ketchum- I do.
448
449 Mr. Balfour- State your name and address please.
450
451 Mr. Ketchum- My name is Joe Ketchum. I work for Timmons, and we are
452 representing Centex Homes in this case. This lot 6 in Stonewall Glen was a lot that
453 recorded with less than the minimum requirement for street frontage for a flag lot. It has
454 17.39 feet frontage where the Code requires 20 feet. We are requesting a variance so
455 the lot can be built on. In addition to that, because the narrowness of the lot in the front
456 and the requirement of a 80-foot lot width building line, the 80-foot line pushes the
457 house way back on the lot so that the buildable area is very small. In order to get a
458 house on this lot that would look appealing to the adjoining houses, we are asking a
459 variance for the lot width requirement also.
460
461 Mr. Balfour- Questions from Board Members? Are the two of you in
462 opposition? State your name please?
463
464 Mr. Reese- James Reese. I reside at 927 Ward Road, which is the lot
465 adjacent to the subject lot, to the left. I own that home, I also talked with everyone in
466 the cul-de-sac about the events that have transpired within the last week; a lot of them
467 are not able to be here. So I am going to be the spokesperson for them. All of us in the
468 cul-de-sac object to the house being built there.
469
470 Mr. McKinney- What do you object to, Mr. Reese.
471
472 Mr. Reese- We do not feel that this house will be conducive to the
473 neighborhood the way the house has to be situated on the lot.
474
475 Mr. McKinney- When you say "not conducive" what do you mean?
476
477 Mr. Reese- Appearance-wise.
478
479 Mr. McKinney- Have you talked to Syntax about the architectural structure
480 of the home, what it is going to look like and so forth? How many square feet. . .
481
482 Mr. Reese- No sir, I have not.
483
484 Mr. McKinney- Would you like us to pass this by, and you and Syntax can
485 go out into the lobby and let them show you what they are building?
486
487 Mr. Reese- No sir, I would still object. Because of the size of the lot and
488 the way the lot is situated, and how narrow the lot is up near the road. We just all feel
489 that it is not going to be a pretty sight for the subdivision.

490
491 Mr. Balfour- In other words, you don't want a house there at all,
492 regardless of style or location.

493
494 Mr. Reese- No sir.

495
496 Mr. McKinney- Thank you.

497
498 Mr. Balfour- Would one of you gentlemen like to respond?
499

500 Mr. Miller- My name is Steve Miller, I work with Syntax Homes. The
501 home on this lot is going to be subject to the same architectural review of other homes
502 that were built in the neighborhood. We will have to submit plans to the architectural
503 review committee to make sure the house is in conformance with the other homes in the
504 neighborhood. One of the reasons for the variance was, there is a minimum house size
505 requirement that is required by the covent of the neighborhood, so that forces us to put
506 a larger house on the lot that we might have been able to fit in that restrictive building
507 area. That was one of the things that caused us to have to come for the variance, was
508 to get a house that met the minimum architectural requirements for the neighborhood.
509 And I think it was in the staff report, the variance is also attempting to the make the
510 house make sense with the other houses in its appearance from the street. I feel that
511 we have tried to, and will have to continue to comply with the same architectural
512 requirements of the neighborhood.

513
514 Mr. Balfour- Have any questions? Thank you.

515
516 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
517 Kirkland, the Board **granted** the variance request subject to the following conditions:

518
519 1. The property shall be developed in substantial conformance with the plan filed with
520 the application. No substantial changes or additions to the layout may be made without
521 the approval of the Board of Zoning Appeals.

522
523 2. At the time of building permit application, the applicant shall submit the necessary
524 information to the Department of Public Works to ensure compliance with the
525 requirements of the Chesapeake Bay Preservation Act and the code requirements for
526 water quality standards.

527
528 3. Connections shall be made to public water and sewer.

529
530 Affirmative: Balfour, Kirkland, McKinney, Nunnally, 4

531 Negative: 0

532 Absent: Wright 1

533
534 The Board granted this request, as it found from the evidence presented that, due to the
535 unique circumstances of the subject property, strict application of the County Code

536 would produce undue hardship not generally shared by other properties in the area, and
537 authorizing this variance will neither cause a substantial detriment to adjacent property
538 nor materially impair the purpose of the zoning regulations.
539

540 **A -125-2001:** **John R. and Natalie N. Congdon** request a variance from
541 Sections 24-95(i)(2) and (2)f of Chapter 24 of the County Code to
542 build an in-ground pool at 109 Walsing Drive (Dorsett Woods) (Tax
543 Parcel 111-11-B-8), zoned R-1, One-family Residence District
544 (Tuckahoe). The accessory structure location requirement and
545 minimum side yard setback are not met. The applicants have 6
546 feet minimum side yard setback and a swimming pool in the side
547 yard, where the Code requires 10 feet minimum side yard setback
548 and allows a swimming pool in the rear yard. The applicants
549 request a variance of 4 feet minimum side yard setback and to
550 locate the swimming pool in the side yard.
551

552 Mr. Balfour- Any others to testify on this case besides the 3 people
553 standing? Please raise your right hand and be sworn in
554

555 Mr. Blankinship- Do you swear the testimony you are about to give is the
556 truth, the whole truth and nothing but the truth so help you God?
557

558 Mr. Condon- I do.
559

560 Mr. Balfour- State your name and address please.
561

562 Mr. Condon- My name is John Condon. My wife and I built this house at
563 109 Walsing Drive 40 years ago. For the whole 40 years, we never realized that our
564 back yard was not our back yard. The house directly across the street from us faces
565 Walsing Drive and the house beside us faces Walsing Drive. They are similar
566 circumstances in my opinion. The pool that is proposed cannot be seen from any of the
567 neighbors because it is shielded by the house itself. The only way it can be seen is
568 from a vacant lot behind it, which my wife and I own. It is well screened and can be
569 screened even more. We have a contract on this house providing a pool can be built.
570 We have closed on the house we intend to move into. It would be terrible hardship on
571 us if this were not approved. Thank you.
572

573 Mr. McKinney- Mr. Condon, the contract that you have on this house, does
574 it include the lot behind the house?
575

576 Mr. Condon- No it does not.
577

578 Mr. McKinney- So what you are saying is that does not include that lot, so
579 someone can come and build a house on that lot, and it will be visible to this pool.
580

581 Mr. Condon- With out screening it a little more, this is true. Except that
582 the pool will be lower than the lot, it is not on the same level as the lot. So it would be
583 very hard to see the pool, particularly if more screening were put in.
584

585 Mr. McKinney- This picture we are looking at on the screen, is this taken
586 from the lot behind the house?
587

588 Mr. Blankinship- It is taken from Earlwood Road, looking down the property
589 line between Lot 7 and Lot 8.
590

591 Mr. Balfour- So the pool would go approximately where that door is
592 shown?
593

594 Mr. Condon- I am not sure where they are going to build the pool. I think
595 it will adjoin the patio.
596

597 Mr. Balfour- I see the patio on the plans, and the pool is just to the rear of
598 that, an in-ground pool?
599

600 Mr. Condon- Yes sir.
601

602 Mr. Balfour- Are there plans to put more screening up?
603

604 Mr. Condon- To the right of that shrubbery is all woods, and it is very
605 thick.
606

607 Mr. Balfour- That is the vacant lot, isn't it.
608

609 Mr. Condon- Yes sir, it is. My point is that you could screen that off from
610 the pool even more than it is now with the woods.
611

612 Mr. McKinney- Are the purchasers here?
613

614 Mr. Condon- Yes sir.
615

616 Mr. McKinney- Do you have a layout showing where the pool is?
617

618 Mr. Condon- Yes sir, the purchasers do.
619

620 Mr. Balfour- Any further questions of Mr. Condon? We would like to hear
621 from the purchasers as to the location of the pool. Please state your name.
622

623 Mr. Face- Edward Joseph Face, Jr., presently residing at 506 Wavney
624 Road in Westham Subdivision. We are the intended purchasers of this property. We
625 have been searching for property in the west-end that could accommodate a pool. We
626 have been told that we could not build a pool at our present home. This plot of the

627 property that was submitted with the application shows the layout of the intended pool
628 here between the slate patio and a brick wall. As you can see, there is a property line
629 behind the brick wall. And to answer your question about additional screening, my wife
630 has some plans for landscaping there that will screen that portion of the property to
631 block any sight to the pool.

632
633 Mr. McKinney- What type of fence will you build around the pool, if this is
634 approved?

635
636 Mr. Face- We have met with the pool builder, Mr. Dave Hancock with
637 Douglas Aquatics, and we have discussed two types of fencing. One is a fence with
638 wrought iron around the entire property; the other is to build a fence just around the pool
639 itself. We are leaning to enclosing the entire property.

640
641 Mr. McKinney- What is the size of this pool?

642
643 Mr. Face- It would be 18 x 36 feet.

644
645 Mr. Balfour- How high is that brick wall?

646
647 Mr. Face- I would estimate about 3 feet tall.

648
649 Mr. Balfour- You propose to add to that height, by putting another fence
650 there?

651
652 Mr. Face- It would not be on top of the brick wall. It would more than
653 likely be behind the brick wall. We would do whatever is necessary to meet the County
654 Code to protect the pool.

655
656 Mr. Nunnally- When you and your wife signed the purchase contract, was
657 this in the contract to get the variance for a swimming pool or did this come up later on?

658
659 Mr. Face- No sir. This was in the original contract for purchase. We
660 purposely put in the contract a contingency to receive the property variances to build a
661 swimming pool on September 20. If we do not receive this, the contract is null and void.

662
663 Mr. Nunnally- Thank you.

664
665 Mr. McKinney- What is the reason for the size of this pool?

666
667 Mr. Face- I have a 15 year old handicapped son and we would like to
668 build a swimming pool for him and the rest of the family.

669
670 Mr. Balfour- Any other questions? Any one to speak in opposition?
671 Thank you.

672

673 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
674 Nunnally, the Board **granted** the variance request subject to the following conditions:
675

676 1. Only the improvements shown on the plan filed with the application may be
677 constructed pursuant to this approval. No substantial changes or additions to the layout
678 may be made without the approval of the Board of Zoning Appeals. Any additional
679 improvements shall comply with the applicable regulations of the County Code.
680

681 Affirmative:	Balfour, Kirkland, McKinney, Nunnally,	4
682 Negative:		0
683 Absent:	Wright	1

684
685 The Board granted this request, as it found from the evidence presented that, due to the
686 unique circumstances of the subject property, strict application of the County Code
687 would produce undue hardship not generally shared by other properties in the area, and
688 authorizing this variance will neither cause a substantial detriment to adjacent property
689 nor materially impair the purpose of the zoning regulations.
690

691 **A -127-2001:** **Douglas Palais and Hazel Buys** request a variance from Section
692 24-94 of Chapter 24 of the County Code to build an addition at
693 8659 Irving Lane (Sleepy Hollow) (Tax Parcel 112-5-C-5), zoned R-
694 1, One-family Residence District (Tuckahoe). The rear yard
695 setback is not met. The applicants have 17.1 feet rear yard
696 setback, where the Code requires 50 feet rear yard setback. The
697 applicants request a variance of 32.9 feet rear yard setback.
698

699 Mr. Balfour- All those planning to testify on this case, please raise your
700 right hand and be sworn in
701

702 Mr. Blankinship- Do you swear the testimony you are about to give is the
703 truth, the whole truth and nothing but the truth so help you God?
704

705 Mr. Corwin- I do.
706

707 Mr. Balfour- State your name and address please.
708

709 Mr. Corwin- My name is Scott Corwin, I work as Johannas Design Group.
710 I also reside at 8009 Toan Road. We are requesting a variance for the property that
711 Hazel Buys and Doug Palais own. As a few points of background, this house was
712 acquired in good faith. An existing non-conforming configuration restricts the use of the
713 property. The owners have unique family health conditions and circumstances. Other
714 adjacent properties do not have these restrictions imposed on them. The proposed
715 additions and renovations have been designed to have negligible impact on the
716 adjacent properties.
717

718 The owners have two family situations that they are attempting to accommodate. The
719 health of an elderly parent has deteriorated over that past year. The first floor
720 renovation and garage addition will allow the elderly parent to reside comfortably at
721 ground level. Additionally, the owner's existing health condition will be accommodated
722 by the second story renovation in the area above the existing garage. Absent this
723 proposed construction and instituting these changes, this unique family cannot
724 reasonably use the property with these unique circumstances on this unique lot.

725
726 The existing house constructed in 1958, predates the Henrico 1960 Code. From the
727 recollection of the neighbor, the existing garage had been a carport, which was
728 enclosed by a previous owner. The existing setback is at the location of the original
729 carport. Having spoken with the zoning staff, it is assumed that the residence was
730 constructed accordingly in 1958. The current Code deems the existing house non-
731 conforming by reason of the reverse corner lot situation. The Irving Lane frontage is
732 about 13 feet longer than that on Sleepy Hollow. The proposed addition does not
733 encroach farther than the existing now non-conforming border. Additionally, we have
734 angled the proposed garage addition away from that encroaching border in order to
735 both lessen the impact on the property adjacent to Irving Lane and in an attempt to build
736 an addition in such a way as to preserve an existing tree with a 60 foot canopy. An
737 extensive renovation has been started on the house. This renovation greatly increases
738 the value the property. Among other improvements; an entirely new heating and air
739 conditioning system, removal of an asbestos shingle roof The addition and
740 renovations requested by this variance application will further increase the value of this
741 property.

742
743 If this variance is not approved, the owners would be required to sell their home, which
744 is currently under construction, at a great expense in order to accommodate an elderly
745 family member. Letters were sent to all the adjacent property owners, inviting them to
746 come and review the plans. Two neighbors accepted our offer, Douglas Pitts of 8656
747 Irving Lane and Robert Lurch of 8658 Irving Lane. Both are in support of the plans.
748 Also having spoken with the staff 2 days ago, we received notice that one neighbor had
749 had contact with the staff, this was the neighbor who lives adjacent to my client on
750 Sleepy Hollow. Hazel called Ms. Janice Busack of 203 Sleepy Hollow road to discuss
751 the project. Her fears had been alleviated by the staff member with whom she spoke.
752 We have not heard of any other inquires, requests for information or comments.

753
754 Finally, Hazel and Doug are going through extensive renovations to their house in order
755 to accommodate existing health problems and aging parents, and they must adapt their
756 plans. This house constructed properly in 1958 is now deemed non-conforming by the
757 Code. We will encroach no farther than the existing Code imposed encroachment. The
758 staff report states the house was oriented as if Irving Lane was the front yard and it
759 states if that were the case, the variance would not be necessary. A reasonable person
760 approaching this house which has an Irving Lane address, would believe it is situated
761 properly. The variance will allow Hazel and Doug to use their unique property in a way
762 similar to all their neighbors. We respectfully request that you grant this variance.

763

764 Mr. Balfour- Are there any questions by Board Members?
 765
 766 Mr. McKinney- Do they intend to use this as a business at their home?
 767
 768 Mr. Corwin- No.
 769
 770 Mr. McKinney- I know you said she was an artist and he was a professional
 771 photographer.
 772
 773 Mr. Balfour- Any other questions? I don't believe there was any
 774 opposition. Thank you.
 775

776 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
 777 Nunnally, the Board **granted** the variance request subject to the following conditions:
 778

779 1. Only the improvements shown on the plan filed with the application may be
 780 constructed pursuant to this approval. No substantial changes or additions to the layout
 781 may be made without the approval of the Board of Zoning Appeals. Any additional
 782 improvements shall comply with the applicable regulations of the County Code.
 783

784 Affirmative:	Balfour, Kirkland, McKinney, Nunnally,	4
785 Negative:		0
786 Absent:	Wright	1

787
 788 The Board granted this request, as it found from the evidence presented that, due to the
 789 unique circumstances of the subject property, strict application of the County Code
 790 would produce undue hardship not generally shared by other properties in the area, and
 791 authorizing this variance will neither cause a substantial detriment to adjacent property
 792 nor materially impair the purpose of the zoning regulations.
 793

794 **A -128-2001:** **Katherine B. Cragg** requests a variance from Section 24-9 of
 795 Chapter 24 of the County Code to build a single family home at
 796 11740 Old Washington Highway (Lakeview) (Tax Parcel 14-2-1-
 797 6A), zoned A-1, Agricultural District (Brookland). The public street
 798 frontage requirement is not met. The applicant has 0 feet public
 799 street frontage, where the Code requires 50 feet public street
 800 frontage. The applicant requests a variance of 50 feet public street
 801 frontage.
 802

803 **A -129-2001:** **Katherine B. Cragg** requests a variance from Section 24-9 of
 804 Chapter 24 of the County Code to build a single family home at
 805 11750 Old Washington Highway (Lakeview) (Tax Parcel 7-2-1-6B),
 806 zoned A-1, Agricultural District (Brookland). The public street
 807 frontage requirement is not met. The applicant has 0 feet public
 808 street frontage, where the Code requires 50 feet public street

809 frontage. The applicant requests a variance of 50 feet public street
810 frontage.

811
812 **A -130-2001:** **Katherine B. Cragg** requests a variance from Section 24-9 of
813 Chapter 24 of the County Code to build a single family home at
814 11760 Old Washington Highway (Lakeview) (Tax Parcel 7-2-1-7),
815 zoned A-1, Agricultural District (Brookland). The public street
816 frontage requirement is not met. The applicant has 0 feet public
817 street frontage, where the Code requires 50 feet public street
818 frontage. The applicant requests a variance of 50 feet public street
819 frontage.

820
821 Mr. Balfour- All that expect to testify in this case please stand. Would
822 you raise your right hand and be sworn in.

823
824 Mr. Blankinship- Do you swear the testimony you are about to give is the
825 truth, the whole truth and nothing but the truth, so help you God?

826
827 Mr. Henry- I am Michael Henry representing Ms. Craig. We have a
828 situation where we have 3 existing lots that were platted in 1945, and as a result of the
829 changes in the ordinances, they are now unable to be built on unless they can adjoin
830 public road frontage. We were unable to obtain the necessary width in the easement in
831 order to construct a public road back to these lots. So we are now in a situation where
832 without the variance, these lots are unbuildable. I noticed in the notes from the
833 Planning Department, they had questions about the access. There was a case that was
834 decided just recently that clarified any issues that come with the right of way and they
835 dedicated this 24-foot road back to these lots. I have a copy of the paper work. There
836 are several roadways throughout this subdivision that were never developed. The
837 Axelles, who own several parcels of land in and around these lots, clarified any issues
838 with the access and they have been resolved.

839
840 The type of houses going in are going to be a benefit to the area. They will be nice
841 homes, and I am sure the adjacent owners will not have an issue with them in size or
842 type. The homes are identical in size, because we only have one home style picked
843 out. The location on the lots is of a general nature so compliance with setbacks could
844 be viewed.

845
846 Mr. Nunnally- How many square feet in the homes?

847
848 Mr. Henry- The rancher will have 2,500 square feet and be all brick, the
849 other will be 3,000 square feet.

850
851 Mr. Balfour- I gather the area on either side of your lots is vacant.

852
853 Mr. Henry- Yes.

854

855 Mr. Balfour- There are 2 homes across the street. . .
856
857 Mr. Henry- Yes.
858
859 Mr. Kirkland- Mr. Secretary are you reviewing the document?
860
861 Mr. Blankinship- Yes.
862
863 Mr. Kirkland- That was my concern, the legal access to the 3 parcels of
864 land.
865
866 Mr. Henry- That was our concern also.
867
868 Mr. Kirkland- Because without that, you could not get a building permit.
869 Does this existing road run all the way to the Chickahominy River?
870
871 Mr. Henry- It actually does. I have walked down it, the power lines go
872 down to the last house on the road. There are no improvements made past the last
873 house. But the roadbed extends past that.
874
875 Mr. Blankinship- Mr. Chairman, this is a court order dated July 2, 2001, and it
876 reads in part that the court finds that Katherine B. Cragg and her successors in interest
877 have an easement of ingress and egress across a portion of the Taylor's Farm
878 Subdivision roads described and identified in the attached exhibit 1. That exhibit shows
879 the narrow strip of property extended from Old Washington Highway extending all the
880 way past to an intersection. This does grant them legal access by way of an easement
881 to the property across that road.
882
883 Mr. Balfour- Any other questions? Next. .
884
885 Ms. Weaver- My name is Nicole Weaver. I reside at 11860 Old
886 Washington Highway. I am one of the houses across from this alleged 20-foot road. I
887 wanted to bring to your attention that the blue road in this finale decree on the plat does
888 not go to Old Washington Highway. So I beg to differ that there is an easement or right
889 of way to goes to any road. Ms. Melton is here with me, she and her sister own the
890 property that actually comes to Old Washington Highway at the end of this 24-foot road.
891 This 24-foot road section that criss-crosses this subdivision was owned by Mr. Cook in
892 1920. What Mr. Axelle wanted to do for his own benefit was to make his parcel one
893 parcel so he could sell it to a developer. The only way he could do that was to do this
894 quick deed to have the 24-foot section of the road split between the land owners. He
895 did grant the easement, but not to Old Washington Highway or Greenwood Road, it just
896 stops at the blue marking. Ms. Melton owns the land that actually comes to Old
897 Washington Highway, and there is not recorded in her deed of any right of ingress or
898 egress at all. So they do not even have a easement.
899

900 Mr. McKinney- Well, if they don't have an easement, they certainly can't
901 build.
902
903 Ms. Weaver- I just wanted to point that out.
904
905 Mr. Kirkland- Where does the blue road end on this drawing?
906
907 Mr. Weaver- Right at the edge of Axelle's property.
908
909 Mr. Blankinship- This plat does not show it all the way out to Old Washington
910 Highway. I do not have the subdivision plat in front of me. The tax map makes it
911 appear that road of the old subdivision does go all the way to Old Washington Highway.
912 But I don't have the plat.
913
914 Ms. Weaver- Technically, that 24-foot section still belongs to Mr. Cook
915 which they couldn't find.
916
917 Mr. Blankinship- The purpose of the order was to dispose of that. It doesn't
918 belong to him anymore as of July 2.
919
920 Ms. Weaver- Only the part that is highlighted in blue and yellow and pink.
921
922 Mr. Blankinship- This map is colored differently, but I see it still doesn't show
923 the intersection. It is described as subdivision roads as shown on the plat of Taylor
924 Farms. As you said, the condition of the variance would require that legal access be
925 demonstrated before we would grant a building permit. So no one is at risk if you grant
926 this with that condition.
927
928 Ms. Weaver- I would also like to bring up the fact that this is a very busy
929 intersection, Old Washington Highway and Greenwood Road, the stop signs being on
930 Old Washington Highway. There is also a store, and the roadway runs right into her
931 parking lot. If you do grant this and there is legal access, you are going to have a
932 problem with traffic. There are blind spots everywhere and I just don't think it would be
933 . . . If someone were to look at the intersection, they would agree allowing more traffic
934 via these homes would be acceptable to the county.
935
936 Mr. Kirkland- So this little road comes out behind the store?
937
938 Ms. Weaver- Yes sir.
939
940 Mr. McKinney- Is there another way to get to the property?
941
942 Mr. Blankinship- The subdivision roads wrap around it; there is another
943 subdivision road that comes to Old Washington Highway. I am looking back through
944 this court order, and it appears that it specifically gives the right to that stretch of road to

945 the adjacent lots to that road. Katherine Cragg and her assigns do not have permission
946 to cross it.
947
948 Mr. McKinney- That cannot have any land landlocked in the Commonwealth
949 of Virginia, can they?
950
951 Mr. Blankinship- I think this functions as a prescriptive easement. This is a
952 court order allowing easement across that property.
953
954 Mr. McKinney- But not to Old Washington Highway, if what Ms. Weaver
955 says is correct.
956
957 Mr. Blankinship- I think that is open to dispute.
958
959 Mr. McKinney- It crosses Ms Melton's property, and there are no easements
960 across her property.
961
962 Ms. Weaver- We have the deed; would you like to look at it?
963
964 Mr. McKinney- Is there a plat attached to that deed?
965
966 Ms. Weaver- Yes.
967
968 Mr. Balfour- We are not being asked whether or not they have access to
969 build, our only request is that if they meet all the other requirements, will we grant them
970 to build on these 3 lots for the reason they ask for. We have to take it up on that issue
971 alone, and if we disapprove it or approve it, he has some other hurdles to cross. But we
972 don't need to take time worrying about it.
973
974 Mr. Blankinship- Your proposed condition takes that into account. They are
975 required to satisfy that condition before they can get a building permit.
976
977 Ms. Weaver- He is proposing 3 dwellings. Isn't that a subdivision, and
978 don't you have more than that 20-foot little driveway to get to them.
979
980 Mr. Blankinship- The lots have already been divided and they have already
981 been created.
982
983 Mr. Balfour- Any other questions? Comments?
984
985 Ms. Melton- I am Joyce Melton, the property owner at the corner of Old
986 Washington Highway and Greenwood Road. I am disturbed that I did not get
987 notification on this hearing this morning, the proposal is to come right across my
988 property. That property has not been dedicated, and I am not really interested in giving
989 it away.
990

991 Mr. McKinney- Mr. Secretary, do you consider Ms. Melton an adjoining
992 property owner?
993

994 Mr. Blankinship- No, because the right of way does not belong to these
995 applicants, so according to the Code we were required to notify everyone whose
996 property adjoins those three lots.
997

998 Ms. Melton- But the proposed road will come down and take a portion of
999 my property?
1000

1001 Mr. Blankinship- You are certainly involved, and I am glad that you are here
1002 this morning.
1003

1004 Mr. Balfour- Any other questions of Ms. Melton? Thank you. I believe
1005 there were 2 others who would like to speak. Both of you please stand and be sworn in.
1006

1007 Mr. Blankinship- Do you swear the testimony you are about to give is the
1008 truth, the whole truth and nothing but the truth, so help you God?
1009

1010 Ms. Thornton- I am Julia Melton Thornton. My reference is to the fact that
1011 the property was sold; a couple of lots were put together and that road went back far
1012 enough to get there. My father was the owner of the property; it was approximately 5
1013 acres, and as a result, the use of the road that is 24 feet across was given by him to let
1014 the people get back to the 2 lots that were sold. The fence that you had on your
1015 reference photo had no relation to us. Some one else established the fence, and they
1016 went out on the railroad right of way. The railroad closed the access and the man came
1017 to me and asked me if he could use our road. I said yes. He never used the road. In
1018 the beginning, Mr. Fletcher, Mr. Cook, Mr. Gilman owned the land through the years.
1019 My father bought the land, 2 pieces, from Mr. Gilman. My records show that it is called
1020 Hunton Terrace. I think that this shows that he owns the 24 foot right of way so they
1021 could get the houses on the back level.
1022

1023 Mr. Blankinship- And that 24 foot road going from Old Washington Highway
1024 all the way back to the property was owned by Mr. Cook.
1025

1026 Ms. Thornton- It was owned by Cook, by Fletcher and all the other people
1027 here.
1028

1029 Mr. Blankinship- And this court order requires that this property that was
1030 previously owned by Mr. Cook is no longer owned by him and that these people now
1031 have the right to cross it.
1032

1033 Ms. Thornton- Mr. Cook sold it to Mr. Gilman.
1034

1035 Mr. Balfour- Ms. Thornton, thank you for your information. Our authority
1036 has nothing to do with the roads. You may be entirely correct, the only issue we can

1037 decide is whether or not if they meet all the other requirements, we are willing to let
1038 them void the public road frontage on these 3 lots. That is the only thing we decide. If
1039 we decide to grant them what they are requesting, they are still going to have to get the
1040 road matter straight. But not with us, we cannot turn it down or approve it for those
1041 issues. We appreciate the information, and it is certainly something Mr. Blankinship will
1042 have in his file when they go for their building permit. But that is not really something
1043 we can decide this morning. The only matter we can decide is if they meet all the other
1044 requirements, we may let them put a house on each of the lots with this variance related
1045 to the frontage. If they do have access to the property, you are then opposed to them
1046 building the houses?

1047
1048 Ms. Thornton - No, I have no objection. It is just that the land that you are
1049 talking about belongs to us.

1050
1051 Mr. Balfour- That is something we cannot handle at this point. Are there
1052 any other questions of Ms. Thornton? If not, thank you.

1053
1054 Mr. Volkmen- My name is Keith Volkmen; I live at 11864 Old Washington
1055 Highway. My house is the one that is right above the blue road on the plat. This week,
1056 the concern of access to the property is being recorded today in the courthouse. The
1057 little piece of property that is between the road on the right and the little house on Old
1058 Washington. That little strip to the side has been sold as of last week. The Axelle's
1059 sold that property to the Taggarts. There is a swamp on the backside of all this
1060 property; if a road goes in through there to gain access to these pieces of property,
1061 which will be next to me, it is going to block up with water coming from all this farm land
1062 draining through my property. I have a huge culvert pipe that takes the water off of this
1063 farm and runs it right through my property.

1064
1065 Mr. Balfour- These issues you will have to take up with the County. Do
1066 you oppose these homes to be built?

1067
1068 Mr. Volkmen- Yes sir, I do. It is going to be right in our front door. My
1069 house has a lot of glass in the house and it is going to be sitting very close to where we
1070 are, and I am opposed to a house being built there.

1071
1072 Mr. Balfour- Have you looked at the plans, do you know what kind of
1073 house is going to be built there?

1074
1075 Mr. Volkmen- I have been told what is being planned to be built there.

1076
1077 Mr. Balfour- Are there any questions of this gentleman? If not, thank you.
1078 Now if the applicant has any thing to say

1079
1080 Mr. Henry- Briefly, the issue with the access on the road going through
1081 the swamp, it will be routed differently. The location of the house on the lot, these lots
1082 are large and we will want privacy also. We will place the homes so that they do not

1083 intrude on others. The drawings submitted with the case are not for the location of the
1084 houses, it was only for the road frontage issue. When they bought the property, these
1085 lots have existed since 1945.

1086
1087 Mr. Balfour- Are you planning to rent these homes?

1088
1089 Mr. Henry- No sir, one is for my parents, one is for myself, and the other
1090 is for a friend. Any other questions for the applicant? If not thank you.

1091
1092 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
1093 Nunnally, the Board **granted** the variance request subject to the following conditions:

1094
1095 1. The applicant shall present proof with the building permit application that a legal
1096 access to the property has been obtained.

1097
1098 2. This variance applies only to the public street frontage requirement. All other
1099 applicable regulations of the County Code shall remain in force.

1100
1101 3. The owners of the property, and their heirs or assigns, shall accept responsibility for
1102 maintaining access to the property until such a time as the access is improved to
1103 County standards and accepted into the County road system for maintenance.

1104
1105 Affirmative: Balfour, Kirkland, McKinney, Nunnally, 4
1106 Negative: 0
1107 Absent: Wright 1

1108
1109 The Board granted this request, as it found from the evidence presented that, due to the
1110 unique circumstances of the subject property, strict application of the County Code
1111 would produce undue hardship not generally shared by other properties in the area, and
1112 authorizing this variance will neither cause a substantial detriment to adjacent property
1113 nor materially impair the purpose of the zoning regulations.

1114
1115 **A -131-2001 Reid Cardon** requests a variance from Section 24-95(i)(2) of
1116 Chapter 24 of the County Code to build a swimming pool at 9100
1117 Windover Court (Mooreland Landing) (Tax Parcel 124-6-A-35),
1118 zoned R-1, One-family Residence District (Tuckahoe). The
1119 accessory structure location requirement is not met . The applicant
1120 has a corner lot and wishes to build swimming pool in side yard,
1121 where the Code permits accessory structures only in the rear yard.
1122 The applicant requests a variance to allow the pool to be built in the
1123 side yard.

1124
1125 Mr. Balfour- All those planning to testify on this case, please raise your
1126 right hand and be sworn in

1127

1128 Mr. Blankinship- Do you swear the testimony you are about to give is the
1129 truth, the whole truth and nothing but the truth so help you God?
1130
1131 Mr. Stanley- I do.
1132
1133 Mr. Balfour- State your name and address please.
1134
1135 Mr. Stanley- I am with JOPA Company, we are the contractor for the
1136 swimming pool. You can see that the proposed location of the pool is directly behind
1137 the house. The way the house is situated on the lot, is caddy-corner and the address is
1138 Wyndham Court. By the County zoning ordinance, if we were to place the pool
1139 according to that, the pool would be in the far right corner of the lot. This is more visible
1140 to the surrounding properties than the location my client proposes. We would prefer to
1141 locate it behind the house where it would be screened by the house and from the
1142 neighbors directly in the rear. It is also my understanding that the owners will heavily
1143 landscape the left property line to screen the neighbors from the pool. And a fence
1144 would be required around the pool. In keeping with the neighborhood, the fence would
1145 be aluminum "wrought iron looking" with brick piers.
1146
1147 Mr. Balfour- Any questions?
1148
1149 Mr. Kirkland- What is the size of this pool?
1150
1151 Mr. Stanley- It is fairly small, 16 x 30 feet.
1152
1153 Mr. Balfour- Any other questions?
1154
1155 Mr. Cardon - I am Reed Cardon, the owner of the property. Almost every
1156 house in Mooreland Landing has a pool; the pool proposed cannot be viewed from
1157 either road, it is completely screened by the house. The house to the left, is at a lower
1158 elevation, which will help block the view and I am planning to plant a row of Leyland
1159 Cyprus along that property line for screening.
1160
1161 Mr. Balfour- Any other questions? There appears to be none, so let us
1162 hear from the other folks.
1163
1164 Mr. Newland- I am James Newland, and this is my wife Dawn. We live at
1165 9104 Windover Court. We are the adjacent property owners. First of all, we do not
1166 have any objection to the construction of the pool; we would like them to have the pool.
1167 We have some questions, which I just discussed with Reed. In the plan, there is no
1168 mention made of fencing. I think there will need to be some fencing.
1169
1170 Mr. Balfour- Do you mean around the pool or where the Leyland
1171 cypresses are going to be planted.
1172
1173 Mr. Newland- Around the pool.

1174
1175 Mr. McKinney- It is required by law, that fencing be constructed around the
1176 pool.
1177
1178 Mr. Newland- We have not seen any plans for this. We are at a much
1179 lower elevation, and are concerned with the drainage. A bog was created along that
1180 property line, it does not appear to be fully functional. There is standing water on the
1181 property and along the property line. And how they plan on draining the pool, could
1182 affect us. If they plan to let it roll off and put it in the bog, that could be an issue. We
1183 would just like to know their plans. Did you get a copy of the letter?
1184
1185 Mr. Nunnally- Yes sir.
1186
1187 Mr. Balfour- We will ask the gentlemen from JOPA about the fence and
1188 the bog.
1189
1190 Ms. Newland- We are concerned about the location of the fence along that
1191 property line. We do not want to share the responsibility of fence that is used to protect
1192 the pool from neighbors. We think we need an answer to the questions about where the
1193 fence will be, how the drainage is going to be handled and what the landscaping will
1194 look like along that property line. This pool does not infringe on the house behind them,
1195 but it does directly affect us.
1196
1197 Mr. Balfour- You might take those issues up with her, before you leave.
1198 Some of those matters are not before us, but there is no reason why they can't be
1199 discussed between you. Any other questions? Mr. Cardon would you like to respond?
1200
1201 Mr. Cardon- The fence is going to be simulated wrought iron, I have not
1202 even contracted out for the fence yet. We wanted to get the pool in first.
1203
1204 Mr. McKinney- We probably need to be talking to Mr. Stanley about the
1205 draining of the pool water.
1206
1207 Mr. Stanley- The pool itself will not have a gravity drain, where you just
1208 open a valve and let the water run out. If it has to be drained, it will have to be pumped
1209 out and that water can be directed by hoses to where it needs to be directed. There will
1210 be water comes out during the process of cleaning the pool, relative to what's in the
1211 pool; it is a very minor amount. I am not sure about the bog, whether that was put in by
1212 the builder. It is there to catch the runoff? It would seem logical that that water might
1213 be directed to that bog when that pool is backwashed. I am not certain. There could be
1214 other ways of disposing of it.
1215
1216 Mr. McKinney- Mr. Cardon, where do you intend on putting the 10-foot high
1217 Leyland's?
1218

1219 Mr. Cardon- They would go in between the Newlands yard and the pool.
1220 Near their driveway.

1221
1222 Mr. Balfour- Any other questions? Thank you sir.

1223
1224 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
1225 Kirkland, the Board **granted** the variance request subject to the following condition:

1226
1227 1. Only the improvements shown on the plan filed with the application may be
1228 constructed pursuant to this approval. No substantial changes or additions to the layout
1229 may be made without the approval of the Board of Zoning Appeals. Any additional
1230 improvements shall comply with the applicable regulations of the County Code.

1231
1232 Affirmative: Balfour, Kirkland, McKinney, Nunnally, 4
1233 Negative: 0
1234 Absent: Wright 1

1235
1236 The Board granted this request, as it found from the evidence presented that, due to the
1237 unique circumstances of the subject property, strict application of the County Code
1238 would produce undue hardship not generally shared by other properties in the area, and
1239 authorizing this variance will neither cause a substantial detriment to adjacent property
1240 nor materially impair the purpose of the zoning regulations.

1241
1242 **A -132-2001:** **Timothy L. Hicks** requests a variance from Section 24-95(q)(5) of
1243 Chapter 24 of the County Code to build a screened porch over the
1244 existing deck at 10624 Runnymede Drive (Magnolia Ridge) (Tax
1245 Parcel 32-9-A-57), zoned R-3AC, One-family Residence
1246 District(Conditional) (Fairfield). The rear yard setback is not met.
1247 The applicant has 22.8 feet rear yard setback, where the Code
1248 requires 30 feet rear yard setback. The applicant requests a
1249 variance of 7.2 feet rear yard setback.

1250
1251 Mr. Balfour- All those planning to testify on this case, please raise your
1252 right hand and be sworn in

1253
1254 Mr. Blankinship- Do you swear the testimony you are about to give is the
1255 truth, the whole truth and nothing but the truth so help you God?

1256
1257 Mr. Hicks- I do.

1258
1259 Mr. Balfour- State your name and address please.

1260
1261 Mr. Hicks- My name is Tim Hicks; I live at 10624 Runnymede Drive in
1262 Magnolia Ridge. I am requesting a variance to allow me to build a screened porch on
1263 the exiting deck. It will be exactly the same size as the deck and it will tie into the

1264 house. As you can see, it is screened from the neighbors. I do have letters from the
1265 neighbors that they have no objections to this. Do you have any questions?

1266
1267 Mr. Balfour- Thank you sir.

1268
1269 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
1270 Nunnally, the Board **granted** the variance request subject to the following condition:

1271
1272 1. Only the improvements shown on the plan filed with the application may be
1273 constructed pursuant to this approval. No substantial changes or additions to the layout
1274 may be made without the approval of the Board of Zoning Appeals. Any additional
1275 improvements shall comply with the applicable regulations of the County Code.

1276
1277 Affirmative: Balfour, Kirkland, McKinney, Nunnally, 4
1278 Negative: 0
1279 Absent: Wright 1

1280
1281 The Board granted this request, as it found from the evidence presented that, due to the
1282 unique circumstances of the subject property, strict application of the County Code
1283 would produce undue hardship not generally shared by other properties in the area, and
1284 authorizing this variance will neither cause a substantial detriment to adjacent property
1285 nor materially impair the purpose of the zoning regulations.

1286
1287 The approval of the March 22, 2001 minutes was deferred until the October 18, 2001
1288 meeting.

1289
1290 There being no further business, and on a motion by Mr. McKinney, seconded by Mr.
1291 Wright, the Board adjourned until October 18, 2001, at 9:00 am.

1292
1293 Daniel Balfour,

1294 Chairman

1295
1296 Benjamin Blankinship, AICP

1297 Secretary