

VERBATIM TRANSCRIPT OF ALBEMARLE COUNTY BOARD OF ZONING APPEALS MEETING
HELD ON NOVEMBER 11, 1986
VA-86-38. EARLYSVILLE FOREST LAND TRUST

Those members present were William Roberson, Jr., William Heath, Carl Van Fossen, Jacquelyn Huckle, and Max C. Kennedy, Chairman. Other officials present were Andrew D. Evans, Deputy Zoning Administrator; Charles W. Burgess, Jr., Zoning Administrator; and Sharon Taylor, Recording Secretary.

Mr. Evans: O.K. This is 86-38. The applicant seeks a variance from Section 4.6.3.4 of the Albemarle County Zoning Ordinance. This section states: "Lots, Yards Adjacent to Street - As to any yard adjacent to a street, road, or access easement, the yard requirements of the ordinance shall be deemed to have been complied with if the setback shall be not less than the minimum yard dimensions required thereby." The applicant is in the process of constructing a new single-family dwelling on lot 136, a building permit (86-1266) having been issued on September 8, 1986. The surveyor plat attached to the building permit did not indicate the existence of a fifteen foot access easement parallel to the southern property line. The Zoning Department was informed of the existence of this easement on or about October 8, 1986. The access easement appears to have been created by an agreement between George H. Gilliam, Trustee for Earlysville Forest Land Trust and Allan Kindrick made on September 15, 1986. In that the rear yard setback measurement for the dwelling must be measured now from the easement line and not the property line, the rear yard does not comply with the minimum requirement. The applicant requests a variance to reduce the rear yard measurement from the minimum requirement of 25 feet to 10 feet. It should be noted that the building permit indicates that the rear setback was to be 40 feet. If the applicant had provided the 40 foot setback, a variance would not be needed. Recommendation: The application should be approved for cause: 1) The applicant's hardship is that the access easement was established after construction had commenced. Until the access easement was established the structure complied for the setback requirements of the PUD. The applicant

Page 2
Verbatim Transcript VA-86-38

has not demonstrated that his perceived hardship is unique to his property in contradistinction to other properties in the same zoning district and general vicinity. The requirement the applicant seeks relief from is shared by all residential properties. 3) The authorization of this variance will not be of detriment to the adjacent properties nor will the character of the district be altered.

Mr. Kennedy: O.K.

Mr. Van Fossen: Chairman, before you go, can I ask you a question or legal counsel a question on it too? I wonder if this is properly before us. Is that it looks like that according to the dates that Andy just read is that the building permit was issued on September the eighth and it complied. On September the fifteenth the easement was granted or an agreement for an easement was taken which was after the fact so to me it appears that the easement is in error or maybe shouldn't be recorded or something rather than the setback requirement here. It's just a question before we go.

Mr. Kennedy: Let's see how those things develop then and then that will probably explain it. (Inaudible)

Mr. Payne: I can give you, give you a comment on that. The, this was a question that was posed to me and Mr. Burgess on reply to Mr. Gilliam. And frankly I think it was a pretty close question, and Mr. Gilliam and I talked about it and I told him that I thought that one way to resolve this would be to would be if it were determined that this was of nature of an existing building what would happen is that this setback simply would become lawfully nonconforming as you say the easement was established. You have a building there and the easement was established later. The, you, the building itself is nonconforming.

Mr. Van Fossen: Would the easement be non?

Page 3
Verbatim Transcript VA-86-38

Mr. Payne: Well, there is a couple of questions whether or not the easement is lawful or not is not really an issue because the easement itself is not subject to the zoning ordinance. You don't have to have a setback for an easement you have a setback for the building from the easement, and Mr. Burgess has been I think very conservative in his ruling, and I don't have any problem with his ruling. I think it is a very close question and I think that either way would have been an arguable position. I think that if you all determine that in fact this is a lawfully existing nonconforming building the resolution of the matter should be to deny the variance on the ground that no variance is required. You have been asked to be overruling Mr. Burgess' opinion. You would in essence be allowing the building to remain with the easement there on the basis that you construe this as a non, as a lawfully nonconforming building.

Mr. Kennedy: We are not here on an appeal of his decision.

Mr. Payne: No, what you have been asked to grant a variance from his ruling that it is not lawful. One other way to resolve that would be to determine that in fact no variance was required because it is lawful. I think that you have the authority to do that under these circumstances. So that was one way to do that. I am not suggesting that that's the way you have to do it or should do it or anything else. But if you were of that opinion then that's, I think would be the proper way to go about it.

Mr. Kennedy: Well let's hear what they have to say.

Mrs. Huckle: I have a question. It says that the building permit was issued with the understanding that the rear setback was to be 40 feet. Now somehow or other the building wasn't built where the permit said it was to be built. Does that make any difference?

Mr. Payne: I don't think so.

Page 4
Verbatim Transcript VA-86-38

Mr. Burgess: The minimum requirements were met. (Inaudible)

Mr. Payne: As long as it meets the minimum requirements that is all it really has to do.

Mr. Kennedy: The applicant can probably explain that.

Mr. Burgess: If I could just make one comment.

Mr. Kennedy: Yes.

Mr. Burgess: Since I have been here and it appears historically this is the way it has been done if a property owner establishes some type of access easement across his private property for whatever reason at the time that access easement has been established they have been required by the Zoning Department to comply with the setback requirements. So in order to be consistent with past administrations of the Zoning Department that is how we determined how I determined that the variance was needed. In that this easement was established on this property by the property owner and he did not meet setback requirements.

Mr. Kennedy: What you are saying is you have an existing dwelling and you are going to put a road in and the road when you put that road in it is going to make that dwelling be too close to the road. And before you allow them to put that road to record you will make sure that they comply and then come for a variance.

Mr. Burgess: That's what has happened several times since I have been here. Not necessarily go for a variance, but to allow proper setback.

Mr. Kennedy: I take it that this road already to record.

Mr. Burgess: It is.

Mr. Payne: It is now.

Inaudible

Mr. Kennedy: O.K. Well are there any more questions to help understand what the applicant and the opposition if any is going to say?

Page 5
Verbatim Transcript VA-86-38

Alright, is there someone here to represent the applicant? With that in mind George, help us out with it.

Mr. Gilliam: Thanks, Mr. Chairman. The staff report is accurate and we certainly agree that either way that you all choose to resolve this as suggested by Mr. Payne is is satisfactory. What, what happened here is that Allan Kindrick owns some adjoining property and as we proceeded through the Earlysville Forest development, and this is pretty much at the tail end of it. I think it is lot 136 which is right just 20 lots or something from the end. Mr. Kindrick provided us with some historical information including some old aerial photographs and some he traced the existence of an easement back to the 1700's and it was not located. His easement was not located on any plats of public record except as kind of a scriggly line on tax maps that indicated that it was a road. In the area, there is an area which shows some physical signs of an old, very narrow roadway having existed long ago, but there are large trees which have grown up in the general area. And we went back and forth with Mr. Kindrick I guess over a period of five years, and as we got close to building in that area this summer it was in everybody's interest to resolve it. If we had proceeded to build a house and Mr. Kindrick had later been able to come in and show that he had an easement through the middle of it he could have gotten us, been joined and maybe had the house ripped down or something. So we all wanted to get it brought to a head. Mr. Kindrick was represented by Cliff McClure and I represented the trust and we finally agreed on a fifteen foot strip running up the back of this property line. We went back and forth, and this agreement wasn't actually signed until after the day it was dated. As I recall this agreement went through several drafts and revisions, and we started with the date on the 15th, but it wasn't actually signed until by the Kindricks on the 19th and by me on the 22nd of September. So it was actually the house was fairly

Page 6
Verbatim Transcript VA-86-38

far under construction by the time we made this arrangement. We needed to get the easement of record as I say to solve this this assertion of Mr. Kindrick's and to give him what I think that we all agreed that he was entitled to, and that was to simply locate an easement that had not been locatable prior to this time. It is a fifteen foot easement. It's not as if a large subdivision access road or or anything like that can go through this area. It does run from the Earlysville Forest line up into Mr. Kindrick's property, and so he could he could take a certainly take a vehicle through, although as I say it's a wooded area and he would have to do a lot of clearing if he wanted to make any use of it.

Mr. Kennedy: George, let me interrupt you for a minute.

Mr. Gilliam: Yes, sir.

Mr. Kennedy: The plat of phase 8, section 9, Earlysville Forest. I can't locate the easement on it. Inaudible.

Mr. Van Fossen: It is right here along the back property line.

Mr. Gilliam: It is on the scale. Inaudible.

Inaudible

Mr. Kennedy: This runs parallel to the lot line.

Mr. Gilliam: Yes, sir. 15 feet. This is the lot that (Inaudible).

Mr. Kennedy: I heard you say lot 136 was the lot. (Inaudible)

Mr. Gilliam: Ellen owns this property, (inaudible).

Mr. Kennedy: This is not the plat that was put to record to show the easement.

Mr. Gilliam: No.

Mr. Kennedy: Well it is just a road parallel to all (Inaudible) 136 and 137 and 138.

Mr. Gilliam: That's, that's correct. And, of course, we did not we didn't

Page 7
Verbatim Transcript VA-86-38

have the same problem on on those two. And I don't think that any of us realized at the time how close it was to the house that was already under construction. If, if this were an area where a you know a major through road could go I would think that there would be a wholly different concern than there is with just a 15 foot right-of-way, which does not meet any of the state or county requirements for a through road. It, it makes no different to to us, Mr. Chairman, whether or not you resolve it by saying it is an existing nonconforming use and we don't need a variance or if if a variance were granted. But I think that we are all interested in getting the record straightened up so that we don't, we don't have a question come up in the future.

Inaudible.

Mr. Gilliam: Mr. Van Fossen.

Mr. Van Fossen: Did you all consider maybe going onto the Dansey property to get the easement to go down which wouldn't require a variance on this thing.

Mr. Gilliam: Well, we don't own the Dansey property. Mr. Dansey does. I believe that Mr. Kindrick has from time to time in the past had discussions with Mr. Dansey, but I don't know what the you know what the status of, what the status of that is. Our agreement with Mr. Kindrick also gives him another easement farther away that would come directly into one of our cul-de-sacs, and this agreement provides that and at the other easement that we've given him it provides he would have 50 feet. So if he ever wanted to cut a subdivision road into his property he would have to use this alternative area and it says here that upon the first use by Kindrick of such 50 foot easement described in item 3, the easement granted and conveyed in item 1, which is the 15 foot one, shall terminate and Kindrick agrees to properly execute and deliver to land trust a deed of abandonment

Page 8
Verbatim Transcript VA-86-38

whereby Kindrick will abandon the lease and quitclaim all right, title, and interest in and to such easement. So if he ever wants to do a subdivision in his property he can get the 50 feet by going further away and at that time this 15 foot easement that we are talking about would be abandoned. And I don't know how Mr. how Mr. Kindrick viewed it, but I think that that our view was that at some time in the future he would want to exercise his right to put in a 50 foot and he would have to go to another location to do that, which we have already granted him the right to do, and that this easement would then be abandoned.

Mr. Roberson: What cul-de-sac does the 50 foot easement go into, the name?

Mr. Gilliam: What's the name of that?

Mr. Hunter Craig: Carriage Hill.

Mr. Gilliam: Carriage Hill.

Mr. Craig: First one on the right.

Mrs. Huckle: So it's on here, the 50 foot.

Mr. Roberson: Same, same cul-de-sac.

Inaudible.

Mr. Craig: Excuse, excuse me.

Mrs. Huckle: Carriage Hill.

Mr. Craig: The 50 foot wide one goes into the Saddle Court cul-de-sac.

Mr. Gilliam: That's, it's down this way.

Mr. Craig: Previous section.

Inaudible.

Mr. Gilliam: That's, that's the one.

Mr. Roberson: What's the name again?

Mr. Craig: Saddle Court.

Mr. Roberson: Saddle Court.

Page 9
Verbatim Transcript VA-86-38

Mrs. Huckle: Oh, O.K.

Mr. Kennedy: Well anyway the 50 foot easement is a considerable distance from this 15 foot easement.

Mr. Gilliam: Yes, the two are unrelated and I think that our view was that this would would give Mr. Kindrick a method right now to get in and out of his property. But if he ever wanted to subdivide it and put in a state road that he would use the other because this isn't wide enough for a state road.

Mr. Kennedy: Any other questions for Mr. Gilliam?

Mr. Gilliam: Thank you Mr. Chairman.

Mr. Kennedy: O.K. Anybody here else to speak? Anybody in opposition?

Mr. Allan Kindrick: Mr. Chairman, Commission, I am Allan Kindrick. I am one of the property owners who feels he has a legal right to use that easement. One of the things that disturbs me is that this is being presented as a new easement. Not meaning to burden you with a lot of paper, but this old road was put into use somewhere about the same time that Albemarle County was formed back in the 1740's. It does wiggle and scriggle as Mr. Gilliam indicated. I have been able to find most of the locations by title search. But most specifically the right-of-way that we are referring to now, the section that we are referring to now on the back of lots 136, 137, and 138 was defined by deed in 1886, and I have highlighted the spot there. Now that is the same location along the same property line that this new instrument reputedly is a new easement for.

Mr. Van Fossen: Mr. Chairman, I am at a lose to see here that I think that Mr. Gilliam said that he has a contract where Mr. Kindrick agreed to this easement and now Mr. Kindrick is opposing it. The

Mr. Kennedy: Well I was kind of worried too, but I was going to let Mr. Kindrick finish and see. If, if, this is not the quorum to discuss the

Page 10
Verbatim Transcript VA-86-38

agreement that you have already made. It's really to decide whether the Zoning Ordinance is being violated by

Mr. Kindrick: That's right.

Mr. Kennedy: By allowing this line, this road to be too close to the dwelling.

Mr. Kindrick: O.K. Now there is a copy a piece there actually. That easement stayed in the dockets. The land was traded some five or six times during the next 100 years. It is still listed when Earlysville Land Trust bought the land. It is still shown. Now, back in 1980 when this thing first became came before the Board of Supervisors October 15, 1980, I pointed out at that time that this easement existed and I would like the County to help me preserve it. And there is a copy of that page of those minutes. Over the next five or six years there is a great deal of correspondence over this easement, and denial as to where it is located and where it isn't located and what have you. I was not able to see the building permit for this lot when I went to the Building Office. It seemed to be out of pocket and I was to be called when they found it. That was the 29th of October. To date they have not called me to tell me whether they have found it or not so I didn't know about this 40 foot versus the 30 foot location of the site. I did somewhere in this time frame go to Mr. Agnor's office and tell him that the foundation was down and it appeared to be too close to the right-of-way. This was before construction started. Apparently nothing was done about it. The house is now basically completed. The instrument that has been referred to here is a new easement, actually was an instrument which had a benefit to the Earlysville Land Trust because there are some houses built in the earlier stages of this building that I suspect I can show a right-of-way through. I signed off on them for a width definition on this easement. Not a new easement, but for a width

Page 11
Verbatim Transcript VA-86-38

definition. I have tried repeatedly to get the County to protect that width. Let's talk just a moment about why we have zoning and the purpose of Zoning as I understand it is for protection, health, and welfare. Now I am going to use that road, possibly even build a house on that side of the space and use that as my private driveway, eight or ten trips a day, maybe more. I will be pulling farm machinery over it. I don't really feel that it's fair to a new home owner to be saddled with a back yard some eight or nine feet wide against a traffic lane when I believe that everybody involved knew where this was before that concrete was poured. They certainly knew before the framing was put up if Mr. Agnor had of conveyed my message. Probably one of the first things that is going to happen to this road in the near future, there is a logging operation that is fixing to take place back there three to four months in duration, which means there is going to be tractors and trailers dragging through it. That is certainly not a safe condition. I don't know that I can add a great deal more to what I have already said to you except that I appeal to you to protect my interest in it because this is a high turn over area, about every six months to a year I am going to have a new owner in that house and I am going to have a new conflict because he is going to think that I am running through his backyard. I really appeal to you to protect my interest, and I have been in this room before Planning Commissions, before Board of Supervisors. So far I have gotten little or no help even though it is a legal documented deed dating back over 100 years and has been in the records the entire time. Thank-you.

Mr. Kennedy: Thank-you sir. Let me ask you this.

Mr. Kindrick: Oh certainly.

Mr. Kennedy: In summary you don't deny that you went into an agreement

Page 12
Verbatim Transcript VA-86-38

to establish the easement from whatever it is, Carriage Hill Drive back to your property.

Mr. Kindrick: That agreement in my understanding only establishes width. It did not move it. It didn't relocate it. It only established the width in it as an agreement not to do anything about that part of the easement beyond it.

Mr. Kennedy: And your position is that road was always there.

Mr. Kindrick: It's always there.

Mr. Kennedy: (Inaudible) Of record.

Mr. Kindrick: And it shows.

Mr. Kennedy: Inaudible. The question about the width. (Inaudible)

Mr. Kindrick: And it specifically says where it is because it has always been there.

Mr. Van Fossen: Nothing in this (inaudible) width though.

Mr. Kindrick: Width is not specified, and I don't claim that width was ever specified.

Mr. Van Fossen: So the detriment of a 15 foot width then wouldn't be to you, it would be to the person who buys that piece of property.

Mr. Kindrick: Except that I'm going to have to deal with constant owners there and I think that you are sitting up a safety factor or a hazardous factor there with a driveway within eight feet of a house.

Mr. Kennedy: In other words.

Mr. Kindrick: These are basically young families with small children. This is first ownership type of homes.

Mr. Kennedy: Then your solution is to have Earlsyville Forest move the house?

Mr. Kindrick: That's my solution. It shouldn't have been there. I came to the County as soon as the concrete was poured and nothing took place.

Page 13
Verbatim Transcript VA-86-38

Mr. Roberson: How often do you use this road now, Mr. Kindrick?

Mr. Kindrick: Not very often. It just can get a truck through it now.

Mr. Kennedy: Are there anymore questions for Mr. Kindrick? Thank-you sir.

Mr. Kindrick: Thank-you.

Mr. Kennedy: Anybody else to speak? Let me see now. If there is nobody to be heard your public hearing will be closed. Alright, as I understand it the question before the board is that the house was built and in construction and at the same time the discussions were going on concerning the location of this easement. Of course, I figured both sides would probably say that it was located here and certain wide here and somebody says this and somebody says that. In the long run they agreed to establish this easement on the back of the lots 136, 137, and 138 and recorded that. When they recorded that, that made that building that was in certain stages of completion nonconforming. So either you don't grant the guy a variance, you will be nonconforming. Now I suppose the County could take action for the road to be moved.

Mr. Roberson: The road or the house? The house. (Inaudible)

Mr. Kennedy: Well you can't move, move the road.

Mr. Heath: Move the house.

Mr. Roberson: Let me ask you this. If the house was there, the house had been there for years and then the easement came up, what action would we take? What would be our course of action? Our course of action would be to grant.

Mr. Kennedy: Well you would probably have to have more facts. You would probably we would explore that and we might call the people back, but it might be certain reasons for having to locate that house where it is, other

Page 14
Verbatim Transcript VA-86-38

than just happens to be located there.

Mr. Roberson: Well, we have had.

Mr. Kennedy: You can go into it with a different point of view, topographic reasons.

Mr. Roberson: Yes, what I am getting at is let's not compress things and complicate them just because they are compressed into a short period of time. We have had occasions where we where we have had houses that were built too close to roads, and we granted a variance. It seems to me to be the simple thing to do here. This appears to me to be an unused road. It hasn't been used in the past. We've heard statements that trees have grown up in it. Mr. Kindrick says you could barely get a truck through and that he doesn't use it very often. I don't really see the complication.

Mr. Kennedy: Alright.

Mr. Roberson: I don't really see the big complication.

Mr. Van Fossen: I don't either, Mr. Roberson. The other thing that I was going to say was that maybe it wasn't properly before us because the building permit was granted based on County records of what they could do that the easement did not exist per say, you could argue that, but the building permit was properly granted according to their records. So you know we could either grant the the setback variance or we could say that it was not properly before us. The easement couldn't, well they would have to resolve that themselves how to record the easement.

Mr. Roberson: Well, that was my, that was my position. When the building permit was granted then from a practical standpoint, probably from a legal standpoint, the building was there. Whether it was built the next day or six years later, it was still there, correct. So then if the easement comes up later, we have to resolve something.

Page 15
Verbatim Transcript VA-86-38

Mr. Kennedy: Well I had a problem with that building permit part too. It would seem to me the building permit says something about 40 feet. No one really realized where the road was at that time. (Inaudible) I guess the road would even be there probably at that time.

Mr. Payne: Mr. Chairman, I would like to comment on this road.
(Inaudible)

Mr. Kennedy: Yes, sir.

Mr. Payne: One of the issues that concerned me was when the building exists for the purposes of being a nonconforming building. I am not perfectly sure that the Supreme Court has ever answered that question. But what we do know is that if you have a permit of appropriate source, a building permit would be one, that's issued and thereafter money is spend in good faith reliance on that project that you have a vested right in whatever that is. That analysis would apply to this. So I think that if the situation were that the building permit were issued and then this arose, then I would think that probably would not be a, a lawfully nonconforming use. Clearly if it was finished and ten years go by then it is obviously a nonconforming. The only issue that comes up if the building is somewhere between their paper building permit and being completely finished when the problem arises. And that was one of the issues that concerned me whether it was sufficiently in existence. I think that the fact that the building was substantially under way would be sufficient and give him a vested right in that building.

Mr. Roberson: You intend to agree with what I am saying or disagree.

Mr. Payne: Well what I hear in this case the building was substantially.

Mr. Roberson: The building was there.

Mr. Payne: It wasn't complete, but it was there had been substantial expenditures on this tract.

Page 16
Verbatim Transcript VA-86-38

Mrs. Huckle: The question that I was going to ask you according to Mr. Kindrick this is an old right-of-way road preexisting any construction on this lot, any footings or anything. Why wasn't it noted? Wasn't it noted on the deed?

Mr. Payne: Well, what Mr. Gilliam has told me and what he told you now was that it was difficult or impossible to locate it with precision and and that's that happens sometimes. Now I want, the reason I got up and was roaming around disturbing your meeting is that I was trying to look at the last line of this deed on this 1886 deed on page 175 I think it is, and it's not there. I can't read it. The the description of the road is run along a certain property line. I can't tell which property line it is.

Mr. Kennedy: I think that it is safe to say the party probably had disagreement over where the easement was located and its width, and they settled that by the agreement.

Mr. Roberson: It appears to me.

Mr. Payne: No, what the what the agreement said is that there is a disagreement as to its location, and that granting that this document does two things with respect to to the old easement and (1) it locates a new easement and (2) Mr. Kindrick releases any any claim that he has to any old easement. So if, for example, this is not the facts for this case, but if it were the case that we knew that the old easement ran right through the middle of the lot if that was what the facts had been I think that is not the facts of this case, but if those were the facts what this would have done is it would have moved the easement from its first location to its new location. I think the question in this case is is that it was not agreements to where it actually was. I don't have the last, the last

Page 17
Verbatim Transcript VA-86-38

page of this deed I might be able to (inaudible).

Mr. Kennedy: I don't think it makes any different because the fact is that it was somewhere else or the party wouldn't have argued on it, and now they have agreed where it was located.

Mr. Roberson: Well, what contractor.

Mr. Kennedy: It speaks for itself.

Mr. Roberson: What they are asking for is a variance to build a house too close to the road. Is that correct? Well if we grant that then I think the situation more than probably will resolve itself because the two parties have agreed to an outlet for Mr. Kindrick that is far more more better than this 15 foot outlet. When he uses that this 15 foot easement becomes obsolete and nonexistent by the reading of their agreement. I really don't see any complication.

Mr. Van Fossen: Mr. Chairman, it is the purpose of this board to grant relief to an applicant whereas we are not adversely affecting another party or the public and where that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience and all. And you know I think that that that's our purpose is to if we can find a reason to grant a variance from the ordinance on a hardship basis is that's the purpose of us being here.

Mr. Kennedy: I want to carry it one step further too would be to look to the lot, the lot involved to the particular parcel of land that is involved. (Inaudible) Mr. Kindrick said that he's involved by the use of the road and the house is too close to his road. That is kind of a reverse way of looking at a variance situation.

(Inaudible)

Mr. Van Fossen: Well I am going to make a motion that the variance be

Page 18
Verbatim Transcript VA-86-38

granted in that the adverse use of this easement is upon the applicant or who they sell their property to, not upon the opposing party here.

I move that the variance be granted.

Mr. Roberson: I'll second.

Mr. Payne: I take it that the board is endorsing the findings of the Zoning Administrator as expressed in the zoning, in the staff report.

Mr. Van Fossen: The building permit was issued in a proper way that it was recorded at that time. Two, I think that it is a hardship on the applicant.

Mr. Kennedy: Are we going to have any trouble with the way that motion is phrased.

Mr. Payne: Well that's the law requires that you state your finding with respect to the existing the hardship, and I think that the staff report lays that out. And what I understand from Mr. Van Fossen is that his motion contemplates that the board if it passes this motion will be saying that it agrees with the Zoning Administrator with respect to the existence of a hardship.

(Inaudible)

Mr. Van Fossen: In accordance with 34.2, I guess it is paragraph 5.

(Inaudible)

Mr. Kennedy: Well that that's the motion now we have to vote on it. O.K. It has been moved and seconded that the application be approved with those understanding. All in favor, call role

Mrs. Taylor: Mr. Heath.

Mr. Heath : Aye.

Mrs. Taylor: Mr. Van Fossen.

Mr. Van Fossen: Aye.

Page 19
Verbatim Transcript

Mrs. Taylor: Mrs. Huckle.

Mrs. Huckle: Aye.

Mrs. Taylor: Mr. Roberson.

Mr. Roberson: Aye

Mrs. Taylor: Mr. Kennedy.

Mr. Kennedy: Aye

Mr. Gilliam: Thank-you, Mr. Chairman.

Mr. Kennedy: The application is approved. Thank-you gentlemen for your help.

Page 5

Minutes of Albemarle County Board of Zoning Appeals
November 11, 1986

The next application before the board was VA-86-39, Photoworks of Virginia.

Mr. Evans read the staff report.

VA-86-39. Photoworks of Virginia, property described as tax map 61U, parcels 15, 16, & 17A, located on the southwest corner of Route 29 and Berkmar Drive, zoned Highway Commercial. The applicant seeks a variance from section 4.15.3.7 of the Albemarle County Zoning Ordinance to increase the allowable square footage of a freestanding business sign from 100 square feet to 125 square feet and to increase the allowable square footage of wall signs from 200 square feet to 223 square feet. (See the attached copy of the staff report.)

Jeffrey Kilmer stated that he currently owned Photoworks, which had been opened for about three weeks. He stated that he would like to make a correction to the staff report in that his wall sign was 27 square feet. He stated that when he first entered into the lease agreement with Dale Ladner, one of the partners of Virginia Partners, one of the criteria on the lease was the signage. He stated that he submitted his signage art to Mr. Ladner for his approval, as well as to Gary Cooper of the sign company. He stated that Mr. Cooper assured him that it fell within the criteria of the Zoning Department, and that he would take care of his sign permits. He stated that Mr. Ladner approved the signage art. He stated that he entered into a sign contract with ACL Sign Company on September 5. He stated that at that point of time he put down \$1,950 to start the construction of the sign. He stated that when he was in the process of setting up his business he filed with the Zoning Department for an operation license, and at that point in time someone in the office asked him if he was aware that a sign permit had not been obtained. He stated that at that point his sign had been under construction for a month, and he called Mr. Cooper who stated that he would take care of it.