



Testimony of Nancy Oliver
On behalf of the Advocates for Herring Bay
Before the Board of Appeals
Case BA 30-14S & 31-14V (2014-0061-S & 2014-0128-V), Michael C. Booth
October 2014

We urge the Board to deny the applicant's request for a variance from the prohibition on locating the Renaissance Festival on a scenic or historic rural road. Granting a waiver from subsection (4) of 18-11-125 would adversely affect our community of Fairhaven by setting a precedent that would undermine the integrity of zoning laws aimed at preserving our environmental and cultural resources.

Fairhaven is a small waterfront community on Herring Bay, about 8 miles from the Booth property. We have narrow, winding, undulating roads that not only have outstanding vistas but also have historical significance. The county's 1997 Scenic and Historic Roads Commission put Fairhaven and Leitch Roads in their top category for preservation, along with Upper and Lower Pindell Roads. Allowing a variance in this case would set a precedent that would affect not just scenic and historic rural roads generally, but specifically those that the 1997 Commission said should "receive the highest level of protection."

Our concern stems from the fact that the wording in section 18-125-4 for the Renaissance Festival is identical to the wording that bans other uses from being located on our roads, such as country clubs and conference retreat facilities. The prohibition on borrow pits is especially important to us given past efforts to locate transfer stations for dredging materials in Fairhaven.

When considered in the totality, we believe that the law is clear that a variance allowing the Renaissance Festival to locate on a scenic and historic rural road is contrary to law and not within the discretion of the executive branch or the Board.

First, the legislative purpose of Bill 4-06 expressly says that the law "prohibits certain **uses** on scenic or historic rural roads." The legislative language implementing that principle is mandatory, stating that certain uses in RA districts "**shall** be located on a road other than a scenic or historic rural road."

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Second, we are unaware of a single case in which the terms of a variance squarely match the facts in this case. For example, an unopposed variance was granted for a child care center at St. James Church, but that case involved an activity located on a scenic and historic road that was not a **rural** scenic and historic road. Similarly, the conditions in the Alviani v. Dixon case dealt with numeric requirements, such as the number of feet of frontage on a roadway. Those distances often can be varied without changing the essential purpose of the requirement. Here you are either on the rural road or you are not. Furthermore, the Alviani conditions were not stated as a “shall” directive, as at issue here.

Finally, even if the Board believes there is a basis for a variance, granting this particular variance would, as noted by the Administrative Hearing Officer, so “substantially alter the criteria for the granting of the special exception,” that the criteria would be swallowed by the variance. A reprieve from subsection (4) would be tantamount to a repeal of the 2006 laws on scenic and historic roads. Such statutory changes are the sole purview of the County Council.

Based on those facts and the potential adverse effects on our community, we believe the applicant’s request for a variance from 18-11-125(4) must be denied.