

1 MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING  
2 APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION  
3 BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY  
4 SPRING ROADS, ON THURSDAY, AUGUST 23, 2012 AT 9:00 A.M., NOTICE  
5 HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH AUGUST  
6 6, 2012 AND AUGUST 13, 2012.  
7

Members Present: Helen E. Harris, Chairman  
R. A. Wright, Vice Chairman  
Greg Baka  
Gentry Bell  
James W. Nunnally

Also Present: David D. O'Kelly, Jr., Assistant Director of Planning  
Benjamin Blankinship, Secretary  
Paul Gidley, County Planner  
R. Miguel Madrigal, County Planner

8  
9 Ms. Harris - Welcome to the August 23<sup>rd</sup> meeting of the Henrico  
10 County Board of Zoning Appeals. Please stand and cite the Pledge of  
11 Allegiance.

12  
13 Good morning, Mr. Blankinship. Would you read the rules that govern this  
14 meeting and let us know if there are any withdrawals or deferrals.

15  
16 Mr. Blankinship - Good morning, Madam Chairperson, members of the  
17 Board, ladies and gentlemen. The rules for this meeting are as follows. Acting as  
18 secretary I'll call each case. And as I'm speaking the applicant should come  
19 down to the podium. We will then ask everyone who intends to speak to that  
20 case to stand and be sworn in. Then the applicant will speak. Then anyone else  
21 who wishes to speak will be given the opportunity. After everyone has had a  
22 chance to speak, the applicant, and only the applicant, will have an opportunity  
23 for rebuttal. After the Board has heard all of the evidence on a case, they will  
24 take that matter under advisement and proceed with the next case. They will  
25 render all of their decisions at the end of the meeting. So if you wish to know  
26 their decision on a specific case, you can either stay until the end of the meeting,  
27 or you can check the Planning Department website this afternoon, or you can  
28 call the Planning Department this afternoon.

29  
30 This meeting is being recorded so we'll ask everyone who speaks to speak  
31 directly into the microphone on the podium, state your name, and please spell  
32 your last name so that we get it correctly in the record.

33  
34 And finally, out in the foyer there is a binder that contains the staff report for each  
35 case, including the conditions that have been recommended by the staff. And it's

36 particularly important for the applicants in use permit cases to be familiar with  
37 those conditions.

38  
39 We do have two requests for deferral this morning. The first is CUP2012-00005.

40  
41 **CUP2012-00005 WESTHAMPTON MEMORIAL PARK** requests a  
42 conditional use permit pursuant to Section 24-52(h) of the County Code to  
43 expand an existing cemetery at 10000 Patterson Ave (Parcel 744-742-5871)  
44 zoned R-1, One-Family Residence District and A-1, Agricultural District  
45 (Tuckahoe).

46  
47 Ms. Harris - Is the applicant for this deferral request here?

48  
49 Mr. Wilson - Yes. Madam Chairman, Mr. Secretary, members of  
50 the Board, my name is Jack Wilson and I represent the applicant. We are  
51 requesting a thirty-day deferral of this case. We are continuing to have  
52 meaningful dialogue with the neighboring homeowners association, and we  
53 would like to allow those discussions to continue until we bring the case forward.

54  
55 Ms. Harris - Mr. Wilson, this is the third time this case has been  
56 deferred, is it not?

57  
58 Mr. Wilson - I believe it is, yes ma'am.

59  
60 Ms. Harris - This is the fourth.

61  
62 Mr. Wilson - It could be as many as the fourth.

63  
64 Mr. Blankinship - I believe it is the fourth.

65  
66 Mr. Wilson - The fourth time. Again, part of our issue is obviously  
67 we're dealing with a newly-formed homeowners association, and we're also  
68 dealing with summer vacation schedules that were making it a little bit difficult to  
69 keep the dialogue moving. We've had a meeting between the last deferral and  
70 this one where we shared some more information with the homeowners and got  
71 some more feedback from them. And we just think that if we can at least have  
72 one more deferral that will give us an opportunity to make sure that we are all on  
73 the same page, and either we'll have reached some understanding with the  
74 homeowners or we won't. And if not, we'll bring it forward at that point.

75  
76 Mr. Blankinship - Do you want to see if there are any homeowners  
77 here?

78  
79 Ms. Harris - Mr. Wilson, before you leave the podium, would thirty  
80 days be amenable to you or would sixty days be better?

82 Mr. Wilson - I believe thirty days. I think we're at the point where  
83 one more meeting with the homeowners, one more exchange of information, we  
84 will either know that we're going to be able to reach some understanding or  
85 recognize that we're just going to politely agree to disagree and bring the case  
86 forward.

87  
88 Ms. Harris - All right, thank you. Are any of the homeowners here  
89 from the Westhampton community? When you state your name, please spell  
90 your last name.

91  
92 Mr. Marshall - Lawrence Marshall—M-a-r-s-h-a-l-l.

93  
94 Ms. Harris - Mr. Marshall, you have a statement to make  
95 regarding this deferral.

96  
97 Mr. Marshall - We support the request for the deferral to continue  
98 discussions. I agree with Jack that we're close enough to knowing whether we're  
99 going to have an agreement or whether we will agree to disagree.

100  
101 Ms. Harris - You are a homeowner? Are you the president of the  
102 association or—

103  
104 Mr. Marshall - I'm not the president of the association. The president  
105 is not able to be here. I am a local real estate attorney, and I am a resident also.

106  
107 Mr. Baka - May I ask a question, Mr. Marshall, Madam  
108 Chairman?

109  
110 Ms. Harris - Yes.

111  
112 Mr. Baka - Along the same lines, same question. Given summer  
113 vacations and it's the fourth deferral, Mr. Marshall, would sixty days be more  
114 appropriate to allow additional time for you to work this out since it's gone on for  
115 a while.

116  
117 Mr. Marshall - I will take Mr. Wilson at his word that we will know  
118 within the next thirty days. I think that's appropriate.

119  
120 Mr. Baka - Okay, thank you.

121  
122 Mr. Marshall - We are in no particular hurry one way or the other,  
123 but that's more in Mr. Wilson's court than ours.

124  
125 Ms. Harris - If there are no more questions from Board members,  
126 thank you, Attorney Marshall. Is there another homeowner who wishes to speak?

127 Okay. Thank you so very much. A motion is in order regarding this deferral  
128 request.

129  
130 Mr. Baka - I'd like to make a motion we defer this case for thirty  
131 days to the next meeting.

132  
133 Ms. Harris - Is there a second?

134  
135 Mr. Wright - I'll second that. September the 27<sup>th</sup> is the next  
136 meeting. Make it specific.

137  
138 Mr. Baka - September the 27, 2012.

139  
140 Ms. Harris - Okay. It's been moved and properly seconded that we  
141 will defer this case until the next meeting, September 27, 2012. Are there any  
142 questions on the motion? All in favor say aye. All opposed say no. The ayes  
143 have it; the motion passes.

144  
145 After an advertised public heading, and on a motion by Mr. Baka, seconded by  
146 Mr. Wright, **CUP2012-00005, Westhampton Memorial Park**, has been deferred  
147 until the September 27, 2012 meeting.

148  
149 Mr. Blankinship - The other request for deferral is CUP2012-00026. I  
150 left a memorandum on the table for you that was prepared by the Department of  
151 Public Utilities. Alvin Christian of that department is going to speak to this  
152 deferral.

153  
154 **CUP2012-00026 VARINA MITIGATION LLC** requests a conditional  
155 use permit pursuant to Sections 24-12(b) and 24-52(a) of the County Code to  
156 develop a wetland mitigation bank at 9421 Osborne Turnpike (NEWSTEAD  
157 FARMS) (Parcel 808-672-3167) zoned A-1, Agricultural District (Varina).

158  
159 Ms. Harris - Please come forward, Mr. Christian.

160  
161 Mr. Christian - Alvin Christian—C-h-r-i-s-t-i-a-n. Basically, the plan  
162 before us conflicted with our master plan to provide sanitary sewer and water. It's  
163 our intention with the master plan to be able to serve the entire County with  
164 water and sewer. We need to see how their mitigation bank is going to impact  
165 our master plan going forward. And we'd like to have some time to work that out  
166 with the applicant.

167  
168 Ms. Harris - Okay. What is your position, sir?

169  
170 Mr. Christian - I am the senior engineer in the private development  
171 section of Public Utilities.

172

173 Ms. Harris - Are there any questions of Mr. Christian? Okay, thank  
174 you.

175  
176 Mr. Nunnally - Are you asking for a thirty-day deferral?

177  
178 Mr. Christian - I think thirty days, yes. I think thirty days will be  
179 sufficient for us to work things out.

180  
181 Mr. Blankinship - Mr. Kelby Morgan is here representing the applicant  
182 as well.

183  
184 Mr. Morgan - Good morning. My name is Kelby Morgan—M-o-r-g-a-  
185 n. I represent Varina Mitigation LLC. We're requesting a deferral for thirty days to  
186 try to work things out with Public Utilities.

187  
188 Ms. Harris - Any questions by Board members? Thank you so  
189 very much.

190  
191 Mr. Morgan - Thank you.

192  
193 Ms. Harris - Is there anyone else who wants to address this  
194 issue? Okay, what is the pleasure of the Board?

195  
196 Mr. Nunnally - I move we defer it until September 27.

197  
198 Mr. Wright - Second.

199  
200 Ms. Harris - Moved by Mr. Nunnally, seconded by Mr. Wright that  
201 we defer this case until September the 27<sup>th</sup>. Are there any questions on the  
202 motion? All in favor say aye. All opposed say no. The ayes have it; the motion  
203 passes.

204  
205 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
206 Mr. Wright, **CUP2012-00026, Varina Mitigation LLC**, has been deferred until  
207 the September 27, 2012 meeting.

208  
209 Ms. Harris - Are we ready now to proceed with our agenda?

210  
211 Mr. Blankinship - Yes ma'am.

212  
213 **CUP2012-00022 ROGERS L. JACKSON** requests a conditional use  
214 permit pursuant to Sections 24-12(d) and 24-12(e) of the County Code to allow  
215 homing pigeon lofts and a noncommercial kennel at 3708 Hargrove Avenue  
216 (PLEASANT VIEW) (Parcel 801-735-4375) zoned R-4, One-Family Residence  
217 District (Fairfield).

219 Ms. Harris - All persons who wish to speak to this case, please  
220 raise your right hand.

221  
222 Mr. Blankinship - Raise your right hand, please. Do you swear the  
223 testimony you're about to give is the truth and nothing but the truth so help you  
224 God?

225  
226 Mr. Jackson - Yes.

227  
228 Ms. Harris - Okay. Please state your name.

229  
230 Mr. Jackson - My name is Rogers Jackson—J-a-c-k-s-o-n.

231  
232 Ms. Harris - Okay. And if you can kind of get us up to date with  
233 what has happened over the last thirty days.

234  
235 Mr. Jackson - They sent me a letter stating that I must take the coop  
236 and move it ten feet in. I called a lot of people that do buildings and setups.  
237 Henrico Code is two feet off the property line and a block up. Now, the diagram  
238 that you showed me where the loft is, everybody who has buildings on that line is  
239 over the line or on the line. So they are violating codes, too. Look at the line, and  
240 look at all the buildings. They are touching the line, which you're supposed to be  
241 two feet off the line. One of the buildings is over the line. Do you see? I went by  
242 the code when I had them moved. Like I told you before, when you move any  
243 building in Henrico County, they give you specifics on how it's supposed to be  
244 done. Any building that you have moved. So I moved the building. Now you're  
245 saying that I must move it ten feet back from the property line.

246  
247 The other problem is if you come in Henrico County where I live, all of the  
248 alleyways are littered and trees are overgrown. Henrico is supposed to keep  
249 those alleyways clean and up to date. We have kids running through there and  
250 kids playing. You don't know what is going to hide in there. You could have  
251 rapists, murderers, and everybody. Take a ride and look in my alleys, look in my  
252 neighborhood. Compare it to your neighborhood. They don't clean those  
253 alleyways. Those alleyways are littered.

254  
255 I don't even see the problem. But I see a problem with everybody else's building  
256 over the line and on the line. When I had mine moved five or six years ago it was  
257 by code.

258  
259 Ms. Harris - Mr. Jackson, each case is judged on its own merit;  
260 you know that.

261  
262 Mr. Jackson - Each case is judged on its own merit. But if I'm in  
263 violation, everybody in the neighborhood is in violation.

264

265 Ms. Harris - You can register a complaint against them.  
 266  
 267 Mr. Jackson - Okay.  
 268  
 269 Ms. Harris - But right now we want you to—  
 270  
 271 Mr. Jackson - I did everything by code that I was supposed to do.  
 272 The other building that I had, I have to take a foot off of it and it will be under  
 273 code.  
 274  
 275 Ms. Harris - Okay. Have you seen the conditions? I'm not seeing  
 276 that. Did you get a copy of today's report?  
 277  
 278 Mr. Jackson - I don't think I have a copy.  
 279  
 280 Ms. Harris - You need that because this is the—these are the  
 281 conditions that are before us now.  
 282  
 283 Mr. Jackson - Well I have met all the conditions that I was required  
 284 to do.  
 285  
 286 Ms. Harris - This approval, should it be granted, is for the keeping  
 287 of not more than fifty pigeons, under the code 24-12(d), and not more than one  
 288 dog, twelve gerbils, and ten parakeets?  
 289  
 290 Mr. Jackson - Yes.  
 291  
 292 Ms. Harris - Do you see that?  
 293  
 294 Mr. Jackson - Yes.  
 295  
 296 Ms. Harris - Can you comply with that?  
 297  
 298 Mr. Jackson - Yes I can.  
 299  
 300 Ms. Harris - Okay. So the problem you have is condition number  
 301 three, the one that says, "No later than October 31, 2012, you need to modify the  
 302 204-square-foot building to reduce its size to no larger than 160 square feet." Is  
 303 that the one you're complaining about?  
 304  
 305 Mr. Jackson - Right. It's just one—160 square feet is really 161  
 306 square feet, so I have to take an inch off of it. If you look at when you first  
 307 measure it, it's 161 square feet. And now you want me to take it two feet off the  
 308 ground. Well by code it's not supposed to be two feet. They're keeping things  
 309 like kids and everybody from crawling up under it. Now you want it two feet off  
 310 the ground.

311  
 312 Ms. Harris - That's the requirement for all pigeon lofts. That's in  
 313 the code. That's for all pigeon lofts.  
 314  
 315 Mr. Blankinship - But it's only for pigeon lofts. That wouldn't apply to  
 316 other kinds of buildings.  
 317  
 318 Ms. Harris - In other words, we're trying to get you to conform with  
 319 the setbacks.  
 320  
 321 Mr. Jackson - Oh, so I have to take one inch off the loft and raise it  
 322 up another foot.  
 323  
 324 Ms. Harris - Well I thought we were looking at a 204-square-foot  
 325 building. So you have to take more than an inch off.  
 326  
 327 Mr. Jackson - So how long is the building? I don't have it on me. I'll  
 328 go home re-measure it and see how many feet it is. It's eight feet by twenty-eight  
 329 feet.  
 330  
 331 Ms. Harris - I think you're talking about condition number four?  
 332 You should bring the 161-square-foot building along the alley in compliance with  
 333 the setbacks or remove it.  
 334  
 335 Mr. Jackson - All the requirements are there, except for that one  
 336 building. So I just have to take two feet off the building and raise it up to two feet.  
 337  
 338 Mr. Blankinship - Let me read the provisions from the code because  
 339 there seems to be some confusion about it. I'm reading from 24-95(i), which is  
 340 buildings and projections in yards. Subsection 2 is in the rear yard of one-family  
 341 or semi-detached dwelling. Paragraph D reads like this: "The buildings or  
 342 structures shall be located not less than ten feet from all street and alley lines,  
 343 not less than three feet from all other lot lines, and shall not be located within  
 344 County easements." So the rear line of this property is an alley line, so there's a  
 345 ten-foot setback. And that's what's shaded in green on the screen. Side property  
 346 lines have the three-foot setback. But along the rear lot line there is a ten-foot  
 347 setback. And I understand the point that looking at the aerial photograph there  
 348 are a lot of other buildings right on that alley line. But as you said, Madam Chair,  
 349 those buildings are not before this Board this morning.  
 350  
 351 Mr. Jackson - So if I take my pigeons out of the building and it's not  
 352 a pigeon lot, then I still have to move the building.  
 353  
 354 Mr. Blankinship - The buildings within ten feet of the alley, yes sir.  
 355



356 Mr. Jackson - How many years are you talking about? Those  
357 buildings have been there for six years. How long are you talking about?  
358 Everything you're talking about does have a time limit. You can't tell me that if  
359 I've had the building up for ten, fifteen, twenty years that now I have to move it.  
360 You have to have a timeline. Like I'm saying, you can't tell me today that you  
361 have a problem with it when it was already there. Something has to factor under  
362 the grandfather clause because that building was there for six years.

363  
364 Mr. Blankinship - That sentence has been in the County code since  
365 1960.

366  
367 Mr. Wright - October 31<sup>st</sup>, does that not give you enough time to  
368 move it?

369  
370 Mr. Jackson - You want the whole building moved? I can't move it.

371  
372 Mr. Baka - The code requires that.

373  
374 Mr. Jackson - I can't move it up six feet—ten feet from the property  
375 line; I have a goldfish pond right in the front of it. I went by code when I first did it.  
376 I can't help it that the code keeps changing. When you have something done, I  
377 went by the code.

378  
379 Mr. Wright - You couldn't have operated under the code since the  
380 code was put in in 1960.

381  
382 Mr. Jackson - I don't know about 1960. When I called the people to  
383 move the building. I don't know whether they have a code book or what. I'll tell  
384 you what, call Crowder or anybody who moves a building. They'll tell you. That's  
385 what they told me, you have to be two feet off the property line and on the block.  
386 That's what Henrico requires.

387  
388 Mr. Wright - They got the wrong code.

389  
390 Mr. Blankinship - Sir, I just read to you from the County code.

391  
392 Mr. Jackson - That's what I did when I moved the building. I couldn't  
393 help what was in place. I went by the code that was there when I had it moved.

394  
395 Mr. Wright - You should have called the County and gotten the  
396 code.

397  
398 Mr. Jackson - That's what I did. I called the County. Then the  
399 people who move buildings, they have to call the County, too, because they can't  
400 just move it. Everything has to have a code.

401

402 Ms. Harris - When you employ them, they have to do as you ask  
403 them to do, otherwise—  
404  
405 Mr. Jackson - No. They can't do what I say. They have to go by a  
406 code—Henrico County code or whatever code they move the building to.  
407  
408 Ms. Harris - I'm saying if you discovered that Henrico County  
409 conflicted with what they're trying to do. You hired them. Maybe they were the  
410 wrong people for the job. I'm concerned about the building that had to be  
411 modified—the 204-square-foot building—to bring it into conformity with the  
412 setbacks, change it to reduce its size to 160 square feet. To me that's a big  
413 problem.  
414  
415 Mr. Jackson - No, that's not a big problem. I do construction work,  
416 so I know. I'll just do it.  
417  
418 Ms. Harris - So you don't have a problem with number three. You  
419 just a problem with moving—  
420  
421 Mr. Jackson - I can't move that building. It's two feet off the line.  
422 And I have a goldfish pond right in front of it.  
423  
424 Ms. Harris - So at the risk of having your case turned down, you  
425 can't move the building to comply with County code.  
426  
427 Mr. Jackson - Well I applied [sic] with County code when I first  
428 moved the building. I can't help—when I told Crowder about it, they called the  
429 County and they went by the County code then. I don't know what the County  
430 code was. They went by with what was on the book that they had.  
431  
432 Ms. Harris - Well they gave you some misinformation because the  
433 code hasn't changed since 1960. They probably followed some type of building  
434 code, but they didn't follow the code that we have to apply here on this Board.  
435  
436 Mr. Baka - Sir, is there anywhere else in the rear of the property  
437 you could put that building? It says 161 square feet, and it's currently about two  
438 feet away from the alley. Is there anywhere else you can move it so that's in the  
439 rear of your property, and so that it's more than three feet from each side  
440 property line, and more than—  
441  
442 Mr. Jackson - I can't move it.  
443  
444 Mr. Baka - Let me finish the question. And more than ten feet  
445 from the alley?  
446  
447 Mr. Jackson - I can't get a truck in the backyard.

448  
 449 Mr. Baka - What other buildings would you need to move out of  
 450 the way and temporarily place somewhere else so that you could get back there  
 451 and could move it? And then once the 161-square-foot building is outside of the  
 452 setbacks, then you can move the other buildings back to where they were.  
 453  
 454 Mr. Jackson - You really can't move it. It's right there. Then you  
 455 have trees and stuff growing up in the alley.  
 456  
 457 Mr. Baka - So what you're saying is one of your only options may  
 458 be to dismantle it and move it back into the yard where it doesn't violate the  
 459 setback anymore. Is that correct?  
 460  
 461 Mr. Jackson - Right.  
 462  
 463 Mr. Baka - Could that be done? So that could be done. More  
 464 difficult, but possible. Yes? Maybe.  
 465  
 466 Mr. Jackson - Maybe.  
 467  
 468 Mr. Baka - Okay.  
 469  
 470 Ms. Harris - So there's some expense involved there.  
 471  
 472 Mr. Jackson - Yes.  
 473  
 474 Ms. Harris - You said you're in construction. You can construct  
 475 another building that would comply with the County code. That would involve an  
 476 expense. How do you feel about it?  
 477  
 478 Mr. Jackson - I'll see what—I'll see what I can do. It's going to be  
 479 impossible to get somebody in the backyard and move that building up ten feet.  
 480  
 481 Mr. Baka - I can understand if you can't move it. Maybe it can be  
 482 dismantled and moved.  
 483  
 484 Mr. Wright - The other building has to be moved too. We could  
 485 give Mr. Jackson sixty days to move it, if he needs it, or ninety days.  
 486  
 487 Mr. Jackson - To move which building?  
 488  
 489 Mr. Wright - Thirty days is not a whole lot of time, especially if  
 490 he—  
 491  
 492 Mr. Jackson - Cut the building down to the code?  
 493

494 Mr. Wright - Yes.  
 495  
 496 Mr. Jackson - I'll cut it down to the code.  
 497  
 498 Mr. Wright - We could give you whatever time you need. How  
 499 much time do you need to do it? We have October 31.  
 500  
 501 Mr. Jackson - By that time I'll be in Louisville, Kentucky. In the end  
 502 of October I go there for a week.  
 503  
 504 Mr. Wright - Do you want to make it November?  
 505  
 506 Mr. Jackson - I go to Florida for a week in November. So you'll have  
 507 to make it December because January I go to Pennsylvania.  
 508  
 509 Mr. Wright - We could make it December; give you three months  
 510 to do it, just so you do it.  
 511  
 512 Mr. Jackson - I'll just cut the building down and move it. Cut that one  
 513 to code.  
 514  
 515 Mr. Gidley: [Speaking off microphone.] And then the rear  
 516 building.  
 517  
 518 Ms. Harris - You have to move the rear building.  
 519  
 520 Mr. Jackson - I can't get a truck in the back to lift it up and move it.  
 521 You have two big trees, and then you have to come across the neighbor's yard,  
 522 and I don't want to deal with the neighbors.  
 523  
 524 Ms. Harris - But you can tear it down is what you could do.  
 525  
 526 Mr. Jackson - I'll see what I can do.  
 527  
 528 Ms. Harris - In looking at the conditions, the five conditions.  
 529  
 530 Mr. Jackson - So in the meantime everybody else who is not abiding  
 531 by the rules, and the alleyway is not cleaned up. All the trash and debris in there,  
 532 who do I contact to get that clean? Ninety percent of the alley is littered. Who is  
 533 going to clean the alleyways?  
 534  
 535 Mr. Blankinship - I'm not certain which department is responsible for  
 536 the alleyways. But I will find out and we'll let you know.  
 537  
 538 Mr. Jackson - Okay. Let me know then I'll find out about the other  
 539 people and their buildings, why theirs are on the line and across the line and

540 everything. I'll cut it down and I'll move it. I'll find somebody with some heavy  
541 equipment to bring it up.

542  
543 Ms. Harris - So Mr. Jackson, you have a copy now of the  
544 conditions, right, those five conditions.

545  
546 Mr. Jackson - Yes.

547  
548 Ms. Harris - Okay. So if we change number three to no later than  
549 December 31<sup>st</sup>?

550  
551 Mr. Wright - And number four.

552  
553 Ms. Harris - And number four to December 31<sup>st</sup>, do you feel you  
554 can comply with these conditions?

555  
556 Mr. Jackson - Yes. I'll cut the building down. The other building right  
557 there, if I cut that building down, I cannot bring the other building up, the one that  
558 I'm going to cut. The other building is in the way of it. So you're talking about  
559 bringing it up ten feet.

560  
561 Ms. Harris - Yes, that's what we're talking about.

562  
563 Mr. Jackson - Then what I'm I going to do about the goldfish pond  
564 that's been in the ground for six years?

565  
566 Ms. Harris - I don't know. You said you're in construction; you  
567 have to come up with something creative to let it all happen. But you know the  
568 code now for the County, and you need to make it comply.

569  
570 Mr. Jackson - Well what about everybody else with buildings not  
571 within the County code?

572  
573 Ms. Harris - Like you said, you have to call and complain.

574  
575 Mr. Jackson - Well I'll call and complain about everybody. All right.

576  
577 Ms. Harris - Thank you so much. Is there anyone else who wishes  
578 to speak to this case?

579  
580 Mr. Jackson - [Speaking off microphone.] Who do I call to complain  
581 about all the other buildings?

582  
583 Ms. Harris - Can you come back to the microphone, Mr. Jackson,  
584 so what you're saying can be recorded in our minutes?  
585

586 Mr. Jackson - Who do I call to make a complaint about everybody  
 587 else's buildings throughout Henrico County whose buildings are over the line?  
 588  
 589 Mr. Blankinship - That would be Community Maintenance, and they're  
 590 at 501-4757.  
 591  
 592 Mr. Jackson - All right. Thank you.  
 593  
 594 Ms. Harris - Is there anyone else who wishes to speak to this case?  
 595 Mr. Blankinship, please call the next case.  
 596  
 597 **[After the conclusion of the public hearings, the Board discussed the case**  
 598 **and made its decision. This portion of the transcript is included here for**  
 599 **convenience of reference.]**  
 600  
 601 Ms. Harris - What is the pleasure of the Board regarding this  
 602 case?  
 603  
 604 Mr. Nunnally - What did we say, we were going until 12/31 or  
 605 something?  
 606  
 607 Mr. Wright - Yes, December 31. We need to amend that if we  
 608 approve it.  
 609  
 610 Ms. Harris - Okay. So we need a motion, if that's our pleasure. I'll  
 611 move that this case be approved with the dates being changed giving him until  
 612 December 31, 2012, to comply with those two conditions.  
 613  
 614 Mr. Blankinship - Three and four.  
 615  
 616 Ms. Harris - Three and four.  
 617  
 618 Mr. Wright - I'll second it.  
 619  
 620 Ms. Harris - Moved by Ms. Harris, seconded by Mr. Wright that  
 621 this case be approved with the dates being changed to December 31 in  
 622 conditions three and four. Is there discussion on the motion?  
 623  
 624 Mr. Baka - I have one question. On condition number one it says  
 625 no more than fifty pigeons, and I don't believe we discussed the number today.  
 626 Was there a reasoning for the number *fifty* being selected? That was one  
 627 question we didn't bring up. The previous case had a different number.  
 628  
 629 Mr. Blankinship - We did do some research into that, Mr. Baka, and we  
 630 didn't really find anything conclusive about how many pigeons are appropriate.  
 631 We don't think there's any concern with the health of the animals themselves

632 with fifty of them being confined in 160 square feet. And we came up with that  
633 number because we went through the history of the cases we've heard in the last  
634 ten or twelve years, which is only four or five. Fifty was the largest number that  
635 had been approved in the past. Since this applicant is currently over fifty, we just  
636 felt like bringing him in line with the most that you've ever approved before would  
637 be appropriate. But it's not a number that we arrived at scientifically or that staff  
638 feels strongly about.

639  
640 Mr. Baka - Okay. So I'm recalling that the previous case about  
641 three or four months ago with a different property of pigeons we had approved a  
642 smaller number. But that was a much smaller accessory structure, wasn't it?

643  
644 Mr. Blankinship - Yes.

645  
646 Ms. Harris - Yes it was.

647  
648 Mr. Baka - Okay. Thank you very much.

649  
650 Ms. Harris - I did drive by there yesterday, and I expected to see  
651 pigeons flying all around. I did not see the first pigeon. Remember last month we  
652 said that there were fifty pigeons per structure. With a hundred pigeons I  
653 certainly expected to see some flying. I don't know what happened to them  
654 yesterday; maybe it was their time to be out doing what they do. I found that kind  
655 of amazing. Mr. Bell, you had a question.

656  
657 Mr. Bell - No, it was answered.

658  
659 Ms. Harris - Are we prepared to vote? All in favor say aye. All  
660 opposed say no. The ayes have it; the motion passes.

661  
662 After an advertised public hearing and on a motion by Ms. Harris, seconded by  
663 Mr. Wright, the Board **approved** application **CUP2012-00022, ROGER L.**  
664 **JACKSON'S** request for a conditional use permit pursuant to Sections 24-12(d)  
665 and 24-12(e) of the County Code to allow homing pigeon loft and noncommercial  
666 kennel at 3708 Hargrove Ave (PLEASANT VIEW) (Parcel 801-735-4375) zoned  
667 One-Family Residential District (R-4). The Board approved the conditional use  
668 permit subject to the following conditions:

- 669  
670 1. This approval is only for the keeping of not more than 50 pigeons under  
671 Section 24-12(d) and not more than 1 dog, 12 gerbils, and 10 parakeets under  
672 Section 24-12(e).  
673  
674 2. Only the existing improvements shown on the plot plan filed with the  
675 application are allowed pursuant to this approval, subject to the conditions below.  
676 Any substantial changes or additions to the design or location of the  
677 improvements will require a new use permit.

678  
679 3. No later than December 31, 2012, the applicant shall modify the 204-square-  
680 foot building along the north property line to (a) reduce its size to no larger than  
681 160 square feet, (b) raise it at least two feet above the ground, and (c) bring it  
682 into conformance with all required setbacks.

683  
684 4. No later than December 31, 2012, the applicant shall bring the 161-square-  
685 foot building along the alley into compliance with the setbacks or remove it from  
686 the property.

687  
688 5. The applicant shall maintain the property so that noise and odors are  
689 controlled.

690  
691  
692 Affirmative: Baka, Bell, Harris, Nunnally, Wright 5  
693 Negative: 0  
694 Absent: 0

695  
696  
697 Mr. Wright - Good luck.

698  
699 Ms. Harris - Yes, yes.

700  
701 Mr. Wright - The good news on these things is if he violates this or  
702 doesn't comply with the conditions we can call him back in, and we can revoke it.  
703 This is not something that's indefinite or permanent.

704  
705 Ms. Harris - Right, right. We definitely had some conditions.

706  
707 **[At this point, the transcript continues with the public hearing on the next**  
708 **case.]**

709  
710 **CUP2012-00025** **PATTIE JENNINGS** requests a conditional use permit  
711 pursuant to Section 24-12(e) of the County Code to allow a noncommercial  
712 kennel at 2215 Kent St (PARK VIEW) (Parcel 780-745-4595) zoned R-4, One-  
713 Family Residence District (Brookland).

714  
715 Ms. Harris - All persons who wish to speak to this case please  
716 stand, and raise your right hand so that you may be sworn in.

717  
718 Mr. Blankinship - Do you swear the testimony you're about to give is  
719 the truth and nothing but the truth so help you God?

720  
721 Ms. Jennings - Yes.

722  
723 Ms. Harris - Please state your name, spell your last name.



724  
 725 Ms. Jennings - Pattie Jennings—J-e-n-n-i-n-g-s.  
 726  
 727 Ms. Harris - Okay. Please state your case.  
 728  
 729 Ms. Jennings - Well, there are a couple of things here. One thing is I  
 730 have some buildings, and it was pointed out that I have too many accessory  
 731 buildings. So I pulled out where we had the garage built, the size that you have  
 732 on it is different than what was built and approved. I have papers that show that  
 733 the garage is actually 576 square feet.  
 734  
 735 Mr. Blankinship - Twenty-four by twenty-four?  
 736  
 737 Ms. Jennings - I don't know, but I have it right here where it says—if  
 738 you to see it.  
 739  
 740 Mr. Blankinship - No, that's fine.  
 741  
 742 Ms. Jennings - Okay. And the little white building in the back is  
 743 actually eight by eight. When I bought my home it was there, and that's the size  
 744 they have on the drawing that I have with my deed and all.  
 745  
 746 Mr. Wright - Which one is it that you say is eight by eight?  
 747  
 748 Ms. Jennings - Directly behind the garage.  
 749  
 750 Mr. Wright - The one we show as eight by ten?  
 751  
 752 Ms. Jennings - It's eight by eight. And that's on the drawing that I had  
 753 when I bought my home. I have that too.  
 754  
 755 Mr. Wright - We have eight by sixteen, but that's really eight by  
 756 eight.  
 757  
 758 Mr. Blankinship - No, that's the kennel.  
 759  
 760 Ms. Jennings - No. I'm talking about directly behind the garage.  
 761 There is one right up in the corner.  
 762  
 763 Mr. Blankinship - I think she means the nine by nine.  
 764  
 765 Mr. Wright - The one we show as nine by nine.  
 766  
 767 Ms. Jennings - They're the only two that are stationary. Okay, just a  
 768 moment.  
 769

770 Mr. Bell - It's up there on the screen, if you want to look.  
771  
772 Ms. Jennings - I'm sorry, what?  
773  
774 Mr. Bell - It's right up there on the screen.  
775  
776 Ms. Jennings - Oh, oh, okay. Sorry. Yes, nine by nine. Yes, right  
777 where your little arrow is there.  
778  
779 Mr. Wright - That's eight by eight.  
780  
781 Ms. Jennings - That's eight by eight, and it's on the sheet that I got  
782 when I bought my home. And I bought it in 1978, so I guess it met the code then,  
783 it was 1.7 feet off the line. And I guess that's what they had in 1978.  
784  
785 Mr. Blankinship - Now you're not an alley, so it wouldn't be the ten feet,  
786 but it would be three feet.  
787  
788 Ms. Jennings - But when I bought my house in 1978—  
789  
790 Mr. Blankinship - It was three feet. It's been three feet since 1960.  
791  
792 Ms. Jennings - Okay, well. I have no problem knocking it down. The  
793 other two buildings are on skids. I have pictures of that showing they're on skids.  
794  
795 Mr. Blankinship - Do our pictures show that, Paul?  
796  
797 Ms. Jennings - Would you like to see those?  
798  
799 Mr. Blankinship - I think we have some pictures that might show it  
800  
801 Ms. Jennings - I have pictures right here showing they're on skids,  
802 both of them. Yes, it's the little white one behind there. There you go. Now I've  
803 got a little something overtop. Well, I have the picture on the other side that  
804 shows the skids.  
805  
806 Mr. Jennings - If you look right beside that rock, that's a skid  
807 underneath there.  
808  
809 Mr. Blankinship - And who are you, sir?  
810  
811 Ms. Jennings - This is my husband.  
812  
813 Ms. Harris - Identify yourself, please.  
814  
815 Mr. Jennings - I came down—I'd like to say something.

816  
817 Ms. Jennings - Tell them who you are. Tell them who you are.  
818  
819 Mr. Jennings - My name is Robert Jennings—J-e-n-n-i-n-g-s. When I  
820 got the permit to build the garage, they came and looked at that shed that you  
821 were just discussing, and it was included in the footage, and there was nothing  
822 said about that being too close to the line or anything else. We have the building  
823 permit and everything  
824  
825 Ms. Jennings - Back in 1978 it was on there when I bought the  
826 property.  
827  
828 Mr. Jennings - It's a cinderblock building with a cement floor.  
829  
830 Ms. Harris - So you say it's one point what? What's the square  
831 footage?  
832  
833 Ms. Jennings - It shows on my deed here, it came with this, and it  
834 shows a drawing that was approved, 1.7. And this was what was written and  
835 approved. Would you like to see this?  
836  
837 Ms. Harris - Yes please.  
838  
839 Ms. Jennings - Okay. Do you want to see the skids?  
840  
841 Ms. Harris - I think we have that in our packet.  
842  
843 Ms. Jennings - I have pictures of both of them.  
844  
845 Mr. Blankinship - The survey shows that the building is 1.7 feet from  
846 the property line. But that was already there when this was—well this is—yes.  
847 When this was drawn that building was already there. That doesn't make it  
848 lawful. I don't know who put it there or when.  
849  
850 Mr. Jennings - It may have been there in the forties. This house was  
851 built in the forties, and that shed was probably built at the same time.  
852  
853 Mr. Blankinship - If it was built in the forties then it would be non-  
854 conforming. If was built before 1960 it would be non-conforming. I don't know off  
855 the top of my head what the setback was in 1953 for accessory structures. We  
856 could look that up. I think we are still going to have an issue with too much  
857 square footage of accessory structures, even after you correct the two that are  
858 incorrect.  
859

860 Ms. Jennings - The garage—and I have that too—is 576 square feet.  
861 That little white building is 64. That's a total of 640 square feet, which is less than  
862 the 682.5 you said we could have.  
863  
864 Mr. Blankinship - And you're just not counting the other buildings?  
865  
866 Ms. Jennings - The other two are on skids so they don't count.  
867  
868 Mr. Blankinship - I think we would count the two on skids. I think  
869 that's—  
870  
871 Ms. Jennings - Well, I had that investigated. And they said if they're  
872 on skids they are not included because they're movable. I had someone check  
873 on that and look it up for me. They said they are not included because they're on  
874 skids.  
875  
876 Mr. Blankinship - Do you know who told you—  
877  
878 Ms. Jennings - Anything on skids.  
879  
880 Mr. Jennings - They're not a permanent structure.  
881  
882 Ms. Jennings - Yes, they're not permanent.  
883  
884 Mr. Jennings - I can move them any time.  
885  
886 Mr. Wright - Which two are on skids?  
887  
888 Ms. Jennings - The one in the back.  
889  
890 Mr. Jennings - The one back there behind the dog kennel and that  
891 one.  
892  
893 Ms. Jennings - Yes.  
894  
895 Mr. Wright - Okay.  
896  
897 Ms. Jennings - They're on skids, both of them.  
898  
899 Mr. Blankinship - I think we do count those against the lot coverage. I  
900 mean how long have they been where they are?  
901  
902 Ms. Jennings - We built those and we put them on skids.  
903  
904 Mr. Jennings - I put them on skids because I was going to move  
905 them if we ever move. It's been—I don't know—right after we built the garage.

906  
 907 Ms. Jennings - My nephew builds homes and stuff. And he said  
 908 skids, if you put—he said you can put one in your front yard and nothing you can  
 909 do because they're on skids.  
 910  
 911 Mr. Blankinship - Well I can guarantee you that's incorrect.  
 912  
 913 Ms. Jennings - I'm just saying. He builds homes and all, so he knows  
 914 all the codes.  
 915  
 916 Mr. Jennings - We're not trying to be hard to get along with, but I can  
 917 move the buildings any time I need to.  
 918  
 919 Ms. Jennings - They're movable; they're not stationary. It's like  
 920 putting a POD up.  
 921  
 922 Ms. Harris - So you'll remove them to comply with the code? Is  
 923 that what you're saying?  
 924  
 925 Ms. Jennings - The only one that isn't, I think, is the white building.  
 926 That's not three feet off. And I really don't have a problem knocking it down, but  
 927 it was there when I bought it. I figures it was grandfathered in. At that time maybe  
 928 it was not three feet.  
 929  
 930 Mr. Blankinship - That might be accurate. If that's the only issue then  
 931 that wouldn't be an issue. But I think we're still over the lot coverage.  
 932  
 933 Ms. Jennings - Well, could I investigate and find out from the building  
 934 people if skids make a difference? This is what I've always heard.  
 935  
 936 Mr. Blankinship - Yes.  
 937  
 938 Mr. Wright - Do you want to continue the case?  
 939  
 940 Ms. Harris - Did you see the conditions? There are four  
 941 conditions. Have you read those?  
 942  
 943 Ms. Jennings - I'm sure I did. The next thing was the dogs.  
 944  
 945 Ms. Harris - Before we talk about the dogs, condition number  
 946 three. You understand the sentence that says, "Any part of any accessory  
 947 structure within three feet."  
 948  
 949 Ms. Jennings - Right. That's what I just addressed.  
 950  
 951 Ms. Harris - You can comply with that?

952  
 953 Ms. Jennings - Yes. That's what I just addressed. I was saying that I  
 954 thought that it was grandfathered in because it was so long ago when it was  
 955 built.  
 956  
 957 Mr. Blankinship - We probably should mention that in the condition that  
 958 if there is a structure that's lawfully non-conforming that doesn't have to be  
 959 removed.  
 960  
 961 Ms. Jennings - Okay. So the white building's okay?  
 962  
 963 Ms. Harris - No.  
 964  
 965 Mr. Blankinship - Well, I don't know yet, but it may be.  
 966  
 967 Ms. Jennings - All right.  
 968  
 969 Mr. Blankinship - And if it is then the condition—we wouldn't want the  
 970 condition to require you to remove something that the code doesn't require you  
 971 to remove.  
 972  
 973 Ms. Jennings - Right, okay.  
 974  
 975 Ms. Harris - But if the code requires that you move it then you're  
 976 going to have to move it. So that's what you're saying that you agree on in these  
 977 conditions.  
 978  
 979 Mr. Jennings - If we have to move them, we have to move them.  
 980  
 981 Ms. Harris - Do you also see the time limit there?  
 982  
 983 Ms. Jennings - I did.  
 984  
 985 Ms. Harris - And you agree to that?  
 986  
 987 Ms. Jennings - I agree to it if we have to.  
 988  
 989 Ms. Harris - If you have to move them.  
 990  
 991 Ms. Jennings - Yes.  
 992  
 993 Ms. Harris - So we are going to say that if—  
 994  
 995 Mr. Blankinship - I was going to add at the end of that sentence so that  
 996 it reads, "Any part of any accessory structure within three feet of the side or rear  
 997 property lines shall be removed unless it is legal non-conforming."

998  
 999 Ms. Jennings - Yes, yes. I thought the storage one is three feet from  
 1000 the back.  
 1001  
 1002 Mr. Jennings - It is, it is.  
 1003  
 1004 Ms. Jennings - It's three feet from the back. So the only one is the  
 1005 white one that is not three feet off. And that was built in cement. And like I said, I  
 1006 assumed because it was on my print I got in 1978. And I don't know how long  
 1007 ago it was built. As you said, the neighborhood was built in the thirties.  
 1008  
 1009 Mr. Blankinship - We can investigate that. That may be allowed to stay.  
 1010 The ten by twelve, what we have labeled ten by twelve in the opposite corner  
 1011 from the eight by eight, that appears from the aerial photographs to be right on  
 1012 the property line, but we don't have a survey that shows that.  
 1013  
 1014 Mr. Jennings - The fence isn't our property line. The fence is about  
 1015 two feet in our line.  
 1016  
 1017 Mr. Blankinship - Okay. We can't tell from what we have whether that  
 1018 one meets the setback or not.  
 1019  
 1020 Mr. Baka - What about the twelve by twelve further up?  
 1021  
 1022 Mr. Jennings - Same situation.  
 1023  
 1024 Mr. Blankinship - That appears to meet the setback. The question there  
 1025 again is with the total area of accessory structures.  
 1026  
 1027 Ms. Harris - When you got your total area, dimensions, did you  
 1028 include the buildings that were on skids? Did you include those?  
 1029  
 1030 Ms. Jennings - No, because I was told they didn't count.  
 1031  
 1032 Ms. Harris - You did not, okay.  
 1033  
 1034 Ms. Jennings - The garage and the little building, you all have the  
 1035 wrong amount up there. They're a total of 640.  
 1036  
 1037 Mr. Blankinship - Probably what happened on those is we're measuring  
 1038 the roof because we're measuring off the aerial photograph, which shows the  
 1039 edges of the roof. And you're measuring off the walls. The walls are what matter.  
 1040  
 1041 Ms. Jennings - I'm going by our—  
 1042  
 1043 Mr. Jennings - The building permit.

1044  
1045 Ms. Jennings - The building permit is what I'm going by.  
1046  
1047 Mr. Blankinship - Right. We probably have it slightly exaggerate  
1048 because we're measuring the roof. The building code treats them differently if  
1049 they're on skids, but the zoning ordinance does not. I think that's going to be the  
1050 confusion there.  
1051  
1052 Mr. Baka - Madam Chairman, question.  
1053  
1054 Ms. Harris - Yes.  
1055  
1056 Mr. Baka - Doesn't the total coverage of accessory buildings, is  
1057 that based upon a percentage of the lot area? The 682.5 is such a specific  
1058 number.  
1059  
1060 Mr. Blankinship - Yes. It's 30 percent of the required rear yard area,  
1061 which is found by multiplying the required lot width by the required rear yard  
1062 depth.  
1063  
1064 Mr. Baka - Thirty percent. Okay. Thanks.  
1065  
1066 Ms. Harris - Will we get back to them as to whether or not these  
1067 skids will count? If we put this in our motion I want to know will your proceed or  
1068 will we proceed?  
1069  
1070 Mr. Blankinship - Yes, we'll follow up with them on that because they'll  
1071 be submitting the other information anyway.  
1072  
1073 Ms. Harris - Then we will notify you as to whether or not we can  
1074 count those other buildings.  
1075  
1076 Ms. Jennings - Okay, thank you.  
1077  
1078 Ms. Harris - Now let's talk about your animals.  
1079  
1080 Ms. Jennings - Okay. My animals have been with us a long time. I  
1081 have two neighbors with me. One lives beside me, and the other one lives  
1082 across the street. I have four letters from the surrounding neighbors. One lady  
1083 didn't even know I had animals. We had one little dog that passed. And one guy  
1084 wrote especially if they are indoors. He thinks our dogs live indoors. They're very  
1085 quiet.  
1086  
1087 Mr. Jennings - They don't bark.  
1088



1089 Ms. Jennings - Two of our dogs had puppies. We didn't know this,  
1090 but it happened. So I've been teaching them; I'm retired. I sleep in the den  
1091 downstairs with the window open; I don't care if the air conditioning is on or not.  
1092 So I hear them and address any noise whatsoever. And I'm teaching them *hush*.  
1093 They know *hush* now. They know *hush*. They're not barkers. Do you want these  
1094 letters?

1095  
1096 Mr. Blankinship - Yes, please.

1097  
1098 Ms. Jennings - Okay.

1099  
1100 Mr. Jennings - If you came to our house and sat in my room, which is  
1101 in the back of the house, all day long, you might hear one of the puppies go *yelp*,  
1102 because they're playing. That's it.

1103  
1104 Ms. Jennings - They're not barkers. They're not barkers. The guy  
1105 next door who made this complaint—. These dogs were born December 26<sup>th</sup>.  
1106 When he bought the house and started renovating it, I introduced myself and  
1107 everything. I told him to let me know if my little puppies—we had just started  
1108 putting them outside because they grew up right in the middle of my house in  
1109 boxes and whatever. We just put them out and they were getting used to the  
1110 outside and all, so of course they would bark, and they were happy. And a little  
1111 puppy does not make much noise anyway. And I said they're in training; I'm  
1112 teaching them to hush. And not "Shut up!" but hush, you know. He says in his  
1113 own letter, May the 15<sup>th</sup> he signed a lease. He had two tenants sign a lease. On  
1114 the seventeenth, two days later, the dog warden came. I talked to him out in the  
1115 front yard. We went in the back. He met them; he saw the dogs and everything.  
1116 Nobody ever barked the entire time this man was here. We stood out front again;  
1117 they never barked. My husband pulled up, and of course they started barking  
1118 because they heard his truck. He and I would go out about 4:30 and play with  
1119 them until 7 when they went to bed. You know, fed them and all. So the  
1120 excitement time of letting them out of their little kennel.

1121  
1122 The tenants are not the ones that have—they had not moved in. They didn't  
1123 move in until the twenty-fifth and twenty-sixth. They signed the lease because I  
1124 talked to them then. And they said they could move a few things but the big  
1125 move was on the twenty-fifth and twenty-sixth. So they weren't even living there.  
1126 The dog warden told me that he ran a report. I'd never had a complaint on my  
1127 animals.

1128  
1129 Mr. Jennings - Before now or since then. Never.

1130  
1131 Ms. Jennings - Yes. We haven't had any others since then either.  
1132 And I've had a dog forever. I don't want to hear anybody else's dog barking; I  
1133 don't want to hear my own. I love animals, but there's no need for excessive  
1134 barking.

1135  
1136 So this is not a complaint from these two tenants here. They're lovely people; I  
1137 get along with them. I'm taking them their mail. They're going to do a yard sale  
1138 with me. There are no complaints there. This is this man that has bought this  
1139 property. And I get nobody wants to live around nine dogs, but we didn't plan on  
1140 this. On the thirty-first the female dogs are going to be fixed. And all of them will  
1141 so we can't have anymore. We would just like to keep these dogs. They're quiet  
1142 dogs. They're good dogs. We love them. The dogs love each other; nobody's  
1143 fighting. They're just sweet dogs. It would break my heart if I thought they were  
1144 going to go somewhere and maybe they weren't good to them, this kind of stuff.  
1145 These neighbors are upset because he said anything because they don't hear  
1146 them, they're good dogs. She lives directly next door and—

1147  
1148 Mr. Blankinship - Ma'am? They'll have a chance.

1149  
1150 Ms. Jennings - —she lives across the street. Oh, okay. The lady  
1151 catty-corner across didn't even know I had dogs. This man has over-exaggerated  
1152 this, plus he doesn't live there; he doesn't know what they do. He just heard  
1153 them when he was renovating. They were just happy little dogs. They went to  
1154 bed at seven; you didn't hear them the entire rest of the night. I'm retired. I'm at  
1155 the back window if I hear *yip*, you know. So they are not disturbing anyone. Like I  
1156 said, it would just break my heart if I thought—

1157  
1158 Mr. Jennings - They may not have barked when he was there, but he  
1159 saw them because I had the gate open. There were little kids running around  
1160 while they were working on the house, and the little kids wanted to come back  
1161 there and play with the puppies. So I let them come back there and play with the  
1162 puppies. That may be how he knew I had nine dogs. Other than that, nobody  
1163 around there even—I mean they don't know we have nine dogs. Two doors  
1164 down from us the man thought we kept them in the house all the time. That's  
1165 how quiet they are.

1166  
1167 Ms. Jennings - This man has bought a rental home and it's in  
1168 Lakeside. I don't know if you've ridden through Lakeside; this is not Wyndham. If  
1169 you want to invest in a house like that you need—when he bought this house in  
1170 foreclosure, he knew the neighborhood. He knew the neighborhood. He should  
1171 have bought in a different area if he didn't want to hear children and he didn't  
1172 want to hear—all around us have animals. I hear *bark bark*, but not constant, you  
1173 know. Nobody's dogs or animals are out of control. He told me, he said maybe  
1174 we can—I forget the exact words, but basically, "Maybe we can upgrade the  
1175 neighborhood since I've moved in, fixing up my house." So he thinks that he's  
1176 coming in—all these people have lived there. My house is just an important to  
1177 me—I pay taxes—as his rental house to him. Same with the neighbors. We  
1178 made an investment. We put money into it. We just added on. I'm babbling,  
1179 okay.

1180

1181 Mr. Jennings - Yes.  
1182  
1183 Mr. Blankinship - That's exactly why we have this process, ma'am, so  
1184 that the neighbors can all come and be heard, and the Board can make a  
1185 decision where they try to resolve everybody's concerns.  
1186  
1187 Mr. Jennings - You have to understand we're upset. She's about to  
1188 cry now, so. We think of these dogs as—we love them just as much as we love  
1189 our kids. They're all named. They all know their names and they mind. If one of  
1190 them barks, you call his name and he hushes up.  
1191  
1192 Ms. Harris - Mr. Jennings, how old are your dogs? I know you  
1193 have the puppies.  
1194  
1195 Mr. Jennings - Right. The original dog is five years old. The next one,  
1196 I don't know how old she is; I bought her. She's crippled. She's probably in her  
1197 teens. The father to these puppies is two years old. And the grown dog that  
1198 wandered into my property as a puppy—I have land in Louisa. I was up there,  
1199 and my dogs were running around barking, and it heard that. I heard it coming  
1200 through the woods; I thought it was a grown dog. And when it got there it was a  
1201 little tiny puppy somebody had dumped off. My property is a mile from any  
1202 highway in all directions. The right-of-way to get to my property is a mile long. So  
1203 I couldn't leave him there. So we just took him in and took care of him.  
1204  
1205 Mr. Blankinship - Is that the one that's not a beagle?  
1206  
1207 Mr. Jennings - Yes. Well he's a lab/beagle mix.  
1208  
1209 Ms. Harris - So you know how old he is.  
1210  
1211 Ms. Jennings - He's very gentle.  
1212  
1213 Mr. Jennings - He's about two.  
1214  
1215 Ms. Harris - About two, okay.  
1216  
1217 Mr. Wright - So your intent now is to raise all of these puppies and  
1218 keep them.  
1219  
1220 Mr. Jennings - Yes sir.  
1221  
1222 Ms. Jennings - We love them.  
1223  
1224 Mr. Jennings - I have forty-four acres in Louisa that I take them up  
1225 on where they can run. And they chase rabbits and they chase deer. But when  
1226 they get back home, they're totally quiet. Matter of fact, most of the time when

1227 they get back home they don't recover until about Wednesday because they're  
 1228 so tired from running.

1229

1230 Ms. Harris - I wonder, Ms. Jennings, what would happen if the  
 1231 same thing—you said you didn't know that you were going to have those little  
 1232 puppies—happened again. You know if we approve this you couldn't keep five  
 1233 more puppies.

1234

1235 Mr. Jennings - We don't intend to. We're going to have all the  
 1236 females spayed.

1237

1238 Ms. Jennings - I have an appointment now for two of them on the  
 1239 thirty-first of August.

1240

1241 Mr. Jennings - The two that are old enough to have puppies. And  
 1242 then we're going to do the puppies. I'll have to talk to the veterinarian, but soon  
 1243 as they're old enough we'll have them fixed also.

1244

1245 Ms. Jennings - We realize we can't have any more.

1246

1247 Mr. Jennings - We don't want any more; the yard's not big enough.

1248

1249 Ms. Jennings - I have three children and eight grandchildren, and  
 1250 we're into our babies now. We know that's plenty. I get that, we get that. But they  
 1251 need somebody to love them. And everybody doesn't do their dog—some  
 1252 hunters put them in a pen and leave them there; we love on ours.

1253

1254 Ms. Harris - Okay. We have other people who wish to speak to  
 1255 this. Ms. Jennings, before you leave, someone from the Board has some  
 1256 questions.

1257

1258 Mr. Bell - I have a couple questions.

1259

1260 Ms. Jennings - I'm sorry.

1261

1262 Mr. Bell - Ms. Jennings, how old are the puppies?

1263

1264 Ms. Jennings - They were born December the 26<sup>th</sup>, so they're seven  
 1265 months old.

1266

1267 Mr. Bell - The puppies have been taught *shush*.

1268

1269 Ms. Jennings - Yes, they know about shush—hush.

1270

1271 Mr. Bell - How often do you shush?

1272

1273 Ms. Jennings - Very rare now. Very rare. If a squirrel runs up a tree,  
 1274 they may, but I am on it.  
 1275  
 1276 Mr. Bell - What would that be? What would *very rare* be?  
 1277  
 1278 Ms. Jennings - I bet they don't make any—well right now they're  
 1279 making no noises. We would keep them in their little pens. Now we're just letting  
 1280 them stay in the yard, and they all snuggle up together and all. So they really  
 1281 don't have anything to bark—generally it was because they wanted to get out.  
 1282 Maybe if a squirrel went running up the pecan tree they may bark, and I'd say  
 1283 hush or step out on the porch and they stop. I am up at 6:30, and I go to bed  
 1284 late. And I'm there. It they bark, it's not two barks till I'm on it.  
 1285  
 1286 Mr. Bell - Okay.  
 1287  
 1288 Ms. Jennings - There is no constant barking. And the only time I  
 1289 leave the house is very rare. I do Meals on Wheels once a month, deliver. I may  
 1290 go to the store or something, but I'm home; I'm a homebody. So I hear them. I  
 1291 oversee them.  
 1292  
 1293 Mr. Bell - In cold, inclement weather where are they housed?  
 1294  
 1295 Ms. Jennings - They all have houses. They all have doghouses and  
 1296 all that. There's no telling what we may give them, but they all have doghouses.  
 1297 It's too many to bring in.  
 1298  
 1299 Mr. Bell - As you well know, in the Lakeside area one of the  
 1300 concerns that we have to look at is density. Within your house, you know, 50-by-  
 1301 150-foot lot, there are eleven other houses just right around you. And it's nice  
 1302 that you have neighbors there who do not have a problem. How about the other  
 1303 neighbors? Have you had any indication that there are any problems?  
 1304  
 1305 Mr. Jennings - All of the neighbors that surround our property you  
 1306 have a letter from.  
 1307  
 1308 Mr. Bell - That's four. There are seven others that are within  
 1309 150 yards of you.  
 1310  
 1311 Ms. Jennings - The ones directly around me don't hear them. As you  
 1312 go further out they can't be disturbing them much. It would be the ones directly  
 1313 around us that would be disturbed the most.  
 1314  
 1315 Mr. Jennings - The lot that's behind my dog pen and our building,  
 1316 that one gentleman, he owns all the way back past—you can see it there. My  
 1317 dog pen is almost at his back porch. And he said he never hears them.  
 1318

1319 Ms. Jennings - And he wrote a letter.  
1320  
1321 Mr. Jennings - Y'all got a letter from him.  
1322  
1323 Ms. Jennings - He's on Wilson Street.  
1324  
1325 Mr. Baka - Mr. Hatfield's letter?  
1326  
1327 Ms. Jennings - Yes and he wrote a letter. We all look out for each  
1328 other. There are dogs that bark around at times, but nobody's dogs constantly  
1329 bark. The one neighbor we had that did that, they moved. But we didn't even yap  
1330 about them.  
1331  
1332 Mr. Jennings - We never complained about it; we just put up with it.  
1333  
1334 Ms. Jennings - Yes. That's their pet, whatever. It wasn't *that* bad that,  
1335 you know, you had to do all that. This man is anticipating. These people have  
1336 rented from him for a two-year lease. And he's anticipating they may not renew.  
1337 If they don't renew, it will not be because of the dogs, I can tell you.  
1338  
1339 Ms. Harris - We're just considering—not that neighbor—  
1340  
1341 Ms. Jennings - But that's what he wrote down. But he's the  
1342 complaint person, that's why I'm addressing what his complaint is about.  
1343  
1344 Ms. Harris - Do you agree to the conditions?  
1345  
1346 Ms. Jennings - I understand what you're saying. I'm just addressing  
1347 what his original complaint was about. I get that no—[whispering] all right, all  
1348 right.  
1349  
1350 Mr. Jennings - That's why I'm up here.  
1351  
1352 Mr. Bell - Condition number one means in essence no more  
1353 dogs.  
1354  
1355 Ms. Jennings - Right.  
1356  
1357 Mr. Bell - It means as these pass away or whatnot that's it.  
1358  
1359 Ms. Jennings - Yes sir. That's why we're having them fixed.  
1360  
1361 Mr. Bell - The standard code for R-4 for the whole County just  
1362 requires no more than three dogs. So looking at this you're asking for an awful  
1363 large exception to it.  
1364

1365 Ms. Jennings - I understand that.

1366  
1367 Mr. Bell - The community effect is as much a part of anything  
1368 that we discuss. So that's why I'm trying to satisfy the concerns about barking.  
1369 The second concern is odor. Have you had any complaints about odor? We  
1370 hadn't talked about that.

1371  
1372 Ms. Jennings - No I have not. And I go out every morning and pick  
1373 up, and every night I pick up. If I go in my backyard and see any, I pick it up then.  
1374 That is addressed twice a day for sure. And if I go out during the day I pick up. I  
1375 do not have piles around in my yard.

1376  
1377 Mr. Jennings - And I have a business in Henrico, and I have  
1378 dumpster in front of my business. And I take it every other day. She puts it in  
1379 garbage bags, and I take it and put it in the dumpster. So nobody's smelling  
1380 anything.

1381  
1382 Mr. Bell - These conditions here with the adjustments that we  
1383 made to the verbiage in it, would you all be able to comply by them?

1384  
1385 Ms. Jennings - Yes.

1386  
1387 Mr. Bell - All right. I think that's all I have.

1388  
1389 Ms. Harris - Are there any other questions from Board members?  
1390 Thank you, Ms. Jennings, Mr. Jennings. Now some others wanted to speak to  
1391 this issue. Please give us your name, and spell your name for us.

1392  
1393 Ms. Heath - I'm Theresa Heath—H-e-a-t-h. I live across from  
1394 Pattie and Bobby. The children that got the dogs barking are mine, my  
1395 grandchildren. I'm raising my grandchildren, two of them. They love to go over  
1396 and play with them. And they're ADHD. If that yard was not fit for my children to  
1397 go in there, I would not allow them back there to play with them. They want to go  
1398 and play. The dogs are so friendly you wouldn't believe. I mean, they're lovable.  
1399 They're like their children, they really are. They're more well-behaved than my  
1400 grandchildren most of the time. The man complained about my—ask me do  
1401 these children live here all the time? And I'm like, yes. I'm like, I'm sorry. I took  
1402 my grandchildren in. They're two rambunctious boys. As far as Pattie and Bob,  
1403 you don't hear their dogs. You never do. Once in a blue moon. Now if a squirrel  
1404 goes through, yes, you can hear them. But as soon as you hear them, all of a  
1405 sudden it's gone quiet. I'm in their yard all the time because I always know where  
1406 my grandsons have disappeared to. If I let them out of the gate and say yes you  
1407 can go across the street and see Pattie, I know where they've gone. They went  
1408 to Pattie's and around the back and to the dogs. But it's always clean. There is  
1409 never anything in there, and they're always putting spray down. There are no  
1410 bugs. I'd much rather for them to play over there. There are no mosquitoes;

1411 there are no flies; there is no nothing. It's clean. I mean, my grandsons, if they go  
1412 out in my front yard, I have to spray them with mosquito spray. They go over  
1413 there, and there are no mosquitoes because they have everything always  
1414 sprayed and kept clean. They have people that come in and spray, and make  
1415 sure it stays that way.

1416  
1417 These dogs are their children. You can go in, and pick up any of them, and love  
1418 on them, including the stray dogs. And we all know in our neighborhood that if a  
1419 dog or something is hurt or someone needs help, go to them. Bob knows  
1420 everything about animals, I think, that there is, besides a vet. My grandson has  
1421 gone over and asked what do I do for a dog that I stepped on his toe and split his  
1422 toenail. That's the type of people they are. And they don't want to offend anyone,  
1423 and they don't. Their dogs are very quiet and very clean.

1424  
1425 Ms. Harris - Thank you so much. Are there any questions from  
1426 Board members? Thank you.

1427  
1428 Ms. Heath - Thank you.

1429  
1430 Ms. Wilkinson - I'm Mary Ellen Wilkinson—W-i-l-k-i-n-s-o-n. I own the  
1431 property immediately to the west, 2217 Kent Street. I own another property in  
1432 Lakeside. I've lived in Lakeside for thirty years. And I'm actually living at my other  
1433 house, but I'm over at 2217 regularly with my dog, who is about thirty-five  
1434 pounds. And I can say that even when my dog is very interested and right at the  
1435 fence, her dogs are either quiet or you hear her say *hush*. And I can say that  
1436 there is no smell in the backyard. They are excellent animal caretakers. And in  
1437 that sense the issue is that they would take of them, and they would take care of  
1438 the property so that we weren't bothered.

1439  
1440 Ms. Harris - Thank you. Are there questions of Ms. Wilkinson?  
1441 Thank you so very much. Is there anyone else who wishes to speak to this case?  
1442 Okay, that concludes the case, and we'll move to the next case.

1443  
1444 **[After the conclusion of the public hearings, the Board discussed the case**  
1445 **and made its decision. This portion of the transcript is included here for**  
1446 **convenience of reference.]**

1447  
1448 Ms. Harris - What is the pleasure of the Board?

1449  
1450 Mr. Bell - I'd like to move that we approve this situation. I'd like  
1451 to make some comments as to why I'm saying that. My initial concern with nine  
1452 dogs and a non-commercial kennel was the density of the area they were put in,  
1453 and also if there were any safety or welfare problems. In listening to what's been  
1454 said by the applicants, and the letters presented, and everything, I feel that we  
1455 have a woman who has shown responsibility in dealing with animals. She's been  
1456 in the Lakeside area since 1996. She's had one, two, or three dogs without



1457 complains that we are aware of. And now she has the puppies that she wants to  
1458 raise. And from what I hear she is as conscientious about her neighbors not  
1459 being disturbed by her dogs as she is about her dogs. So under those  
1460 considerations I feel that she will not adversely affect the health or safety or  
1461 welfare of the persons residing or working on the premises or in the  
1462 neighborhood. And I feel that she will not impair the character of the district or  
1463 adjacent districts. Therefore I move that we grant the CUP.

1464  
1465 Mr. Wright - I'll second it.

1466  
1467 Ms. Harris - Okay. Moved by Mr. Bell, seconded by Mr. Wright  
1468 that this case be approved. Are there any questions or is there any discussion on  
1469 this case?

1470  
1471 Mr. Wright - This is also the same situation. If it gets out of hand  
1472 we can call her back in and either modify it or revoke it. It isn't like we've granted  
1473 her an indefinite permanent thing.

1474  
1475 Ms. Harris - I drove by this house yesterday too, and noticed that  
1476 the family seems to be a conscientious family. I think her premises are an asset  
1477 to the neighborhood. I didn't expect to see any dogs running around anyway  
1478 because they were in the yard, but I believe they do care about their image to the  
1479 neighborhood, and that's an asset.

1480  
1481 Any more discussion on this motion? All in favor say aye. All opposed say no.  
1482 The ayes have it; the motion passes.

1483  
1484 After an advertised public hearing and on a motion by Mr. Bell, seconded by Mr.  
1485 Wright, the Board **approved** application **CUP2012-00025, PATTIE JENNINGS'**  
1486 request for a conditional use permit pursuant to Section 24-12(e) of the County  
1487 Code to allow a noncommercial kennel at 2215 Kent St (PARK VIEW) (Parcel  
1488 780-745-4595) zoned R-4, One-Family Residence District (Brookland). The  
1489 Board approved the conditional use permit subject to the following conditions:

1490  
1491 1. This approval is only for one cat and nine dogs owned by the property owner.  
1492 No new or replacement animals may be added, so that the number of animals  
1493 will be reduced by natural means to three, as allowed in a residential district. The  
1494 approval is not for the boarding or breeding of animals at any time. All other  
1495 applicable regulations of the County Code shall remain in force.

1496  
1497 2. No new improvements may be constructed pursuant to this approval. Any  
1498 additional improvements shall comply with all applicable regulations of the  
1499 County Code.

1500  
1501 3. The owner shall bring the accessory structures on the property into  
1502 compliance with the required setbacks and the limitation on lot coverage. Any

part of any accessory structure within three feet of the side or rear property lines shall be removed, unless it is a legal nonconforming structure. The total area of the rear yard covered by accessory structures shall not exceed 682.5 square feet. The owner shall obtain a demolition permit for this purpose no later than September 24, 2012, and complete work no later than November 19, 2012.

4. The owner shall maintain the property so that noise and odors are controlled.

Affirmative:	Baka, Bell, Harris, Nunnally, Wright	5
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Negative:		0
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Absent:		0
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**[At this point, the transcript continues with the public hearing on the next case.]**

**VAR2012-00005**                      **ANITA L. MCLOUGHLIN** requests a variance from Section 24-9 of the County Code to build a one-family dwelling at 10777 Chicopee Road (Parcel 751-763-9609) zoned A-1, Agricultural District (Three Chopt). The public street frontage requirement is not met. The applicant proposes 0 feet public street frontage, where the Code requires 50 feet public street frontage. The applicant requests a variance of 50 feet public street frontage.

Ms. Harris -                      All persons who wish to speak to this case please raise your right hand.

Mr. Blankinship -              Do you swear the testimony you're about to give is the truth and nothing but the truth so help you God?

Ms. McLoughlin -              I do.

Ms. Harris -                      Okay. Please state your name and spell it for us.

Ms. McLoughlin -              Anita K. McLoughlin. A-n-i-t-a, initial K, McLoughlin—  
M-c-l-o-u-g-h-l-i-n.

Mr. Blankinship -              Would you pull the microphone down just a bit?

Ms. McLoughlin -              Sorry. Is this better?

Ms. Harris -                      Yes.

Ms. McLoughlin -              Okay. I'm here to request a variance to build a one-family dwelling at my address, 10777 Chicopee Road, Glen Allen, Virginia.

1549  
 1550 Mr. Wright - Could you speak more directly? You speak softly. I  
 1551 want to make sure I hear everything you say, Ms. McLoughlin.  
 1552  
 1553 Ms. McLoughlin - Okay. I'm here to request a variance to build a one-  
 1554 family dwelling at 10777 Chicopee Road in Glen Allen. It doesn't quite meet the  
 1555 requirement of the County code. The County code is fifty feet, and it's  
 1556 approximately 250 feet away.  
 1557  
 1558 Mr. Wright - What is the size of your lot?  
 1559  
 1560 Ms. McLoughlin - The size?  
 1561  
 1562 Mr. Wright - Yes, of your lot.  
 1563  
 1564 Ms. McLoughlin - It's approximately one—well on this plat it's 1.06  
 1565 acres.  
 1566  
 1567 Mr. Wright - One point three acres?  
 1568  
 1569 Mr. Blankinship - One point zero six.  
 1570  
 1571 Ms. McLoughlin - One point zero six.  
 1572  
 1573 Mr. Wright - Okay. How far is your lot from—is it Chicopee Road?  
 1574  
 1575 Ms. McLoughlin - Chicopee Road. Two hundred and fifty feet.  
 1576  
 1577 Mr. Wright - That's from the end of Chicopee Road?  
 1578  
 1579 Ms. McLoughlin - Yes sir. That's for the water. That's the street  
 1580 frontage.  
 1581  
 1582 Mr. Wright - Describe the condition of the road from the end of  
 1583 Chicopee to your property.  
 1584  
 1585 Ms. McLoughlin - It's a gravel driveway. My parents live there. My niece  
 1586 lives across the road. And my grandparents lived on the other side. They've  
 1587 passed away, but my sister now lives there. So it's been family land since 1963.  
 1588 It's a gravel drive right up to my property.  
 1589  
 1590 Mr. Wright - How wide is it?  
 1591  
 1592 Ms. McLoughlin - The gravel drive is for just a single lane.  
 1593

1594 Mr. Wright - How many properties does that driveway serve? How  
 1595 many properties use that driveway to access their property?  
 1596  
 1597 Ms. McLoughlin - It serves three dwellings, yes sir.  
 1598  
 1599 Mr. Wright - Three dwellings. Who maintains that driveway?  
 1600  
 1601 Ms. McLoughlin - Everybody in our family pool together. When it needs  
 1602 gravel they—maybe once a year, if that, we all pool our money together and put  
 1603 the gravel in.  
 1604  
 1605 Mr. Wright - Do you actually own this property yourself?  
 1606  
 1607 Ms. McLoughlin - Yes sir, I do. It's in my name.  
 1608  
 1609 Mr. Wright - How long have you owned it?  
 1610  
 1611 Ms. McLoughlin - I've owned it since I want to say—I'm guessing 2005.  
 1612  
 1613 Mr. Wright - Since 2005?  
 1614  
 1615 Ms. McLoughlin - Yes sir. But the total land has been in my family since  
 1616 1963.  
 1617  
 1618 Mr. Wright - What type of dwelling do you desire to build on your  
 1619 property?  
 1620  
 1621 Ms. McLoughlin - I would like to build like a three-bedroom dwelling.  
 1622 Nothing like over the top. Just the normal family home—three bedroom, two  
 1623 bath.  
 1624  
 1625 Mr. Wright - Is this a rancher or—  
 1626  
 1627 Ms. McLoughlin - Yes sir, a rancher.  
 1628  
 1629 Mr. Wright - A ranch-style home.  
 1630  
 1631 Ms. McLoughlin - All the other homes are ranch, so I would want to  
 1632 build it to fit in with the other ranch-style homes.  
 1633  
 1634 Mr. Wright - Is it going to be brick?  
 1635  
 1636 Ms. McLoughlin - Yes sir, brick.  
 1637  
 1638 Mr. Wright - It will be a brick dwelling.  
 1639

1640 Ms. McLoughlin - Yes sir.  
1641  
1642 Ms. Harris - Can we look at the aerial photo please?  
1643  
1644 Ms. McLoughlin - Sure.  
1645  
1646 Ms. Harris - The one that shows 10777.  
1647  
1648 Mr. Gidley: [Speaking off microphone.] It's up.  
1649  
1650 Ms. Harris - Okay. The property that is between 10801 and  
1651 10777, what is that? Is that an easement right there?  
1652  
1653 Mr. Baka - The plat doesn't show any easement.  
1654  
1655 Ms. Harris - I'm looking at this map.  
1656  
1657 Mr. Baka - Yes, I see that.  
1658  
1659 Ms. Harris - I'm just wondering.  
1660  
1661 Mr. Blankinship - Do you know the answer to that, Ms. McLoughlin?  
1662  
1663 Ms. McLoughlin - I see the easement. I see the actual easement listed  
1664 along the bottom of the lot. But I don't see that on this plat. I don't see an  
1665 easement listed on this plat.  
1666  
1667 Mr. Blankinship - I was curious about that as well. I didn't do extensive  
1668 research, but I did look at the documents. This was your case, wasn't it, Miguel?  
1669 Yes. I looked at the documents that Miguel pulled out, and I couldn't figure out  
1670 what was going on there either. I suspect that it's just an error in the tax maps. I  
1671 suspect that the west line of 10777 is actually the east line of 10801.  
1672  
1673 Ms. McLoughlin - Yes, that seems—  
1674  
1675 Mr. Blankinship - But it wasn't exactly clear, and it didn't seem to have  
1676 any direct bearing on the variance, so I didn't spend a whole lot of time trying to  
1677 solve it.  
1678  
1679 Ms. McLoughlin - I wasn't told that there was an easement there. But I  
1680 was told that there was an easement so I'm not landlocked, so I can get to my  
1681 actual lot.  
1682  
1683 Mr. Blankinship - Right. The easement along the north side where the  
1684 road is.  
1685

1686 Ms. McLoughlin - Yes, yes. And then of course there would be an  
1687 easement because I was told I could hook into sewer on the Lexington side.  
1688  
1689 Mr. Blankinship - Right.  
1690  
1691 Ms. McLoughlin - There's a manhole actually on that. It's called like a  
1692 County easement, I guess, for utilities.  
1693  
1694 Mr. Blankinship - Yes, that's correct.  
1695  
1696 Ms. McLoughlin - Okay. But I'm not aware of any such easement, like  
1697 you guys were saying, on that left side.  
1698  
1699 Ms. Harris - I have a couple other questions. I understand there's  
1700 one more lot that is available for building. Is that across from your lot?  
1701  
1702 Ms. McLoughlin - Yes ma'am. It belongs to my sister and her husband.  
1703  
1704 Ms. Harris - All right.  
1705  
1706 Mr. Wright - Ms. McLoughlin, have you read the conditions that we  
1707 have proposed for this case? There are five conditions that have been proposed.  
1708 If it's approved, these conditions would apply.  
1709  
1710 Ms. McLoughlin - Yes sir. Yes, I can comply to all the conditions.  
1711  
1712 Mr. Wright - Mr. Blankinship, she said she acquired title to this  
1713 property in 2005.  
1714  
1715 Mr. Blankinship - Yes sir.  
1716  
1717 Mr. Wright - Would the five years begin to run from the day we  
1718 approve it?  
1719  
1720 Mr. Blankinship - That's a good question. That's a standard condition.  
1721 You could look at it either way. You intend to remain on the property for the next  
1722 five years, right?  
1723  
1724 Ms. McLoughlin - Yes sir.  
1725  
1726 Mr. Blankinship - So it shouldn't really matter. But you could make the  
1727 argument, yes, that the five years began to run when she acquired it.  
1728  
1729 Mr. Bell - Acquired the property, yes. You're planning to build  
1730 your house on this property, not a house for sale?  
1731

1732 Ms. McLoughlin - Yes sir, my house.  
 1733  
 1734 Mr. Bell - Do you know at this time where it would be located on  
 1735 your property?  
 1736  
 1737 Ms. McLoughlin - More toward like the center, but maybe just a little bit  
 1738 back.  
 1739  
 1740 Mr. Bell - So the trees will remain or—  
 1741  
 1742 Ms. McLoughlin - The trees will remain. I'm going to keep as many  
 1743 trees as I can possibly keep, yes.  
 1744  
 1745 Mr. Wright - She has to comply with the requirements of the  
 1746 ordinance insofar as lot lines, etcetera. One other question. Do you have a legal  
 1747 agreement or right to use the road?  
 1748  
 1749 Ms. McLoughlin - Yes I do.  
 1750  
 1751 Mr. Wright - Was that granted with your deed?  
 1752  
 1753 Ms. McLoughlin - It was granted in.  
 1754  
 1755 Mr. Wright - Do you have a copy of that with you that I might look  
 1756 at it?  
 1757  
 1758 Mr. Blankinship - I believe we have it in the file.  
 1759  
 1760 Mr. Wright - I didn't see it.  
 1761  
 1762 Mr. Blankinship - No, we wouldn't have put it in your packet, but we  
 1763 have it in the file.  
 1764  
 1765 Ms. McLoughlin - Oh, okay.  
 1766  
 1767 Mr. Wright - So you have it?  
 1768  
 1769 Mr. Baka - Who owns the underlying property under the fifty-foot  
 1770 easement?  
 1771  
 1772 Mr. Blankinship - I believe it's part of 10800 Chicopee Road on the  
 1773 north side.  
 1774  
 1775 Mr. Baka - That's one of your relatives?  
 1776  
 1777 Ms. McLoughlin - You're talking directly across?

1778  
1779 Mr. Blankinship - Yes.  
1780  
1781 Mr. Baka - If you look at the actual fifty-foot easement itself,  
1782 since that's an easement and not a public road. Who owns the underlying land of  
1783 that easement? Whose property is it?  
1784  
1785 Ms. McLoughlin - It belongs to my father and my mother.  
1786  
1787 Mr. Baka - Thanks.  
1788  
1789 Ms. McLoughlin - Okay.  
1790  
1791 Ms. Harris - Do you have any plans for your proposed  
1792 construction of your home? Do you have any plans?  
1793  
1794 Ms. McLoughlin - Yes I do. It's through Oakwood Homes.  
1795  
1796 Ms. Harris - Okay. Do you have them with you?  
1797  
1798 Ms. McLoughlin - I didn't bring it with me. It's probably about 1800  
1799 square feet, I'm guessing.  
1800  
1801 Ms. Harris - And you said Oakwood Homes will be constructing it?  
1802  
1803 Ms. McLoughlin - Pardon?  
1804  
1805 Ms. Harris - You said Oakwood Homes?  
1806  
1807 Ms. McLoughlin - Oakwood Homes, yes ma'am. That's my plan is to go  
1808 through them.  
1809  
1810 Ms. Harris - Are there other questions from Board members?  
1811  
1812 Mr. Baka - Just one other question. The public road ends at  
1813 Chicopee just past Village Run Drive. Is there a maximum number of lots that  
1814 may be served by either an easement or by a private gravel road in the County  
1815 ordinance? In other words, if you add this lot and add another lot in future across  
1816 on the north side next to 10800.  
1817  
1818 Mr. Blankinship - There is not a limit for lots that already exist. We did  
1819 just recently amend the ordinance to provide a new procedure for creating new  
1820 family subdivisions. If this were going through that procedure they would be  
1821 limited to three on the private road. But that doesn't apply here because they're  
1822 not creating these lots; the lots were already there.  
1823



1824 Mr. Baka - Well that's germane to the other property. Would it  
 1825 potentially limit a potential subdivision of 10800 or the other relatives?  
 1826

1827 Mr. Blankinship - Yes. None of them would be able to divide in the  
 1828 future. They'd have to get a variance to build on the lots that exist now. And they  
 1829 would not be able to divide any of the lots.  
 1830

1831 Mr. Baka - So the applicant's case is okay today. But were you  
 1832 aware of that for the future?  
 1833

1834 Ms. McLoughlin - Yes, I was made aware of that.  
 1835

1836 Mr. Baka - Thanks.  
 1837

1838 Mr. Wright - This deed is to your—is George B. McLoughlin your  
 1839 husband? Are you still married to him?  
 1840

1841 Ms. McLoughlin - No.  
 1842

1843 Mr. Wright - You're not.  
 1844

1845 Ms. McLoughlin - No.  
 1846

1847 Mr. Wright - Okay.  
 1848

1849 Ms. McLoughlin - But it's totally in my name now.  
 1850

1851 Mr. Wright - So you acquired his interest in the property?  
 1852

1853 Ms. McLoughlin - Yes. Well it was family land, so he just—he had no  
 1854 interest in it, so I just acquired it.  
 1855

1856 Ms. Harris - Okay. Are there other questions?  
 1857

1858 Mr. Baka - Are there any principles of Cochran that apply to this  
 1859 case, Mr. Blankinship?  
 1860

1861 Mr. Blankinship - You see our review in the staff report of the Cochran  
 1862 question. It turns, as these questions often do, on what you consider to be the  
 1863 property taken as a whole. If you take this 1.06 acres then there is no other use  
 1864 for this property. It's too small to farm, and no other use would be allowed on the  
 1865 one-acre lot with no road frontage. If you wanted to take the position that the  
 1866 whole twelve-acre parcel from which these were carved is the property taken as  
 1867 a whole, then I think an argument could be made that they already have  
 1868 reasonable beneficial use of that twelve-acre parcel. But I think that's the way to  
 1869 look at that question, what do you consider to be the property taken as a whole.

1870  
1871 Mr. Wright - I'm going to address that question. I don't know  
1872 whether you want to do it now or wait.  
1873  
1874 Ms. Harris - We'll wait until question period during the motion.  
1875  
1876 Mr. Baka - Okay.  
1877  
1878 Ms. Harris - Are there any more questions on this? Thank you so  
1879 very much. Did you have anything else to say?  
1880  
1881 Ms. McLoughlin - I don't have any more questions. The only thing that I  
1882 did notice is on the actual variance, on this page on the variance, they just—  
1883  
1884 Mr. Blankinship - Staff report, first page?  
1885  
1886 Ms. McLoughlin - Yes. They just spelled my name—the *McLoughlin*  
1887 with an *a* instead of an *o*, and I didn't know if that needed to be corrected.  
1888  
1889 Mr. Blankinship - Well I apologize for that. We will correct that in  
1890 system.  
1891  
1892 Ms. McLoughlin - Just in case anything legal should come up, I want to  
1893 be the right person.  
1894  
1895 Mr. Blankinship - Absolutely. And I apologize for that.  
1896  
1897 Ms. Harris - This is why it's so good to spell your name for us.  
1898  
1899 Ms. McLoughlin - I understand.  
1900  
1901 Ms. Harris - Thank you so very much.  
1902  
1903 Ms. McLoughlin - Thank you too. Have a good day.  
1904  
1905 Ms. Harris - Okay. Is there anyone else who wishes to speak to  
1906 this case? If not, this concludes the case. Mr. Blankinship, please call the next  
1907 case.  
1908  
1909 **[After the conclusion of the public hearings, the Board discussed the case**  
1910 **and made its decision. This portion of the transcript is included here for**  
1911 **convenience of reference.]**  
1912  
1913 Ms. Harris - What is the pleasure of the Board?  
1914

1915 Mr. Wright - Madam Chairman, I want to move that we approve  
1916 this, and I would like to give some information or discuss some legal implications  
1917 or complications here that I think are there. The first thing we have to do when  
1918 we consider something of this nature is to consider the effect of the Cochran  
1919 case. I've read this a hundred times. And I almost read it every time before we  
1920 come before this body because it was a landmark decision insofar as variances  
1921 are concerned.

1922  
1923 I think the principal issue here—as raised by Mr. Blankinship—is when you say it  
1924 includes all the property. If you read the Cochran case, unfortunately the  
1925 Cochran case doesn't give us a whole lot of leadership or information about that  
1926 particular issue. I like to refer to the Cochran case. This case referred to three  
1927 different properties in three different locations that were all appealed, and the  
1928 Supreme Court took them all at one time. But each one was concerned with a  
1929 specific piece of property, not something that had been developed or whatever.  
1930 With that in mind, the Court held as follows. It says in the light of the Packer  
1931 case, which is where they construed the statutory term effectively prohibit or  
1932 unreasonably restrict the utilization of the property, and unnecessary hardship,  
1933 and undo hardship. The Court said that unless the effect of the zoning ordinance  
1934 as applied to the piece of property under consideration would in the absence of a  
1935 variance interfere with all reasonable beneficial uses of the property taken as a  
1936 whole. Unless that happened, they would have to say that the Board of Zoning  
1937 Appeals had no authority.

1938  
1939 My position in reading this very carefully is that that's what the Court said and  
1940 they were referring to one piece of property. When they said, "taken as a whole,"  
1941 they were considering that piece of property. So my position on this is we need  
1942 to consider—this piece of property was purchased—well, it wasn't purchased, it  
1943 was gifted to this lady. But she took title in 2005. It wasn't something done just  
1944 yesterday. It's a family situation. So my position is insofar as applying the  
1945 Cochran decision, I would apply it to this piece of property and not go back to the  
1946 twelve acres. So if that is the position, which is the proper position, then we get  
1947 by the Cochran case in this case.

1948  
1949 Mr. Bell - Don't you still have to go through the three  
1950 exceptions, though?

1951  
1952 Mr. Wright - Yes. That's the second step. The first thing we have  
1953 to do is decide whether we have the authority to hear the case. That's what  
1954 Cochran said. Cochran says that if you could have a beneficial use of that piece  
1955 of property, then the Board would have no authority to even consider the  
1956 variance. But my position in making the motion is that we apply this Cochran  
1957 theory to this piece of property.

1958  
1959 Now, this piece of property taken as a whole, the one-point-so-many acres that  
1960 this lady owns, has no other beneficial use. It can't be used for agriculture; it's

1961 not big enough. The only use it could be put to would be for residential uses. So  
1962 my position is the Cochran case does not apply here; therefore, we have the  
1963 authority to consider the case.

1964  
1965 Okay, now we get by that, so I'm looking at statute. The statute says when a  
1966 property owner can show that this property was acquired in good faith—and that  
1967 doesn't apply here; it was in good faith—then they have three options. It says or,  
1968 or, or. I will take the third option here. Granting the variance would alleviate a  
1969 clearly demonstrable hardship as distinguished from a convenience or special  
1970 privilege. Since this lady had an acre of land that cannot be used for anything  
1971 else, then I think denying the variance—that we need to grant the variance  
1972 because it would alleviate a clearly demonstrable hardship as distinguished from  
1973 a convenience or privilege.

1974  
1975 Now we get to that stage, then we have the three findings we have to go  
1976 through—or four findings we have to go through. Strict application of the  
1977 ordinance would produce undo hardship relating to the property. Well that's a  
1978 given in my book. Number two, the hardship is not shared generally by other  
1979 properties in the same zoning district and vicinity. Well I don't see any others.  
1980 And evidently we have had no applications for that, so I would assume that is  
1981 correct. The variance will not be of substantial detriment to adjacent property and  
1982 the character of the district. I take the position that building a house would be in  
1983 conformity with the others that are there, her other relatives. The last one is the  
1984 one that has caused us some concern. A condition or situation is not so general  
1985 or of a recurring nature so as to make a general regulation reasonably practical.  
1986 I've taken the position over the years that since there—there have been a lot of  
1987 properties that have required us to consider zero road frontage, but we haven't  
1988 had one in several years. So that to me now is not generally recurring. But over a  
1989 period of years this has been going about, if it was generally recurring I would  
1990 take the position that the Board of Supervisors would certainly feel constrained to  
1991 do something about it and take some steps to take care of that.

1992  
1993 So all of that having been said, I move we approve this variance application.  
1994

1995 Ms. Harris - Any more discussion?

1996  
1997 Mr. Bell - Did she say that she owned Lot 2 that was across—  
1998 directly across from the one that she's going to build her house on?

1999  
2000 Mr. Blankinship - I was family-owned.

2001  
2002 Ms. Harris - She doesn't own it.

2003  
2004 Mr. Bell - Another family member?

2005

2006 Mr. Wright - Her brother owns it. This is a family division. And I  
2007 take it, Mr. Blankinship, it has not violated the subdivision ordinance.

2008  
2009 Mr. Blankinship - That's correct.

2010  
2011 Mr. Wright - As long as it doesn't violate the subdivision ordinance  
2012 we have no problem.

2013  
2014 Mr. Baka - I'll second.

2015  
2016 Mr. Blankinship - You may see that other lot come in, though, at some  
2017 point in the future, the lot on the north side.

2018  
2019 Mr. Baka - I'll second Mr. Wright's motion.

2020  
2021 Ms. Harris - Moved by Mr. Wright, seconded by Mr. Baka that this  
2022 case be approved. Any further discussion or questions on this motion? All in  
2023 favor say aye. All opposed say no. The ayes have it; the motion passes.

2024  
2025 After an advertised public hearing and on a motion by Mr. Wright, seconded by  
2026 Mr. Baka, the Board **approved** application **VAR2012-00005 ANITA L.**  
2027 **MCLOUGHLIN'S** request for a variance from Section 24-9 of the County Code to  
2028 build a one-family dwelling at 10777 Chicopee Road (Parcel 751-763-9609)  
2029 zoned A-1, Agricultural District (Three Chopt). The Board approved the variance  
2030 subject to the following conditions:

2031  
2032 1. This variance applies only to the public street frontage requirement for one  
2033 dwelling only. All other applicable regulations of the County Code shall remain in  
2034 force.

2035  
2036 2. At the time of building permit application the owner shall demonstrate that the  
2037 parcel created by this division has been conveyed to members of the immediate  
2038 family, and the subdivision ordinance has not been circumvented. Ownership of  
2039 the parcel shall remain in the immediate family for a minimum of five years.

2040  
2041 3. The applicant shall present proof with the building permit application that a  
2042 legal access to the property has been obtained.

2043  
2044 4. The owners of the property, and their heirs or assigns, shall accept  
2045 responsibility for maintaining access to the property until such a time as the  
2046 access is improved to County standards and accepted into the County road  
2047 system for maintenance.

2048  
2049 5. Any dwelling on the property shall be served by public water and sewer.

2052	Affirmative:	Baka, Bell, Harris, Nunnally, Wright	5
2053	Negative:		0
2054	Absent:		0

2055

2056

2057 **[At this point, the transcript continues with the public hearing on the next**  
2058 **case.]**

2059

2060 Mr. Blankinship - Madam Chairperson, the next three cases are  
2061 companion cases, and I would recommend that we have just one public hearing  
2062 for all three, but you will need to vote on all three separately.

2063

2064 **CUP2012-00027 KROGER COMPANY** requests a temporary  
2065 conditional use permit pursuant to Section 24-116(c)(1) of the County Code to  
2066 hold a special event at 4816 S Laburnum Avenue (LABURNUM SQUARE)  
2067 (Parcel 815-714-7661) zoned B-2, Business District (Varina).

2068

2069 **CUP2012-00028 KROGER COMPANY** requests a temporary  
2070 conditional use permit pursuant to Section 24-116(c)(1) of the County Code to  
2071 hold a special event at 1356 Gaskins Road (Parcel 745-745-9968) zoned B-2C,  
2072 Business District (Tuckahoe).

2073

2074 **CUP2012-00029 KROGER COMPANY** requests a temporary  
2075 conditional use permit pursuant to Section 24-116(c)(1) of the County Code to  
2076 hold a special event at 9480 West Broad Street (Parcel 756-758-4127) zoned B-  
2077 2, Business District (Brookland).

2078

2079 Ms. Harris - Anyone who wishes to speak to this case please raise  
2080 your right hand that you may be sworn in.

2081

2082 Mr. Blankinship - Do you swear the testimony you're about to give is  
2083 the truth and nothing but the truth so help you God?

2084

2085 Mr. Rich - I do.

2086

2087 Ms. Harris - Okay. Please state your name, spell it for us, and  
2088 then state your case.

2089

2090 Mr. Rich - My name is David Rich. Last name is R-i-c-h. Just to  
2091 give you kind of a general overview of the event, it's a mobile marketing program  
2092 that our marketing agency from Charlotte, North Carolina, puts on for Kroger.  
2093 They are our client. So we've been doing this for seven weeks so far. We hit all  
2094 the major NASCAR markets, and we activate at Kroger's outside their parking  
2095 lots. We take up roughly 15,000 square feet. We have the property owner's  
2096 approval. We have CLIs from all the vendors that participate. And we're basically  
2097 running six-hour events outside. It's purely promotional. There are no sales.

2098 There is no hot grilling. It's mainly just coupon giveaways, drink samples that are  
2099 already prepackaged; they're not open. And we have video games, and racing  
2100 simulations, and tire changing. And it's basically just to bring awareness to the  
2101 race coming up that weekend.

2102

2103 Ms. Harris - What is your position? Are you with Kroger?

2104

2105 Mr. Rich - I'm with the marketing agency. It's called Retail  
2106 Sports Marketing in Charlotte, North Carolina. And I am an assistant account  
2107 executive.

2108

2109 Ms. Harris - I notice that you are going to have music. What  
2110 decibel? Are you familiar with our code?

2111

2112 Mr. Rich - I'm not familiar with decibel units. We just play it off of  
2113 an iPod. We angle the speakers in towards our event so it's not pointing out to  
2114 the communities. We can play it as quietly as we need to, whatever decibel level  
2115 that is.

2116

2117 Ms. Harris - I believe it's sixty-five, is it not?

2118

2119 Mr. Blankinship - Sixty-five is what we often use when we have  
2120 residences that we're concerned about.

2121

2122 Mr. Rich - Okay.

2123

2124 Mr. Blankinship - In these cases, because they're all in the middle of  
2125 the afternoon, I think as staff, we weren't that concerned about it.

2126

2127 Mr. Rich - Okay. Well I'll write that down.

2128

2129 Mr. Nunnally - Have you read all the conditions on this?

2130

2131 Mr. Rich - I actually did not receive a copy of that one at all.

2132

2133 Ms. Harris - Do you have a report?

2134

2135 Mr. Rich - I do not have one.

2136

2137 Ms. Harris - Okay, we need to—

2138

2139 Mr. Blankinship - You're probably going to want to take a minute since  
2140 you have three of these and they're pretty lengthy.

2141

2142 Mr. Rich - Sure.

2143

2144 Mr. Wright - You have seventeen conditions; you better take a  
2145 look at it.

2146

2147 Mr. Rich - Okay.

2148

2149 Mr. Blankinship - How similar are the three sets of conditions, Miguel?  
2150 Are the Gaskins Road conditions very different from the others?

2151

2152 Mr. Madrigal - [Speaking off microphone] No, they're not very much  
2153 different.

2154

2155 Mr. Blankinship - So if he reviews one set he'll be okay?

2156

2157 Mr. Madrigal - [Speaking off microphone] Yes, the principal part. The  
2158 Gaskins' one, the biggest concern was just where the trailers that carry all the  
2159 equipment, where they're going to park, because it's a communal loading area in  
2160 the back. So it's very difficult to place anything back there. Plus there was some  
2161 construction going on.

2162

2163 Mr. Blankinship - Okay.

2164

2165 Ms. Harris - And I'm concerned. Even though generically the  
2166 condition for parking is the same, when you look at the store that's on Broad  
2167 Street, I'm just wondering about the parking spaces that will be used, what will be  
2168 left?

2169

2170 Mr. Rich - Okay. As far as parking goes, it varies from store to  
2171 store; the parking lot sizes. And we can condense as much as possible. I'm not  
2172 quite sure. I'll have to look at that store to see how many parking spaces. But  
2173 what is an appropriate number for that store, do you know?

2174

2175 Ms. Harris - No I don't. But I get my gas there, and I notice that  
2176 sometimes that's a problem, you know, navigating around to get gas. And I'm  
2177 just wondering if you're going to put some type of exhibit, just what is that going  
2178 to do to the other parking spots, and how many will you be using. I get gas at  
2179 that Kroger so I'm familiar with the parking spaces that are there.

2180

2181 Mr. Rich - Okay. We try and stay away from the fuel centers as  
2182 best we can. I feel like this one on West Broad Street, I believe the fuel station is  
2183 over to the right if you're looking at that picture. And we're not blocking that major  
2184 road—and that's at the bottom of the screen—that would enter over to the fuel  
2185 station. And so that entire right side, we're not inhibiting that.

2186

2187 Ms. Harris - Where are you going to place it?

2188



2189 Mr. Rich - It would be on the far left. If you could go back to that  
2190 picture we were just looking at before. Event layout, probably. Yes. It's on the left  
2191 side over there, taking up those five. So we would take the two driving lanes on  
2192 that left side, and then half of that row in the middle, I guess. If that makes any  
2193 sense.

2194

2195 Ms. Harris - What I'm saying is that you have right much parking  
2196 congestion sometimes. So it's going to be interesting to see how you maneuver  
2197 your exhibit around.

2198

2199 Mr. Rich - We've visited these locations. And this one, honestly,  
2200 is one of the larger lots that we've worked in before. And as far as maneuvering,  
2201 we get there—our event is supposed to run from one to seven. We arrive on site  
2202 roughly five hours before, and it's coned off the night before. So we drop off  
2203 cones that week when we're in market. The store manager will place them out  
2204 there to block the parking the night before, so when we show up they don't have  
2205 to tow any cars or anything like that. So all of our haulers will pull into that area  
2206 that's zoned off. So it shouldn't inhibit any traffic patterns.

2207

2208 Ms. Harris - Right. I know Lowe's parking lot is adjacent to that, so  
2209 I would imagine some people would have to use Lowe's if they wanted to shop  
2210 there.

2211

2212 Mr. Rich - Possibly. And we've done this in shopping centers  
2213 before where there are multiple different stores. For the most part they really  
2214 don't mind because we bring them business, too. I mean we're just bringing  
2215 people out to the event, so.

2216

2217 Mr. Blankinship - I think as staff we were more concerned about the  
2218 Gaskins Road location.

2219

2220 Mr. Rich - Okay.

2221

2222 Mr. Blankinship - The parking there is not as abundant as it is at the  
2223 others, and it's not in large open lots; it's more spread out and strung around the  
2224 stores. Miguel just mentioned the concern with where the tractor-trailers will park  
2225 at that one. There's really no place close to that store that would accommodate  
2226 tractor trailers without blocking either a fire lane or the other stores' loading  
2227 docks.

2228

2229 Mr. Rich - Right, right. And if that is the case, if there is no room,  
2230 we always run it by the store manager and other stores in the area. We don't  
2231 want to take up their loading docks in the back for sure. If there is no room—we  
2232 have run into this before—they will unload, and then they will bring their haulers  
2233 back to wherever they're staying overnight; so I guess their hotel. So they will  
2234 unload. They'll drive it back there, and then kind of have to carpool back over.

2235 And then later when we're packing up they can bring their haulers back and pack  
2236 up their gear.

2237  
2238 Mr. Baka - May I make a suggestion? I don't believe we can  
2239 make this a requirement, but I think it's fair to at least offer this as a suggestion.  
2240 On a special event day like this, perhaps the organization could send a brief  
2241 memo or communication to the employees to find parking, if it's possible, with  
2242 adjacent businesses, and perhaps to talk to adjacent businesses and say hey,  
2243 we're going to have a great event here this day. Hopefully it'll bring your business  
2244 some secondary purchases because you're close to ours. But would it be okay if  
2245 our employees parked in your business and they walked a little further that day,  
2246 thereby freeing up maybe a couple dozen spaces for other folks.

2247  
2248 Mr. Rich - We actually never park our haulers in front of the  
2249 store where there are parking spaces. We always park them behind. And we try  
2250 to push our event as far back to the back of the lot so we don't infringe on their  
2251 business. We don't want to be too close to the store.

2252  
2253 Mr. Baka - Right. I just mean the general employees who would  
2254 actually be working *in* the Kroger store that day.

2255  
2256 Mr. Rich - Oh, the employees.

2257  
2258 Mr. Baka - Yes. Not your event folks.

2259  
2260 Mr. Rich - Right, right. Okay. And that's happened before too.  
2261 They've had them park even offsite sometimes and walk over.

2262  
2263 Mr. Baka - On a typical Saturday, whatever employees are  
2264 inside, whether that's a couple dozen or whatnot, those folks might have  
2265 opportunity. If that's prearranged with neighboring businesses I'm sure they'd  
2266 welcome the opportunity to know about it ahead of time, they'd be glad, and  
2267 maybe they will be fortunate to get some secondary purchases that kind of spill  
2268 over from people going from one store to another.

2269  
2270 Mr. Rich - I can make that request for sure.

2271  
2272 Mr. Baka - Just a suggestion.

2273  
2274 Mr. Rich - Yes.

2275  
2276 Ms. Harris - Don't you normally have some type of banner up  
2277 advertising what's going to happen on that particular day?

2278  
2279 Mr. Rich - That day. Well we send out preannouncement kits,  
2280 which basically include a banner and fliers'. And those actually just go inside the

2281 store. So nothing is placed outside really to promote the event. When we show  
2282 up it's just all of our gear. No banners are out there before.

2283  
2284 Mr. Nunnally - Have you visited each on of these locations, sir?

2285  
2286 Mr. Rich - I have.

2287  
2288 Mr. Nunnally - So you're familiar with what they're talking about,  
2289 then.

2290  
2291 Mr. Rich - Yes.

2292  
2293 Mr. Bell - Concerning parking again. I know you're going to  
2294 have cones to designate the area. Are you going to have anybody who's going to  
2295 be directing people to the parking?

2296  
2297 Mr. Rich - At each event we hire an off-duty police officer, just  
2298 basically to assist with traffic control and crowd management during the event.  
2299 So throughout the day, if people do need direction, he'll be there to help, if that  
2300 answers your question?

2301  
2302 Mr. Bell - So there won't be anybody specifically handling  
2303 parking?

2304  
2305 Mr. Rich - Not specifically. We operate in that confined area. So  
2306 once it is roped off, nobody really tries to pull through because there is caution  
2307 tape that goes all the way around our event; it's not just cones. So it really has  
2308 good traffic barriers. But throughout the event if people do need help parking  
2309 that's, I guess, close to our event, the officer is there to assist with that.

2310  
2311 Mr. Bell - In condition number twelve, and all of them, it talks  
2312 about inclement weather, and using Kroger as an emergency shelter, and that  
2313 you would get approval from Kroger.

2314  
2315 Mr. Rich - Right.

2316  
2317 Mr. Bell - Has that been done yet?

2318  
2319 Mr. Rich - That has been implemented before, probably four to  
2320 five times. We've done thirty of these events. And what happens, we'll take one  
2321 or two of our smaller exhibits, such as maybe a small racing simulator, and we'll  
2322 clear a space in their store, and we'll set up that and a table. And that's about it.  
2323 Just pretty much to try to keep the event live so it's not a complete bust.

2324  
2325 Ms. Harris - Is this the first time you've done this at these stores?  
2326

2327 Mr. Rich - This is, yes.  
 2328  
 2329 Ms. Harris - Okay. We want to give you a few minutes to look at  
 2330 the seventeen conditions.  
 2331  
 2332 Mr. Rich - Yes, absolutely.  
 2333  
 2334 Ms. Harris - We need to know if that meets your approval.  
 2335  
 2336 Mr. Rich - Okay. Do you want me to confirm all of them as I read  
 2337 through them?  
 2338  
 2339 Ms. Harris - Whichever is more expedient. We can take a five-  
 2340 minute recess and come back.  
 2341  
 2342 Mr. Rich - That's fine, sure.  
 2343  
 2344 Ms. Harris - Let's take a five-minute recess.  
 2345  
 2346 [Five-minute recess begins; end of first recording.]  
 2347  
 2348 [Meeting resumes; beginning of second recording.]  
 2349  
 2350 Ms. Harris - Thank you so much for coming.  
 2351  
 2352 Mr. Rich - Okay, thank you. Do you know when I'll be able to  
 2353 know—  
 2354  
 2355 Ms. Harris - If you hang around a little while you'll hear the  
 2356 decision of the Board.  
 2357  
 2358 Mr. Rich - Okay. Thank you. Oh, and just so you know, the  
 2359 condition in here about public waste, I have already paid for those. They'll be  
 2360 dropped off at each event the night before, and then they'll be picked up the  
 2361 night after our event is over. One male, one female, and one handicap. Okay.  
 2362  
 2363 Ms. Harris - So do we need to add anything to that condition?  
 2364  
 2365 Mr. Blankinship - No ma'am. He was just stating that he's already  
 2366 complied with it.  
 2367  
 2368 **[After the conclusion of the public hearings, the Board discussed the case**  
 2369 **and made its decision. This portion of the transcript is included here for**  
 2370 **convenience of reference.]**  
 2371

2372 Ms. Harris - Even though these are companion cases, we are  
2373 voting on them each separately. So that would be CUP2012-00027, Kroger  
2374 Company. This is for the Kroger Store on Laburnum Avenue. What is the  
2375 pleasure of the Board?

2376  
2377 Mr. Nunnally - Madam Chairman, I move we approve this use  
2378 permit. It will not affect the health, safety, or welfare of the persons residing or  
2379 working on the premises or the neighborhood. It will not impair the adequate  
2380 supply of light and not increase the congestion of traffic on the streets, or  
2381 increase the public danger from fire. So I make a motion we approve it.

2382  
2383 Ms. Harris - Is there a second to this motion?

2384  
2385 Mr. Wright - Second.

2386  
2387 Ms. Harris - Moved by My Nunnally, seconded by Mr. Wright that  
2388 this case be approved. Are there any questions or discussion on this motion? All  
2389 in favor say aye. All opposed say no. The ayes have it; the motion passes.

2390  
2391 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
2392 Mr. Wright, the Board **approved** application **CUP2012-00027, KROGER**  
2393 **COMPANY'S** request for a conditional use permit pursuant to Section 24-  
2394 116(c)(1) of the County Code to hold a special event at 4816 S Laburnum Ave  
2395 (LABURNUM SQUARE) (Parcel 815-714-7661) zoned B-2, Business District  
2396 (Varina). The Board approved the temporary conditional use permit subject to  
2397 the following conditions:

2398  
2399 1. This conditional use permit is for the approval of a one-day temporary  
2400 outdoor event to be held at the Laburnum Square Shopping Center on  
2401 Wednesday, September 5, 2012.

2402  
2403 2. The outdoor event shall be limited to the following time: 10:00 am to 8:00  
2404 pm and incorporates set-up, event, and breakdown periods within this time  
2405 frame.

2406  
2407 3. Only the temporary improvements shown on the plot plan filed with the  
2408 application may be erected pursuant to this approval. Any additional  
2409 improvements shall comply with the applicable regulations of the County Code or  
2410 as specified in the conditions of approval.

2411  
2412 4. The applicant shall clearly demarcate the perimeter of the event area via  
2413 traffic cones and shall install traffic barriers at affected parking drive aisle  
2414 entrances to block vehicular traffic from entering the event area. Main traffic drive  
2415 aisles (providing for internal traffic circulation) leading in or out of the shopping  
2416 center shall be kept free and clear of equipment, vehicles, and obstacles  
2417 associated with the event.

2418  
2419 5. Temporary tents shall maintain a 10 foot setback from property lines and  
2420 buildings. Temporary tents shall not be enclosed (with tarps or fabric) and  
2421 generators shall not be placed underneath tents.

2422  
2423 6. All temporary tents shall be properly tethered as required by the Building  
2424 Inspections Department and /or Fire Division.

2425  
2426 7. The applicant shall obtain necessary building permits for items including  
2427 mechanical amusement devices, electrical generators and electrical connections  
2428 to be used during the event.

2429  
2430 8. Existing fire lanes shall be maintained in accordance with the Fire  
2431 Prevention Code. Access to on-site fire hydrants and fire department  
2432 connections shall not be impaired.

2433  
2434 9. The applicant shall provide adequate restroom facilities as required by the  
2435 Building Inspections Department, consisting of one men's, one women's, and  
2436 one handicapped accessible unit.

2437  
2438 10. On-site landscaping planters shall be kept free and clear of equipment  
2439 and displays. All approved landscaping shall be maintained in a healthy condition  
2440 at all times. Dead plant materials shall be removed within a reasonable time and  
2441 replaced during the normal planting season.

2442  
2443 11. The applicant shall maintain the property so that debris is controlled  
2444 during the event. Adequate trash receptacles shall be provided throughout the  
2445 event.

2446  
2447 12. The applicant shall secure an agreement with Kroger Management that  
2448 the subject store shall serve as a temporary emergency shelter during an  
2449 inclement weather event (if needed).

2450  
2451 13. The applicant is hereby put on notice that any public safety official (Fire,  
2452 Police, and/or Building Inspection personnel) can postpone or cancel the  
2453 planned outdoor promotional event due to expected severe weather.

2454  
2455 14. The sale of alcoholic beverages shall be prohibited at the event.

2456  
2457 15. The applicant shall prohibit loitering on the property.

2458  
2459 16. Tractor trailers associated with the promotional event shall be parked at  
2460 the northwest corner of the shopping center – behind existing stores.

2462 17. Speakers for amplified music shall be directed toward the grocery store in  
2463 order to limit its impact on adjoining businesses and the abutting residential  
2464 neighborhood.

2465  
2466  
2467 Affirmative: Baka, Bell Harris, Nunnally, Wright 5  
2468 Negative: 0  
2469 Absent: 0  
2470

2471  
2472 Ms. Harris - CUP2012-00028.  
2473

2474 Mr. Baka - Madam Chairman, I'll make a motion that we approve  
2475 CUP2012-00028, Kroger Company, for two reasons. One reason is that it's a  
2476 temporary one-day event at the site, and secondly it will not adversely impact the  
2477 health, safety, and welfare of the adjacent properties and the surrounding  
2478 businesses.  
2479

2480 Ms. Harris - Any more questions on this or discussion?

2481  
2482 Mr. Blankinship - We need a second to that motion.  
2483

2484 Mr. Bell - I second that motion.  
2485

2486 Ms. Harris - Okay. Moved by Mr. Baka, seconded by Mr. Bell that  
2487 this case be approved. Any discussion or further questions on this motion? All in  
2488 favor say aye. All opposed say no. The ayes have it; the motion passes.  
2489

2490 After an advertised public hearing and on a motion by Mr. Baka, seconded by  
2491 Mr. Bell, the Board **approved** application **CUP2012-00028 KROGER**  
2492 **COMPANY'S** request for a conditional use permit pursuant to Section 24-  
2493 116(c)(1) of the County Code to hold a special event at 1356 Gaskins Rd (Parcel  
2494 745-745-9968) zoned B-2, Business District (Tuckahoe). The Board approved  
2495 the temporary conditional use permit subject to the following conditions:  
2496

2497 1. This conditional use permit is for the approval of a one-day temporary  
2498 outdoor event to be held at the Gayton Crossing Shopping Center on Thursday,  
2499 September 6, 2012.  
2500

2501 2. The outdoor event shall be limited to the following time: 10:00 am to 8:00  
2502 pm and incorporates set-up, event, and breakdown periods within this time  
2503 frame.  
2504

2505 3. Only the temporary improvements shown on the plot plan filed with the  
2506 application may be erected pursuant to this approval. Any additional

improvements shall comply with the applicable regulations of the County Code or as specified in the conditions of approval.

4. The applicant shall clearly demarcate the perimeter of the event area via traffic cones and shall install traffic barriers at affected parking drive aisle entrances to block vehicular traffic from entering the event area. Main traffic drive aisles (providing for internal traffic circulation) leading in or out of the shopping center shall be kept free and clear of equipment, vehicles, and obstacles associated with the event.

5. Temporary tents shall maintain a 10 foot setback from property lines and buildings. Temporary tents shall not be enclosed (with tarps or fabric) and generators shall not be placed underneath tents.

6. All temporary tents shall be properly tethered as required by the Building Inspections Department and /or Fire Division.

7. The applicant shall obtain necessary building permits for items including mechanical amusement devices, electrical generators and electrical connections to be used during the event.

8. Existing fire lanes shall be maintained in accordance with the Fire Prevention Code. Access to on-site fire hydrants and fire department connections shall not be impaired.

9. The applicant shall provide adequate restroom facilities as required by the Building Inspections Department, consisting of one men's, one women's, and one handicapped accessible unit.

10. On-site landscaping planters shall be kept free and clear of equipment and displays. All approved landscaping shall be maintained in a healthy condition at all times. Dead plant materials shall be removed within a reasonable time and replaced during the normal planting season.

11. The applicant shall maintain the property so that debris is controlled during the event. Adequate trash receptacles shall be provided throughout the event.

12. The applicant shall secure an agreement with Kroger Management that the subject store shall serve as a temporary emergency shelter during an inclement weather event (if needed).

13. The applicant is hereby put on notice that any public safety official (Fire, Police, and/or Building Inspection personnel) can postpone or cancel the planned outdoor promotional event due to expected severe weather.



- 2553 14. The sale of alcoholic beverages shall be prohibited at the event.  
2554  
2555 15. The applicant shall prohibit loitering on the property.  
2556  
2557 16. Speakers for amplified music shall be directed toward the grocery store in  
2558 order to limit its impact on adjoining businesses and/or residential  
2559 neighborhoods.  
2560  
2561 17. Tractor trailers associated with the promotional event  
2562 shall be parked out of sight from the event and shall not further reduce required  
2563 parking.  
2564

2565  
2566 Affirmative: Baka, Bell Harris, Nunnally, Wright 5  
2567 Negative: 0  
2568 Absent: 0  
2569

2570  
2571 Ms. Harris - The last companion case, CUP2012-00029, Kroger  
2572 Company. What is the pleasure of the Board?  
2573

2574 Mr. Bell - I move that we accept it because I think it will not  
2575 affect the health and safety or welfare of persons residing in the area or  
2576 businesses in the area. And it will not affect public danger from fire or any other  
2577 reasonable public concern.  
2578

2579 Ms. Harris - Do we have a second to this motion?  
2580

2581 Mr. Baka - Second.  
2582

2583 Ms. Harris - Okay. Motion by Mr. Bell, seconded by Mr. Baka that  
2584 this case will be approved. Is there any discussion or any questions on this  
2585 motion? I like to see this, too. Not only does it not adversely affect the wellbeing  
2586 or people involved here, but I think it creates a little excitement in this  
2587 community. I think that's all good. Positive excitement. I think that's all good.  
2588

2589 Okay. Any more discussion on this case? All in favor say aye. All opposed say  
2590 no. The ayes have it; the motion passes.  
2591

2592 After an advertised public hearing and on a motion by Mr. Bell, seconded by Mr.  
2593 Baka, the Board **approved** application **CUP2012-00029 KROGER COMPANY'S**  
2594 request for a conditional use permit pursuant to Section 24-116(c)(1) of the  
2595 County Code to hold a special event at 9480 W Broad St (Parcel 756-758-4127)  
2596 zoned B-2, Business District (Brookland). The Board approved the temporary  
2597 conditional use permit subject to the following conditions:  
2598

2599 1. This conditional use permit is for the approval of a one-day temporary  
2600 outdoor event to be held at the West Broad Street Shopping Center on Friday,  
2601 September 7, 2012.

2602  
2603 2. The outdoor event shall be limited to the following time: 10:00 am to 8:00  
2604 pm and incorporates set-up, event, and breakdown periods within this time  
2605 frame.

2606  
2607 3. Only the temporary improvements shown on the plot plan filed with the  
2608 application may be erected pursuant to this approval. Any additional  
2609 improvements shall comply with the applicable regulations of the County Code or  
2610 as specified in the conditions of approval.

2611  
2612 4. The applicant shall clearly demarcate the perimeter of the event area via  
2613 traffic cones and shall install traffic barriers at affected parking drive aisle  
2614 entrances to block vehicular traffic from entering the event area. Main traffic drive  
2615 aisles (providing for internal traffic circulation) leading in or out of the shopping  
2616 center shall be kept free and clear of equipment, vehicles, and obstacles  
2617 associated with the event.

2618  
2619 5. Temporary tents shall maintain a 10 foot setback from property lines and  
2620 buildings. Temporary tents shall not be enclosed (with tarps or fabric) and  
2621 generators shall not be placed underneath tents.

2622  
2623 6. All temporary tents shall be properly tethered as required by the Building  
2624 Inspections Department and /or Fire Division.

2625  
2626 7. The applicant shall obtain necessary building permits for items including  
2627 mechanical amusement devices, electrical generators and electrical connections  
2628 to be used during the event.

2629  
2630 8. Existing fire lanes shall be maintained in accordance with the Fire  
2631 Prevention Code. Access to on-site fire hydrants and fire department  
2632 connections shall not be impaired.

2633  
2634 9. The applicant shall provide adequate restroom facilities as required by the  
2635 Building Inspections Department, consisting of one men's, one women's, and  
2636 one handicapped accessible unit.

2637  
2638 10. On-site landscaping planters shall be kept free and clear of equipment  
2639 and displays. All approved landscaping shall be maintained in a healthy condition  
2640 at all times. Dead plant materials shall be removed within a reasonable time and  
2641 replaced during the normal planting season.

2643 11. The applicant shall maintain the property so that debris is controlled  
2644 during the event. Adequate trash receptacles shall be provided throughout the  
2645 event.

2646  
2647 12. The applicant shall secure an agreement with Kroger Management that  
2648 the subject store shall serve as an emergency temporary shelter during an  
2649 inclement weather event (if needed).

2650  
2651 13. The applicant is hereby put on notice that any public safety official (Fire,  
2652 Police, and/or Building Inspection personnel) can postpone or cancel the  
2653 planned outdoor promotional event due to expected severe weather.

2654  
2655 14. The sale of alcoholic beverages shall be prohibited at the event.

2656  
2657 15. The applicant shall prohibit loitering on the property.

2658  
2659 16. Speakers for amplified music shall be directed toward the grocery store in  
2660 order to limit its impact on adjoining businesses and/or residential  
2661 neighborhoods.

2662  
2663 17. Tractor trailers associated with the promotional event shall be parked at  
2664 the rear of the grocery store.

2665  
2666  
2667 Affirmative: Baka, Bell, Harris, Nunnally, Wright 5  
2668 Negative: 0  
2669 Absent: 0

2670  
2671  
2672 Ms. Harris - Moving now to the minutes of July 26, 2012.

2673  
2674 Mr. Wright - Madam Chairman, I believe one correction would be  
2675 in order. On page 4, line 145. It says, "Then they withdraw the violation, issue a  
2676 new violation, and then me have..." I think the word should be "we."

2677  
2678 Ms. Harris - Okay.

2679  
2680 Mr. Wright - That's just a typo.

2681  
2682 Ms. Harris - Are there any more corrections to the minutes? Okay.  
2683 A motion is in order that we approve the minutes.

2684  
2685 Mr. Wright - I move we approve them as corrected.

2686  
2687 Mr. Baka - Second.

2689 Ms. Harris - Moved by Mr. Wright, seconded by Mr. Baka that the  
2690 minutes be approved as corrected. Any questions on the motion? All in favor say  
2691 aye. All opposed say no. The ayes have it; the motion passes.

2692  
2693 On a motion by Mr. Wright, seconded by Mr. Baka, the Board **approved as**  
2694 **corrected the Minutes of the July 26, 2012**, Henrico County Board of Zoning  
2695 Appeals meeting.

2696  
2697  
2698 Affirmative: Baka, Bell Harris, Nunnally, Wright 5  
2699 Negative: 0  
2700 Absent: 0  
2701

2702  
2703 Ms. Harris - Right now we're going to move to Mr. Blankinship and  
2704 let him take charge of the election of officers.

2705  
2706 Mr. Blankinship - Thank you, Ms. Harris. The chair will now entertain  
2707 nominations for the office of chairman for the next year.

2708  
2709 Mr. Nunnally - I move to elect Mr. Wright for chairman next year.

2710  
2711 Mr. Blankinship - Mr. Nunnally has nominated Mr. Wright. Are there any  
2712 other nominations? The chair will entertain a motion to close the nominations.

2713  
2714 Mr. Bell - I move that we close the nominations.

2715  
2716 Mr. Blankinship - Moved by Mr. Bell. Is there a second?

2717  
2718 Ms. Harris - Second.

2719  
2720 Mr. Blankinship - Seconded by Ms. Harris. All in favor of closing  
2721 nominations for chairman say aye. All opposed no.

2722  
2723  
2724 Affirmative: Baka, Bell Harris, Nunnally, Wright 5  
2725 Negative: 0  
2726 Absent: 0

2727  
2728  
2729 The nominations are closed. And Mr. Wright, since you're the only nominated  
2730 candidate you are elected by acclamation. Congratulations.

2731  
2732 Mr. Blankinship - The chair will entertain nominations for the office of  
2733 vice chairman.

2734

2735 Mr. Wright - I move that Mr. Nunnally be elected as vice chairman.  
 2736  
 2737 Mr. Blankinship - Mr. Wright has nominated Mr. Nunnally. Are there any  
 2738 other nominations? The chair will entertain a motion to close the floor to  
 2739 nominations.  
 2740  
 2741 Ms. Harris - I so move.  
 2742  
 2743 Mr. Blankinship - Is there a second?  
 2744  
 2745 Mr. Baka - Second.  
 2746  
 2747 Mr. Blankinship - Ms. Harris has moved and Mr. Baka has seconded  
 2748 that we close the floor. All in favor signify by saying aye. All opposed say no.  
 2749  
 2750 Affirmative: Baka, Bell Harris, Nunnally, Wright 5  
 2751 Negative: 0  
 2752 Absent: 0  
 2753  
 2754 Mr. Blankinship - The floor is closed. And Mr Nunnally being the only  
 2755 nominated candidate, you are elected by acclamation. Congratulations.  
 2756  
 2757 Ms. Harris - Thank you, Mr. Blankinship. A motion is in order to  
 2758 adjourn the meeting.  
 2759  
 2760 Mr. Wright - Nobody wants to move that we adjourn.  
 2761  
 2762 Mr. Baka - I move we adjourn.  
 2763  
 2764 Mr. Wright - Second.  
 2765  
 2766 Ms. Harris - It's been moved and properly seconded that the  
 2767 meeting be adjourned. This motion does not require us to vote.  
 2768  
 2769  
 2770  
 2771  
 2772  
 2773  
 2774  
 2775  
 2776  
 2777  
 2778  
 2779

*Helen E. Harris*

Helen E. Harris  
Chairman

*Benjamin Blankinship*  
Benjamin Blankinship, AICP  
Secretary