

1 MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING
2 APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY
3 ADMINISTRATION BUILDING IN THE GOVERNMENT CENTER AT PARHAM
4 AND HUNGARY SPRING ROADS, ON THURSDAY JANUARY 23, 2014 AT
5 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-
6 DISPATCH JANUARY 6, 2014, AND JANUARY 13, 2014.
7

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

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 Mr. Wright - Welcome, ladies and gentlemen, to the January 2014
10 meeting of the Henrico County Board of Zoning Appeals. Please stand and join
11 me in pledging allegiance to the flag of our country.
12

13 Mr. Blankinship, will you please read our rules.
14

15 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,
16 ladies and gentleman. The rules for this meeting are as follows: Acting as
17 secretary, I will announce each case. And as I'm speaking, the applicant should
18 come down to the podium. Then we will ask everyone who intends to speak to
19 that case to stand and be sworn in. Then the applicant will speak. And then
20 anyone else who wishes to speak will be given the opportunity. After everyone
21 has had a chance to speak, the applicant and only the applicant will have an
22 opportunity for rebuttal.
23

24 After the matter has been heard and the Board has asked any questions, they
25 will take that matter under advisement, and they will proceed to the next case.
26 They will render all of their decisions at the end of the meeting. So if you wish to
27 hear their decision on a specific case, you can either stay until the end of the
28 meeting, or you can check the Planning Department website—we update it about
29 an hour or so after the meeting ends—or you can call the Planning Department
30 this afternoon.
31

32 This meeting is being recorded, so we'll ask everyone who speaks to speak
33 directly into the microphone on the podium, state your name, and please spell
34 your last name so we get it correctly in the record.
35

36 Finally, there is a binder in the foyer that contains the staff report for each case,
37 including the conditions that have been recommended by the staff. It's
38 particularly important that the applicants be familiar with those recommended
39 conditions.

40
41 I do not believe we have any deferrals or withdrawals, Mr. Chairman.

42
43 Mr. Wright - Then will you please call the first case.

44
45 **CUP2013-00038 SHORT PUMP TOWN CENTER** requests a
46 conditional use permit pursuant to Section 24-116(c)(1) of the County Code to
47 hold fundraising events at 11700 W Broad Street (Parcel 738-764-0203) zoned
48 B-3C, Business District (Conditional) and WBSO, West Broad Street Overlay
49 District (Three Chopt).

50
51 Mr. Wright - Will all persons having an interest in this case,
52 whether for or against, please stand and be sworn.

53
54 Mr. Blankinship - Raise your right hand, please. Do you swear the
55 testimony you're about to give is the truth and nothing but the truth so help you
56 God?

57
58 Mr. Munsey - I do.

59
60 Mr. Wright - Please state your case.

61
62 Mr. Munsey - My name is James Munsey. I'm a representative of
63 the Virginia Firefighter Games and the Rotary Club of Innsbrook. We held this
64 event for the first time on April 20, 2013. The event was a tremendous success.
65 This is a competition and celebration of our first responders. Fire departments
66 from across the metro Richmond region are invited to participate with
67 demonstrations, live displays and a lot of activities for families and children. And
68 then there's a competition amongst the firefighters that is the centerpiece of the
69 event. We are repeating the event in 2014. This year's date is going to be on
70 May 3rd. We are here today asking for, again, the Board to allow us the
71 conditional use for the event.

72
73 Mr. Wright - Is there anything in this request that is different from
74 the one that we had last year?

75
76 Mr. Munsey - Because of the success of last year's event, our flow
77 of the actual event last year was not ideal because our footprint was a little small
78 for the number of demonstrations and displays that we had. So the Town Center
79 has allowed us to expand the size of our footprint this year, which will allow us to
80 have better flow for the public as they attend the event and to better separate the

81 displays that we'll have out there. That's the largest change since last year. It's in
82 the same general vicinity; it's just a larger footprint.

83
84 Mr. Wright - Did you have any traffic problems last year?

85
86 Mr. Munsey - No sir, we did not. And there was still ample parking
87 available at the Town Center throughout the day.

88
89 Mr. Wright - Did you notice any traffic jams or people held up
90 during the event?

91
92 Mr. Munsey - No sir. The only thing close to a jam is people would
93 slow down as they came around the ring road; who didn't know what was going
94 on as they were taking a look at it. But that was about the only thing we noticed.

95
96 Mr. Wright - And that's exactly what you want, right?

97
98 Mr. Munsey - Yes sir, absolutely.

99
100 Mr. Wright - Mr. Blankinship, did you have any complaints last
101 year?

102
103 Mr. Blankinship - No sir, we did not receive any.

104
105 Mr. Nunnally - Have you read the conditions on this case?

106
107 Mr. Munsey - Yes sir.

108
109 Mr. Nunnally - And you agree with them?

110
111 Mr. Munsey - Yes sir, absolutely. The conditions are basically
112 identical to last year, and we have no problem with them at all.

113
114 Mr. Wright - Any questions from members of the Board?

115
116 Ms. Harris - I see that you are projecting about 5,000 spectators
117 this year?

118
119 Mr. Munsey - Yes ma'am.

120
121 Ms. Harris - How many did you have last year?

122
123 Mr. Munsey - We had between four and five thousand. Our count
124 was just a little under 5,000. We are doing the same types of advertising this
125 year. We're duplicating our advertising efforts from a year ago, so we're
126 anticipating the same crowd for this year's event.

127
128 Ms. Harris - Okay. Are you increasing your police presence this
129 year?
130
131 Mr. Munsey - I believe that the police department is recommending
132 the same amount of security that we had last year, which is a supervisor and four
133 police officers, I believe. They'll be out there again.
134
135 Ms. Harris - On the layout plan, could you identify—I see there will
136 be kiddie activities, vendor displays, demonstrations, etcetera. But could you
137 identify some of these stores? I'm trying to picture just where your event will take
138 place.
139
140 Mr. Munsey - Oh, yes ma'am. So if you look down there where it
141 says "entrance" on the lower right-hand quadrant of that layout next to "display
142 area," that would be where Texas de Brazil is, and the Funny Bone Comedy Club
143 is right there. As you go toward the bottom where the stage and entertainment
144 area is, that is coming closer to where Macy's is. American Family Fitness would
145 be on the opposite end of the ring road to the very top of that diagram. So it's
146 around the back of Short Pump Town Center on the north side of the Town
147 Center.
148
149 Mr. Wright - Any further questions from members of the Board?
150
151 Mr. Blankinship - I have one. You had mentioned four to five thousand
152 people. Would they all be arriving and leaving more or less at the same time?
153
154 Mr. Munsey - No sir. Last year our findings were the average
155 participant stayed 60 to 120 minutes at the event, and it's an all-day event. So
156 that number of people was the total flow throughout the day. But it's constantly
157 cycling. This is not an event that people are going to spend six or eight hours at.
158
159 Mr. Wright - Is anyone here in opposition to this request? Hearing
160 none, that concludes the case. Thank you very much for appearing.
161
162 Mr. Munsey - Thank you very much, ladies and gentleman.
163
164 **[After the conclusion of the public hearings, the Board discussed the case**
165 **and made its decision. This portion of the transcript is included here for**
166 **convenience of reference.]**
167
168 Mr. Wright - Do I hear a motion on this case?
169
170 Mr. Baka - I make a motion that we approve CUP2013-00038 for
171 the second year in a row. This appears to be a good event for the community,

172 and it does not adversely affect the traffic in the area or the surrounding
173 environment. So I make a motion to approve this CUP.

174
175 Mr. Wright - Is there a second?

176
177 Mr. Nunnally - Second.

178
179 Ms. Harris - Second.

180
181 Mr. Wright - Seconded twice. Any discussion on this motion?
182 Hearing none, all in favor say aye. All opposed say no. The ayes have it; the
183 motion passes. It's approved.

184
185 After an advertised public hearing and on a motion by Mr. Baka, seconded by
186 Mr. Nunnally, the Board approved application **CUP2013-00038, SHORT PUMP**
187 **TOWN CENTER's** request for a conditional use permit pursuant to Section 24-
188 116(c)(1) of the County Code to hold fundraising events at 11700 W Broad Street
189 (Parcel 738-764-0203) zoned B-3C, Business District (Conditional) and WBSO,
190 West Broad Street Overlay District. The Board approved the temporary
191 conditional use permit subject to the following conditions:

192
193 1. This conditional use permit is for the approval of a one-day temporary outdoor
194 event to be held at Short Pump Town Center on May 3, 2014. Set-up for the
195 event will occur on Friday, May 2, 2014 and breakdown will commence at the
196 conclusion of the public event and extend to no later than Sunday, May 4, 2014.

197 2. The outdoor event shall be limited to the following times: Set-up shall occur
198 between 7:00 am to midnight, the public event shall occur between 9:00 am and
199 4:00 pm, and breakdown shall commence at the conclusion of the public event
200 and shall end no later than 8:00 pm the following day. All set-up and breakdown
201 activity related to the event shall cease between the hours of 12:00 am and 7:00
202 am.

203 3. Only the temporary improvements shown on the layout plan filed with the
204 application may be erected pursuant to this approval. Any additional
205 improvements shall comply with the applicable regulations of the County Code or
206 as specified in the conditions of approval.

207 4. The applicant shall clearly delineate the perimeter (footprint) of the event area
208 with temporary fencing and shall install traffic barriers at affected parking drive
209 aisle entrances to block vehicular traffic from entering the event area. Internal
210 shopping center circulatory roadways (providing general internal traffic
211 circulation) leading in or out of the shopping center shall be kept free and clear of
212 equipment, vehicles, and obstacles associated with the event. Fire lanes shall be
213 maintained in accordance with the Fire Prevention Code. Access to on-site fire
214 hydrants and fire department connections shall not be impaired.

5. 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.

6. The applicant shall obtain all necessary building permits for items including but not limited to tents (in excess of 900 square feet), elevated stages, spectator bleachers, climbing towers, mechanical amusement devices, electrical generators and electrical connections to be used during the event. Building permits shall be requested no later than four weeks prior to the event and required inspections shall occur no later than noon on Friday, May 2, 2014.

7. The applicant shall provide adequate restroom facilities and hand wash stations as required by the Building Inspections Department.

8. All temporary tents and amusement devices employed during the event shall be properly anchored as required by the Division of Fire.

9. The applicant shall obtain necessary Health Department permits for the sale of food during the event, if necessary.

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

11. Speakers for amplified sound and music shall be directed toward the main event in order to limit its impact on adjoining businesses and/or residential neighborhoods and shall not exceed 65 db at the property line.

12. On-site security and safety measures shall satisfy the Police Division's written requirements.

13. Emergency preparedness and safety requirements shall be developed in accordance with the written requirements of the Division of Fire.

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

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

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

APL2014-00001 JOHN A. AND LORRIE B. WAJCIECHOWSKI
appeal a decision of the director of planning pursuant to Section 24-116(c) of the

254 County Code regarding the property at 1013 New York Avenue (BILTMORE)
255 (Parcel 784-762-8160) zoned R-4, One-Family Residence District (Fairfield).
256

257 Mr. Wright - Everyone who desires to speak with reference to this
258 case, whether you're for or against, please stand and be sworn.
259

260 Mr. Blankinship - Please raise your right hands, please.
261

262 Do you swear the testimony you're about to give is the truth and nothing but the
263 truth so help you God?
264

265 Mr. Wright - All right. Please state your name.
266

267 Mr. Wood - Members of the Board, I'm Andrew Wood. I'm a
268 lawyer. I represent the appellant here. He will be speaking on his own behalf.
269

270 Mr. Wright - All right.
271

272 Mr. Wood - His name is John Wajciechowski.
273

274 Mr. Blankinship - Excuse me; I did my best.
275

276 Mr. Wajciechowski - You did great.
277

278 Mr. Wright - Please state your name for the record.
279

280 Mr. Wajciechowski - John Wajciechowski. And I'll spell that. W-a-j-c-i-e-c-
281 h-o-w-s-k-i.
282

283 Mr. Blankinship - So we spelled it correctly.
284

285 Mr. Wright - And please present your case.
286

287 Mr. Wajciechowski - Could I either approach or just hand these to you? I
288 didn't realize there was so many of you; I would have made more copies. It's four
289 copies of what I'm going to go through. And I'm going to show you anyway.
290

291 I'll go through in the same order that they are arranged so that it will be easier for
292 everyone to see.
293

294 I'm here today as a rebuttal to some of the information that has been given in the
295 decision that is being made on our property on our behalf by the County, the
296 Zoning Board. I also have—I'll show you these first pictures to begin with.
297 Primarily what this concern is about is these two pictures. What is the difference
298 between these two pictures? You have them in front of you, so you can see, but
299 I'll hold them anyway. One is that you really can't tell what the difference is. This

particular one, which is Exhibit 1, has seats in it. This Exhibit 2 does not have seats in it. But from where you walk by or drive by or see us going down the road, you do not know whether or not they are being used personally for us or in use of our business on occasion. This other one is exactly this. They look to be the same, but the other one is exactly this. I opened the door just so you'd know—of course this picture didn't turn out very well. You can't see that inside that door are seats.

On your Henrico County—on what was given to you, I don't know if that's in there as well. In the first paragraph, the factual background is I have point underlined about the second paragraph or halfway down. It says the County inspectors have observed multiple vehicles parked at the appellant's residence, including two hearses and three or four nearly identical vehicles. There have also been six to eight other vehicles parked there at any given time. And that's people coming to visit. What I was saying is my contention is that anybody coming to the house is it appears that somebody is there or a vehicle that is—that is absolutely our vehicle. And there's no contention there. We certainly own a hearse. But at any given time, because of our ministry, because of what my wife and myself do. She is a chaplain, as I'm about to read the affidavit—her affidavit.

I can summarize this. I don't want to really do that, but I'll summarize the vehicles. You can see that my name is—I'm reading the affidavit now. My name is Chaplain Lorrie Wajciechowski. I'm owner of Heaven's Coach Service. I've also been asked to clarify the use of vehicles that are located in my home, 1013 New York Avenue, Glen Allen, Virginia. My husband, John Wajciechowski, and I own five vehicles as follows. There's a 2004 Jeep Grand Cherokee, titled to Lorrie Wajciechowski, and used by Patsy Brooks, my mother, as her personal-use vehicle and garaged at her home, 2203 Mendota Drive. Rarely is the vehicle at our home or parking lot unless she comes over.

A 1995 Cadillac hearse titled to John Wajciechowski and used by John and Lorrie in the course of business. Ninety-nine percent of the time that vehicle in the course of our business is the vehicle that we use.

The 2008 Toyota van titled to John Wajciechowski is a personal-use vehicle. It also is used occasionally—it's used primarily as a personal vehicle, but occasionally—10 percent or less or less, it's used in the course of our business, as well as a 2001 Chrysler Town and Country. The same kind of information. A 2002 Chrysler Town and Country van. Same kind of information. The reason we said 10 percent or less in our personal use is that we calculated last—the entire last year all of the calls that we did, the amount of time that we spent on them, and you can imagine how long it took to figure all this out. But we calculated all that time, the amount of time that the vehicles were on the road in use of business and then of personal use. And we came up with a figure. We calculated the entire time. And we came up with a figure of not 10 percent, but 8.992 percent the amount of time that these vehicles were used for business. The

346 hearse, however, is used 99 percent of the time for that. The other vehicles are
347 just used 10 percent or less.

348
349 I, my husband, and my daughter—continuing with the affidavit—Kristy Alexander,
350 who resides in the home with us, personally use each of the three minivans as
351 three people in the home. There are three additional vans. It says four in here. I
352 guess somebody was visiting or something; I don't know. But we only own three
353 vans. In the course of the day—personal use in the course of each day to run
354 errands—grocery, pay bills, go to the bank, do chores, pick up dry cleaning, take
355 our children and parents to doctors, pick up and spend time with our children and
356 grandchildren, go to work, visit family and friends, take vacations, attend
357 meetings and Bible studies, and attend church. I use each of the three minivans
358 as a personal-use vehicle in the course of each day to perform my chaplaincy,
359 non-paid duties. Today she's actually performing a ceremony at a funeral. So she
360 is officiating—if you want to call it that—at a funeral at this moment.

361
362 This is not a business, but a calling. On a regular basis, I visit patients in
363 hospitals; nursing homes; and at homes and hospice care; incarcerated
364 individuals in jails and prisons; drug addicts and alcoholics in recovery houses;
365 the homeless in shelters and on the streets; mentally, emotionally, and
366 psychologically-challenged at various psychiatric facilities; and many individuals
367 and families in crisis at their homes and in schools. I offer spiritual comfort,
368 guidance, and counsel, and do so with 90 percent of my day. I will and have used
369 as many as three different vehicles in one day based on my need and distance to
370 be traveled. My husband, John Wajciechowski, is currently in seminary, also
371 assists on a daily basis visiting these individuals and sharing spiritual counsel
372 using each of the three minivans as a personal-use vehicle. My daughter, Kristy
373 Alexander, also uses each of the three minivans on a daily basis for personal use
374 to go to and from work, to and from school, to and from various personal
375 meetings, and to visit family and friends. Her statement is attached as well.

376
377 While each of these vehicles can be and often are outfitted with necessary
378 equipment to transport decedents with stretchers in the back—or cots, as we call
379 them—that does not mean that they are used that way on a daily basis. Each
380 vehicle is equipped should the need arise. I would challenge anyone to prove
381 otherwise because to do so would mean that someone would have to know what
382 they're doing each and every hour we leave the home. And that would be
383 impossible.

384
385 On a percentage-of-use basis, these vehicles, with the exception of the hearse—
386 as I stated earlier—are used primarily for personal use, and when needed,
387 approximately 10 percent may be used in the course of our business. It is the
388 hope that this sworn affidavit will clear up any misconception this Zoning
389 Commission may have regarding the use of our vehicles in the course of our
390 daily lives. And that's her card, Exhibit 4C, is the next page. Her chaplaincy card.

392 The next statement is from Kristy Alexander, who lives at our home. My name is
393 Kristy Alexander, and I reside at 1013 New York Avenue. Just to prove that she
394 is there. I wanted to clarify that I use at least one of the three minivans registered
395 to my parents on a daily basis and go to and from work; to and from culinary arts
396 classes at Virginia College in the south side; to visit friends and family; and to run
397 errands with my parents. She can be reached—if you turn the page, you see that
398 her identification card there is circled with our address.

399
400 Next we have a handwritten affidavit. And this is from Patsy Brooks, my mother-
401 in-law, Lorrie's mother. To whom it may concern, I have been using my
402 daughter's—Lorrie Wajciechowski—2004 Grand Cherokee Jeep for the last two
403 years. I live at 2203 Mendota Drive in Henrico. And that is where the jeep is kept.
404 I visit often and also attend Bible study there with several other women. Without
405 the extended parking area—we widened the driveway—everyone would have to
406 park on the street, which is narrow and busy. If the jeep is in the driveway, I'm in
407 the house. And that's signed by Patsy Brooks.

408
409 The next exhibit, Exhibit 7, is Anthony Gigliano. I, Anthony Ryan Gigliano am a
410 collector of hearses, of both vintage and modern model years. It has come to my
411 attention that one of the hearses that I currently own, as well as one that I used
412 to own—he recently sold it—are now in question for being seen parked at 1013
413 New York Avenue, Glen Allen, Virginia. To clear up any confusion, both of the
414 white hearses that have been seen parked at this address—I think he had a
415 green one as well. I don't know. I'm trying to remember that. Anyway—are owned
416 solely by me. This is a 1974 Cadillac Fleetwood hearse with the VIN number.
417 This vehicle is currently owned by me, and the other hearse in question is my
418 1994 Cadillac Fleetwood hearse—a different VIN number. I owned the vehicle
419 until December of 2013. I drive these vehicles daily for general transportation
420 purposes, not commercial. Therefore, they were parked at 1013 York Avenue
421 from time to time when I was there to pick up paperwork from my employer for
422 my next assignment. Neither of these hearses are used to transport any
423 deceased person, nor have they ever been used for that purpose while under my
424 ownership. They are both titled and registered with the Virginia Department of
425 Motor Vehicles by me for use as privately owned vehicles for general
426 transportation use. They are not commercial vehicles, nor are they registered or
427 used as such. Sincerely—and he signed it Anthony Gigliano.

428
429 Moving forward, I have some pictures just to show you why the determination is
430 that at some point these vehicles are considered—right now being considered to
431 be—the vans are considered to be commercial vehicles. Exhibit H shows—this is
432 all within my neighborhood, within a block or two, a street or two, right around
433 me, right in my neighborhood. And you know the address.

434
435 But this is Better Built Construction. This is Exhibit 8. And it's just a truck with a
436 sign on it. Now our hearse has a sign on it. Not really. It's a made thing that says
437 Heaven's Coach. And it's inside the window. But, I mean, if you want to count

438 that as titling or something, that's fine. But it's certainly much less obtrusive. This
439 is the Diamond Cab Company. They're right around the corner from me. This
440 vehicle drives past me every day.

441
442 Jones and Frank, Exhibit 10. Another commercial vehicle. Well, I'm assuming
443 commercial vehicle. Pallets for sale. U. S. Logistics. This is a pallet person right
444 down the road from me. That's Exhibit 11

445
446 Exhibit 12. If you look at this, this is two pharmaceutical representatives. They
447 live in my neighborhood. It's a husband and wife team. They use their personal
448 vehicles forty hours per week. My wife went and spoke to them—or asked them.
449 And they use that for visiting clients and potential clients while working from their
450 home. These are just two regular vehicles that they use for commercial or what's
451 considered commercial use.

452
453 This is the next. Exhibit 13 is a husband and wife—excuse me—realty team
454 working from their home and their personal vehicles in the course of their forty
455 hours. I think it's five vehicles. One of them is right in front of the other. But it's
456 five vehicles that they use. And they use them all. It's the personal vehicles, but
457 they use them in their business as well.

458
459 Exhibit 14 is that. There are two work vehicles that belong to a landscaping
460 neighbor that we have. They're used a minimum of forty to fifty hours. This is as
461 per their telling us how often they use them in this landscaping business. He says
462 the vehicles are titled to him personally, and he and his son drive them for both
463 work and personally.

464
465 About two blocks away from us, Exhibit 15. Two personally-owned vehicles with
466 commercial signage in a driveway of a residence. The license plate number on
467 both of these is the phone number of the business. This husband and wife bail
468 bondsman team use their personal vehicles all hours of the day and night to go
469 to bail people out of jail all over the state of Virginia.

470
471 Exhibit 16. This is two work trucks and a trailer in a driveway.

472
473 Exhibit 17. This is three trucks; one is behind another. Three work vehicles and a
474 trailer in a driveway. The trailer has building materials and tools.

475
476 Right down the road from me, Exhibit 18. Two work trucks at a house.

477
478 Right around the corner from me, Exhibit 19. Seven vehicles, five are tagged. At
479 a residence.

480
481 Three houses down from me. Three doors down from me there's a work truck, a
482 work van in the driveway that have been there for months with work materials

483 and whatever else in the front. In the back of this home is filled with work
484 materials right behind.

485
486 All the way down at the end of my street. On the corner of New York Avenue and
487 Brook. This residence, located at the corner of New York and Brook, as I said,
488 constantly has bucket trucks, work trucks, trailers, tractors, every other vehicle,
489 as well as log-cutting and log-splitting equipment in the front or in the side of the
490 property. This business operates out of that facility, not off that property. They go
491 and do and work off the property and come and bring things. And then the next
492 picture is Exhibit 21. This is what they do. The trees that they've cut down, they
493 split them up, and they sell it as firewood. A tree removal, stump removal
494 business that operates at this home right down at the end of my street.

495
496 What is the difference between all of these places and where I reside? What is
497 the difference? Before we started this business, I lived at the property, I rented it,
498 and I had an irrigation repair company. I had two trucks. I had an F250, a Ford
499 F250. I didn't have any signage or anything on them, but I had two other SUVs,
500 all four-wheel-drive vehicles. I had a Mercedes. All four of those vehicles fit on
501 the driveway, as do all of our other ones, prior to widening it. And that was done
502 for a different purpose, which I'll explain in just a second.

503
504 But the difference between all of these places that have been here—we've been
505 in this business for three and a half years with all of these vehicles—well, not all
506 of them. But with all of these vehicles that we own right here. The difference is—
507 or the difference came as soon as we put this up. And that's a cross. That's what
508 seemed to be the triggering key or the focal point. It's not stated in here that way.
509 And actually what happened is when—I was approached by the County; a card
510 was left, and I called Ms. Robin D'Amore. She came and explained to me, and
511 was pointing out what—she was asking me what are these vehicles, what are
512 they for, what are they used for, which I told her—personal use and all that stuff.
513 The hearse, of course, is—you know, it actually has been out—I've gone and
514 gotten groceries in it. And that was trying to be dismissed, but I just went. I mean
515 it was one of those things. But anyway, it was a very interesting appearance, a
516 hearse going and picking up groceries. And I drove it through the drive-in one
517 time. She came and she said—and I said well why do you think that this is a
518 commercial property? I asked her. And she said well. And I said I need to see the
519 zoning, and so she opened up the book and we read it. And I said but I don't
520 have all these vehicles here, and this isn't this. I said what makes this look like a
521 commercial—this is the same house as it was built in 1950. What makes it a
522 commercial looking kind of property? And she said well the first thing is you have
523 a cross, and then you have this, and you have this. So that was an aside, but the
524 point is it was thrown out there, it was being said.

525
526 Whether or not that is absolutely the focus or what brought this to the attention—
527 why wouldn't a landscaping company, and why wouldn't a tree company, and
528 why wouldn't a bail bondsman company with signage all over—why wouldn't that

529 be taken into consideration as well. They all live right there. They're all fair game
530 if that's what's being stated. I have three minivans. I have a hearse. There is no
531 contention there. I'll call that a commercial vehicle, I have no problem. But that's
532 what I'm allowed. I'm allowed one vehicle, one commercial vehicle. My lot is
533 actually—and I think it's one commercial vehicle per lot. My house is on two lots,
534 not one. And I'm not even asking to consider that.

535
536 But I'm just—I'm pointing out that there are a whole lot of things here that are
537 misrepresented, probably not on purpose, but just misrepresented and not
538 necessarily caught. And that's why I'm bringing them to your attention. And I
539 thank you for your undivided attention.

540
541 The Zoning Ordinance does not—I'm looking at your—what was given to me.
542 And I'm on the second paragraph in the second section where it talks about one
543 commercial vehicle, the owner of a lot in a residential district may provide parking
544 for one commercial vehicle. We have—and does not exceed 10,000 pounds in
545 weight. That's a 5,000-pound vehicle, but that's not even important. Although the
546 Zoning Ordinance does not define commercial vehicle. It does not define
547 commercial vehicle. There are commercial parameters clearly enough that are
548 given. The DMV has them. They're much larger vehicles and all that type of stuff.
549 So since it is not defined, there's a point in my favor. It's absolutely not defined.
550 And as you can see in these other vehicles, they probably might be considered
551 commercial or more commercial or, if there is such a thing, a varying degree or
552 whatever. That obviously would be your determination.

553
554 If you turn the page there is a statement before the third paragraph where it says
555 moreover they're used in the business. Of course they're used in the business,
556 occasionally in the business, as I stated. But it was also stated a little further up
557 that on our driveway. All of these vehicles fit on our driveway. And it was implied
558 that we have a fleet and that's why we had to expand the driveway. It wasn't
559 done for that. I have two little children. They've got nowhere to ride a bicycle.
560 They ride a bicycle, they rollerblade, they do the little roller skates and all that
561 kind of stuff. I roll a basketball court out there, one of those little things that you
562 can shoot on. It's kind of hard to shoot in the grass. Well, you can, of course. So
563 now I have a hard surface to do that on. So it's not just as it appears or as it
564 could be stated oh, you did it because of this. I didn't do it because of that. I
565 already had all the vehicles parked in my regular driveway. The driveway was
566 expanded for different reasons.

567
568 The next point is that this is no different—the picture that we said when I saw—
569 there's the mention of a gurney in here, that the vehicle was being changed and
570 a gurney was pulled out. Well just like in tool type of thing, the seats were in,
571 they're going to be put back in, or if I pulled out, it just needed to be cleaned. I
572 washed it. It's no different than someone coming home and rinsing off their car or
573 pulling a toolbox out or pulling their tools out to clean them and then putting them
574 back in. It wasn't being used for anything. And I'm sure that happens

occasionally or whatever. And it happened to be seen. There's no hiding that. It's not intended to be that. And so it's not an "a-ha gotcha" moment.

Further down where it says "first" under section number three, we have that there are no clients visiting the house, no meetings at the house. Originally when I said—when I asked Ms. D'Amore what would constitute this and she said well you couldn't have meetings. I said what we really do is—I'll address that one in a second. Thank you for putting that up. We have Bible studies. My wife is a chaplain. She has a women's study; I have a men's study. And that's the other part for why this was expanded. We live on a narrow road. It's just a regular road that runs through a community. It's a regular road. Steep ditches. So with everybody trying to park on the side of the road, it was a little bit hairy. And so I just expanded the driveway to accommodate all the people that come. Like I said, my own personal vehicles fit on the one other part of the driveway, so we had room.

I love these pictures. Right at the end of this where you can see the vans are parked now, often we'll move them all over right there, and people will pull in off the street so our Bible study people are right there, not parking up and down the road and blocking. The neighbors across the way have events, and they park up and down the road. The other ones over here do as well. They're a military family. They have six or eight vehicles—they had six vehicles; let me take that back. The people next to me have a commercial vehicle is why I didn't take that picture. Just didn't.

But we also have many other places right next to us that have three—two or three minivans. And they're just like this. They're exactly like this. There is no indication that they are being used in a business or they're being used for personal use. And there's no determination of that.

There is the one commercial vehicle. And it says that, that are many—the original claim in the front was that they're two. If you could go back to the thing that you had right before this. Will commercial vehicles be stored at the home? No. Was our original in nine—in 2010, we only had one vehicle. It was just a minivan. That was the only vehicle we had. Well, we had a jeep and a minivan. That was the Toyota. So that's where that statement is. So it's not like we tried to pass anything over or any of that. The implication was that—or it seemed to be that way written in here. And that wasn't it at all. We're trying to be very compliant and open and complicit with all that has been asked of us. But it appears that there have been some misunderstandings.

In the second where it says—under three two where it says "second," halfway down it says the predominant use of the vehicles is—your contention—is that the predominant use of the vehicles is for their business. And I have just proved to you or shown you that there is no way to determine that. That by look, by riding by and taking a picture today or riding by and taking a picture tomorrow or

621 coming and taking a picture at any time you don't know if it has the seats in it,
622 you don't know if it has the cots in it. And just because it has the cots in it doesn't
623 mean it's not being used for personal use. I have one outside right now. I don't
624 know which one you would classify that, but I have one I consider personal use
625 right now.

626
627 We have, at the bottom of the page, the third, it says there's no logo sign on the
628 premises. It's only in the vehicle. It's not on—there's nothing on the house. Our
629 house is just—you saw the picture of the house. It's a white house with green
630 shutters. It doesn't get any more common than that.

631
632 If you turn the page, the conclusion is at the end it says the appellants have not
633 provided legitimate reasons for granting their appeal, according to the request,
634 that the BZA deny the appeal. Accordingly—was the suggestion. But I didn't feel
635 we were guilty. As far as I was concerned we have one commercial vehicle.
636 When there were two or however many—if Anthony came or something and
637 there were two hearses there, that was actually what the initial contact was when
638 she said—Ms. D'Amore said something to me, you have two hearses. I said I
639 have one hearse. She goes you have two hearses. I said I only have one hearse.
640 She says there are two hearses. And I said there are two hearses there because
641 Anthony came by to pick something—he dropped the his vehicle off and he went
642 off to do some paperwork or whatever. I said but anyway. And he comes by
643 occasionally and he leaves the vehicle. So that's not my vehicle. That's no
644 different. I had my roof worked on. Commercial vehicle. I had my furnace
645 replaced. Commercial vehicle. They come in and they go out. The come in and
646 they go out. They don't stay there overnight. They don't stay there for any
647 extended period of time. They stay there for as long as someone has gone away.
648 And then they come back and get their vehicle and leave.

649
650 It would be just like someone here, if you have a commercial vehicle you drive for
651 the County or whatever, and somebody says can you go get something. You
652 went and got some coffee. Well is that considered commercial or is that personal
653 use or? I mean it just becomes to me a gray or a cloudy or a foggy area.

654
655 Like I said, the whole point of all this—none of this came up until this cross went
656 up. This is what started all of this. You've seen how many people. There are fifty
657 other homes that we could have taken pictures of and brought of commercial
658 vehicles. Apparently we live in a very commercial place where people come
659 home or people that bring their vehicle, or two, home. So we've seen that very
660 often. But it was not until this went up. And you can see that not only is it a
661 cross—she's a chaplain; I'm in seminary. That's just what we wanted. Why
662 wouldn't we be able to have a cross in our place? I have a flag. I have a flag as
663 well. Hopefully nobody's going to be complaining about that.

664
665 I do appreciate your attention. I would say different than this. At this end of this
666 conclusion it says, accordingly the director requests that you deny the appeal. I

667 say otherwise, because I've shown you, as far as I'm concerned, a
668 preponderance of the evidence, that there are a whole lot of ways of looking at
669 this. And certainly I have just given you another and presented much more clear
670 evidence and not tried to imply things, but only tell you what the truth is, and
671 show you the vehicles as they are. Can you tell which one is which is really kind
672 of where this goes.

673

674 Right down the way from me there's a woman with a daycare. Right down the
675 way. She has two or three minivans. They have little seats in them. Are they
676 commercial vehicles? She just goes and gets children and takes them back. I
677 don't know.

678

679 Do you have any questions of me?

680

681 Mr. Wright - I have one. You said that you didn't conduct any
682 business at this residence?

683

684 Mr. Wajciechowski - Yes sir, thank you. Thank you for bringing that up.

685

686 Mr. Wright - I just want to get that—

687

688 Mr. Wajciechowski - No, you're absolutely correct. Every bit of business
689 that is conducted with any vehicle that we own is off the premises. I go to
690 someone's home, to the hospital, to the morgue. We work for the ME as well.
691 From time to time we go and get people at accident scenes and that type of
692 thing. Nothing comes there.

693

694 Mr. Wright - I'm looking at a business license that says name of
695 licensee Lorrie Wajciechowski, trade name Heaven's Coach Service. Where
696 businesses will happen or take place is 1013 New York Avenue.

697

698 Mr. Wajciechowski - Is only where the office is. No business takes—no—I
699 can't pick up dead bodies at my home; we're all alive.

700

701 Mr. Wright - I'm just curious how we have a business license
702 showing that a business is being conducted at that address.

703

704 Mr. Wajciechowski - Should we not have a business license? I really don't
705 know. I know we needed to have a business license and they just asked for an
706 address. I don't have a place. I understand that you have that. I'm saying that we
707 don't have a facility to go to, a separate facility. But it's just like these people.
708 Just like anybody, they have an off-facility or whatever. The only thing that we do
709 is we have our vehicles at our home.

710

711 Mr. Wright - Do you operate this business anywhere else?

712

713 Mr. Wajciechowski - Everything is off premises. The office is the—when
 714 we say conducting business, we answer phone calls there.
 715
 716 Mr. Wright - Explain to me what you do with this business,
 717 Heaven's Coach Service. What is it? What is involved with it?
 718
 719 Mr. Wajciechowski - Well, what we do is we are—last night, for instance.
 720 Someone died in their home. We got a call. And it comes from either the police or
 721 it will come from a funeral home sometimes. They know that we are a removal
 722 company. We're removal and transport, and that's what we are called. What we
 723 do is we go to someone's home, pick them up, and take them out. They've
 724 already passed. They've been pronounced dead and all that kind of stuff.
 725 Sometimes we take them to the medical examiner; sometimes to a funeral home.
 726
 727 Mr. Wright - And that's what you use the hearse for?
 728
 729 Mr. Wajciechowski - Yes sir.
 730
 731 Mr. Wright - Do you ever use these other vehicles to do this type
 732 of thing? These vans or?
 733
 734 Mr. Wajciechowski - Yes. When the hearse is occupied and we get maybe
 735 more than one call at once, which actually happens. When we get more than one
 736 call at once, we have to go. You can't leave grandma lying in the bed or fallen on
 737 the floor. You can't just leave them there until somebody—I'll be there in a couple
 738 of hours or three hours or four hours. That just needs to happen.
 739
 740 Mr. Wright - So that's what you use the vans for.
 741
 742 Mr. Wajciechowski - Yes sir.
 743
 744 Mr. Wright - And do the vans have seats in them?
 745
 746 Mr. Wajciechowski - They do have seats in them. We take them in and we
 747 take them out. They're prepared. They are prepared—they have cots in them
 748 sometimes, but not always. And that is, we just make them available because
 749 when do get calls, hopefully when business is really good, that we have vehicles
 750 available to go. We also do long-distance runs. If we have somebody that we're
 751 picking up and they need to go what we call long distance, to run up to
 752 Fredericksburg, or run up to Blacksburg, or run up to Metropolitan, which is up in
 753 Alexandria, that ties up the hearse first, or ties up these vehicles for an extended
 754 period of time. Then if we get another call, there it is again, we have a vehicle
 755 away for two hours and we need to go get somebody and take them somewhere
 756 else.
 757

758 Mr. Wright - You wouldn't ordinarily need three vans for your
759 personal use except for the business would you.
760

761 Mr. Wajciechowski - We have three people, as I said, that live in that
762 house.
763

764 Mr. Wright - Each one of them has a vehicle.
765

766 Mr. Wajciechowski - Right. They don't have a name on it, but that's I'm
767 taking it to here, I'm taking it to here, I'm taking it to here. Yes sir.
768

769 Mr. Bell - When the vans are used, do you charge for the use
770 like you do the hearse?
771

772 Mr. Wajciechowski - A transport is a charge, when you pick them up.
773

774 Mr. Bell - Whether it's the hearse or the van.
775

776 Mr. Wajciechowski - Whether it's a hearse or the van. I mean that is how—
777 the people don't care how you get there. Someone a long time ago—this is a little
778 business story. Someone a long time ago lost their license because they had a
779 station wagon, and they didn't have a minivan fixed up and they didn't have a
780 hearse either. They had a station wagon, and they would put people in the back.
781 Well, they got in trouble when they sat somebody up in the front seat that had
782 passed and were riding around. So they got in all kinds of trouble. Thankfully, we
783 don't do that. Our stuff is discreet,
784

785 Ms. Harris - Mr. Wajciechowski, the supplemental business
786 license questionnaire that you signed in October 2010, there was a question
787 there that said will commercial vehicles be stored at the home, and you said no.
788

789 Mr. Wajciechowski - Yes ma'am, I did.
790

791 Ms. Harris - But at that time did you have—your friend had two
792 hearses and you had one?
793

794 Mr. Wajciechowski - No, no, no, no. In 2010, the only thing we had was a
795 jeep and the Toyota Sienna, the 2008 Toyota. That was it. Those were the only
796 vehicles that were at that place. All those other vehicles that I had for my
797 business prior to that I sold. And that's what helped fund us to be able to buy
798 that. So no, that was—and we don't even—well, like I said, we don't consider the
799 minivan a commercial vehicle, because it was our other—again, the jeep, even
800 though we owned it, was with Lorrie's mother. So we really only had one vehicle.
801 You know, we were like the lone rangers riding around. If somebody called us,
802 fine. If they didn't, we'd go and eat lunch and then did other things that we
803 needed to do.

804

805 We're in the ministry. So we go and visit people at nighttime and in the daytime if
806 somebody's sick or if somebody just needs to talk. In the middle of the night.
807 Speaking of which, that's another thing to add. Somebody will say well, wait a
808 minute, I saw you leaving at 2:00 a.m. or all hours of the day. Well, yes. When
809 does somebody commit suicide? Or when is somebody having a difficult time at
810 night that they don't want to talk on the phone, that you need to get to them and
811 talk to them. It would be at nighttime. So we go at all hours of the day. So
812 basically we're on call as a chaplain and as a seminarian twenty-four hours a
813 day.

814

815 Ms. Harris - Okay. So sometime before December 2013 you had
816 three hearses on your premises?

817

818 Mr. Wajciechowski - Not that I know of.

819

820 Ms. Harris - The gentleman who sent the affidavit said that he had
821 two hearses.

822

823 Mr. Wajciechowski - Oh, but he didn't drive them all. I mean he didn't drive
824 them all there. He would only come with one. That's his transportation.

825

826 Ms. Harris - So there were never three hearses on your premises.

827

828 Mr. Wajciechowski - Not that I ever know of.

829

830 Ms. Harris - But there might have been two because the person
831 who—

832

833 Mr. Wajciechowski - Oh, absolutely there were two. He owned a hearse,
834 and he would come and visit. But that would be like saying you had a bread truck
835 at your house. Well yeah I did, because the bread man came and dropped it off.
836 Or the same thing like I just told you. I had my house worked on. I had my heat
837 pump—not my heat pump—my heater replaced, and then I had some other
838 things done in the house. An electrician came. At Thanksgiving I had a clogged
839 drain, so I had to call the plumber. So the plumber was parked there for a few
840 hours. That has nothing to do with me. They are commercial vehicles, but they
841 were—.

842

843 Ms. Harris - They were not your commercial vehicles.

844

845 Mr. Wajciechowski - But they're not my commercial vehicles. Only the
846 hearse. And I can see—I'll say absolutely that we do use it as a commercial
847 vehicle. I don't take Sunday joy rides. Although it has been used—it went up to
848 Kings Dominion for a kids ride because they wanted to get in. A ball team came
849 and wanted to get in them one time and ride around. We did that. But that's not

850 commercial; we didn't make any money off of that. That was just like a donation
851 type thing.

852
853 Ms. Harris - So this fellow is your employee—was your employee
854 or is your employee?

855
856 Mr. Wajciechowski - He is an independent contractor. The people that
857 work for us don't work *for* us. They're independent contractors. They work for a
858 lot of people actually.

859
860 Ms. Harris - But he was there to pick up—

861
862 Mr. Wajciechowski - Paperwork.

863
864 Ms. Harris - Yes.

865
866 Mr. Wajciechowski - Yes ma'am.

867
868 Ms. Harris - For his next assignment.

869
870 Mr. Wajciechowski - Of where he would go, and what was pending, and
871 what would be—a lot of times we'll get a call, someone's sick, and if you were
872 going to be available for this. You know, it's imminent. We had one last night. It's
873 imminent. And then within three or four hours. But the truth is they called us and
874 they turned around and called us right back and we went.

875
876 Ms. Harris - So your contention is that you only have one
877 commercial vehicle—

878
879 Mr. Wajciechowski - Yes ma'am.

880
881 Ms. Harris - —and that's the hearse?

882
883 Mr. Wajciechowski - Yes ma'am.

884
885 Ms. Harris - The others you use 10 percent—

886
887 Mr. Wajciechowski - Eight point nine nine two, as we calculate. And that
888 was our busiest year, by the way. It's not like we just said—or we took a busy
889 month or a light month. That was by far our busiest year. That would be the most
890 it was absolutely used.

891
892 Mr. Bell - So we're in agreement that the hearse is your one
893 commercial vehicle.

894
895 Mr. Wajciechowski - Yes sir, yes sir.

896
 897 Mr. Bell - The hearse is gone, let's say, being used. And then
 898 they call and you use the van to go pick up another--
 899
 900 Mr. Wajciechowski - Yes sir.
 901
 902 Mr. Bell - —to transport.
 903
 904 Mr. Wajciechowski - Yes sir.
 905
 906 Mr. Bell - How would you classify the van at that time?
 907
 908 Mr. Wajciechowski - As a personal vehicle being used in a—just like a—
 909 the same way that I did my irrigation business. A personal vehicle being used to
 910 perform our work. We have to just do it. I can't have a fleet of hearses.
 911
 912 Mr. Bell - Thank you.
 913
 914 Ms. Harris - Is there anywhere else you could house any of those
 915 vehicles other than on your premises?
 916
 917 Mr. Wajciechowski - Well I do own land. It's way down in the country. I'm
 918 not going to drive all the way down there and get one. If the hearse was the issue
 919 or the appearance of the one, then I could understand that. It kinda has a little
 920 creepy factor to it for some people. Not once you get around death, really, and
 921 you've been around it. But when it's a—some people ooh, there's a hearse at
 922 that house. That's a very, what would say—a very noticeable vehicle. It just is. If
 923 we had to do something with it, we could probably put up a privacy fence and
 924 then park it in the backyard so it wouldn't be seen on a daily basis with people
 925 that go by, if that's the complaint.
 926
 927 Ms. Harris - Would you be willing to do that if that's the complaint?
 928
 929 Mr. Wajciechowski - Yes, as long as you wouldn't expect it to be done like
 930 right now, because a privacy fence is going to cost a lot of money. But yes, we
 931 absolutely would be able to. I mean if we had a little leeway of time to be able to
 932 get a fence up. But we could absolutely move it to the side or to the back or
 933 whatever and then put a fence up.
 934
 935 Ms. Harris - How much time would you need to construct a privacy
 936 fence?
 937
 938 Mr. Wajciechowski - Probably within three months or a month. You know
 939 what I mean. I'm not going to stretch it out like years; it doesn't need that. I have
 940 a pretty good sized lot. To put a privacy fence around it is a little bit more—
 941

942 Ms. Harris - Thank you.
 943
 944 Mr. Wajciechowski - That's all. I'm absolutely willing to do whatever needs
 945 to be done, especially if that would be a remedy as far as that goes. Thank you
 946 for asking by the way.
 947
 948 Mr. Wright - Any other questions?
 949
 950 Mr. Baka - Yes sir, Mr. Chairman, if I may. Sir, lots of folks have
 951 personal vehicles they use for business use. And actually before I ask my
 952 question, I appreciate the fact that you have a good service here and a good
 953 calling. I'm just trying to focus on the zoning aspects of this. Sometimes the
 954 positive aspects of a home-based business, American entrepreneurs, is that you
 955 grow to a point that your business is successful and expands and, you know,
 956 may need to look for other places to house the business itself or operational
 957 vehicles or whatnot. But let me ask this. Lots of folks have personal vehicles for
 958 business use. So if the hearse is out and it is as Mr. Bell pointed out, if the
 959 minivan is a personal vehicle used for business use and you're receiving
 960 remuneration for that use of the minivan, why would you say that's not a
 961 commercial use at that time? Why would you say that it's not a commercial
 962 vehicle?
 963
 964 Mr. Wajciechowski - If you're going to classify it—if you're going to say that
 965 it sometimes is a commercial vehicle and sometimes—I can say it's being used
 966 X amount of time.
 967
 968 Mr. Baka - So it is a commercial vehicle.
 969
 970 Mr. Wajciechowski - If you were going to say it like that. But as with the
 971 example that I gave, if you took your personal vehicle and someone asked you to
 972 go do something for your work, wouldn't that be also the same thing. You say on
 973 a much lesser basis. Oh well, where do you—that's the whole point. Where do
 974 you draw the line? Is it 2 percent, 3 percent, once, occasionally? Where do you
 975 draw the line, then, that this becomes a commercial vehicle? It certainly is a
 976 minivan. It's not like a big van. It's not a big cargo van; it's just a minivan.
 977
 978 Mr. Baka - Okay, thanks. That's all I have.
 979
 980 Mr. Wright - Any further questions? All right. Do you have anything
 981 further at this point to offer on your case before we hear from the opposition?
 982
 983 Mr. Wajciechowski - Sure. I appreciate your attention and your intelligent
 984 questions about how it could be and how it looks. And I can give one more—just
 985 an additional answer. Once it grows to a certain size—I don't think we could do
 986 any more. We don't want to do a much larger business at all. The business has
 987 grown beyond our expectations, which is wonderful. At the same time, there

are—if it takes too much time from us, then it takes away from our ministry, what we do, which we also have Bible studies at the house. And she's in seminary, so we don't have but so much time. So we do this on a—it has now reached a ceiling and we're going to pare back. We've already talked about that. And if we need to put the hearse where we need to put the hearse, so be it. Again, it's not—that's how it appears at this point, but that doesn't mean it's growing any bigger. Because that's beyond where we need to be.

The other thing is I have examined that. And for us to go to a place or even just to house our vehicles in a different place would slow our response time, which is very important. It also would cost us more money. It would be ineffective for us. It basically would wipe us out of business. There would be no reason to be in business because it would be beyond what our capabilities would be.

Mr. Wright - All right, sir, if you'd just have a seat. Does anyone here desire to speak in opposition to this?

Mr. Hart - Good morning. My name is Jason Hart. I'm assistant County attorney for the County of Henrico. That's H-a-r-t. We speak in opposition to this. I'd like to introduce Robin D'Amore who is going to give you a little bit of background about how we found out about this violation and what led us to issue this notice of violation.

Ms. D'Amore - I'm Robin D'Amore. The last name is D apostrophe a-m-o-r-e. I received a complaint about 1013 New York Avenue. The complainant states that there was more than one business vehicle at the property. The employees are reporting to the property, and that there's a business appearance of the residence.

I called the complainant to get more information from them.

Mr. Wright - How many complaints did you get?

Ms. D'Amore - One. From the one person.

Mr. Wright - One complaint. Okay.

Ms. D'Amore - Right. When I went to the property I did observe there were two hearses at the property. I don't know if they have submitted this information, but DMV records indicate that the appellant has a Toyota van, a Cadillac hearse, a Chrysler sport van, a Chrysler van, and a Ford sport utility vehicle in addition to the Jeep Cherokee that his wife owns. And there's also been a white truck observed at the property. I'm not sure who owns that.

So I called the complainant after I observed the two hearses to get more information from them. What they told me was this past summer they observed

1034 the appellant pull a gurney out of one of their minivans and wash it out in the
1035 driveway. The owner repaved his drive in the side yard, which you saw pictures
1036 of, to expand the driveway to make room for all the vehicles. There are up to six
1037 work vehicles parked in the driveway. The hearse, the white hearse is there at
1038 different times; it's not there consistently. They have four minivans; the seats
1039 have been removed. All of them are similar make and model. As I was on the
1040 phone with the complainant, they observed the wife of the appellant putting a
1041 gurney into one of the minivans. They also said that people show up at the end of
1042 the day to pick things up. And sometimes they pick up the minivans. They say
1043 cars are always coming and going. Usually three to four minivans are there
1044 regularly, and I've seen up to three in addition to the hearse. Also, the appellant
1045 receives regular deliveries--sometimes body bags—to their home.

1046
1047 So the concern is the vehicles, but also the appearance of the home itself. I
1048 haven't observed people coming and going, but I have observed the vehicles,
1049 which is why I issued the notice of violation.

1050
1051 Mr. Hart - Thank you, Robin. I think in this case the appellant's
1052 argument can kind of be boiled down to the two separate arguments. The first
1053 seems to be that there is only one commercial vehicle on the property. He
1054 contends that the hearse that he owns—which you see in that picture—is the
1055 only commercial vehicle on that property.

1056
1057 The department's position is that—as I expressed in the short letter that I believe
1058 all of you have probably read by now. The department's position is that not only
1059 the hearse, but the three minivans themselves are also commercial vehicles.
1060 Because you can only have one commercial vehicle not exceeding 10,000
1061 pounds gross weight as a customarily incidental use to the dwelling, then having
1062 more than one is the violation.

1063
1064 To speak to a question that was asked, I believe by you, Ms. Harris, about the
1065 privacy fence issue, even if a privacy fence is erected and the van is hidden
1066 behind—I'm sorry—and the hearse is hidden behind the privacy fence, there is
1067 still a violation to the extent that they are using the vans in the operation of their
1068 business.

1069
1070 Now I'll speak to the first issue, whether the vans constitute commercial vehicles.
1071 As Mr. Wajciechowski has pointed out, we don't define commercial vehicle in the
1072 ordinance. And this is exactly the reason that there is no definition and that we
1073 don't have a bright-line definition of using it more than 50 percent for commercial
1074 purposes or using it more than 75 percent commercial purposes. It gives the
1075 department the discretion to look at the circumstances and look at how the
1076 vehicles are being used and determine whether they are actually being used for
1077 commercial purposes.

1079 As Mr. Wajciechowski has stated, the hearse is the primary commercial vehicle
1080 used in his business. It seems that that's the first one. When they get one call in
1081 the middle of the night that's the first one that's sent out. But as he said, if they
1082 have a day when they get two calls, the hearse is the first one that gets sent out.
1083 And let's say they get sent to Fredericksburg and it's gone for most of the day.
1084 They get a second call, one or more the minivans is going to pick up the body
1085 and transport it. Even though, as he said, the bodies aren't moved to the house,
1086 they are still conducting business out of the house. As I believe Mr. Wright
1087 pointed out, that's the sole place where the business is located. On the business
1088 application, he stated that's their only office; they're not located anywhere else.
1089 So when they get two calls, one of those minivans goes to pick up the property.
1090 And since they have three minivans, you know, their family members can use the
1091 other ones and always leave them essentially an available minivan to go on a
1092 second call that they get that day.

1093
1094 Essentially, their business could not function the way it does if they didn't have
1095 those minivans there stored on the property. So I think it's pretty apparent those
1096 minivans are used for commercial purposes. There is no bright-line rule. There
1097 isn't a rule that says if I go grocery shopping with it then it's not a commercial
1098 vehicle. There's no rule that says if my family members also use it for personal
1099 purposes it's not a commercial vehicle. It's a commercial vehicle if it's used in the
1100 furtherance of a business. And here clearly each of these minivans are used in
1101 the furtherance of the business. And the fact that there are three of them allows
1102 them to conduct the business, I would argue, even more successfully because if
1103 one of their family members is using it to run the kids to the pool, they can grab
1104 another minivan, identically outfitted, stick a gurney in there, and go pick up the
1105 body.

1106
1107 Additionally, Mr. Wajciechowski has—it seems a second argument is that
1108 everyone around him is also violating this ordinance. He takes various pictures of
1109 other commercial vehicles in various lots and various driveways throughout his
1110 neighborhood and it seems the surrounding area. The fact that others are
1111 violating—may be violating this ordinance does not excuse Mr. Wajciechowski's
1112 violation. If the Board of Supervisors determines that any number of commercial
1113 vehicles can be kept at the residence, then that's a decision for the Board of
1114 Supervisors in a legislative capacity to make. The fact that other people may also
1115 be violating the ordinance does not also give Mr. Wajciechowski license to violate
1116 the ordinance. In at least one of the circumstances—in at least one of the
1117 pictures that he's presented to you—I'm not sure which one—there has been a
1118 notice of violation issued for that violation.

1119
1120 As I'm sure you all know, the department has a complaint-based operation when
1121 it comes to zoning enforcement. We're not roaming around and looking for these
1122 people. We're not roaming around and trying to hurt small businesses. We're not
1123 looking for crosses in the yards. We operate when we get a complaint. And we
1124 received a complaint in this instance, as Ms. D'Amore said, of multiple

commercial vehicles on the property, people coming and going to the property, body bags being delivered to the property, the Wajciechowskis pulling gurneys out from the minivans and washing them in their driveway. That's the complaint that we received and those are the circumstances that we received, which led us to investigate this complaint and issue that notice of violation.

In those other circumstances with the other pictures of the Diamond taxicab or whoever else is operating—has commercial vehicles parked at the residences—he said something about a lumber cutting service—in those circumstances, were we to receive a complaint—were the Department Planning to receive a complaint, they will go out and investigate. And if there were a violation of this ordinance—and in particular if there was more than one commercial vehicle of not more than 10,000 pounds gross weight kept at the property—then they would speak with the resident, see if there's something they could do, and then issue the notice of violation. The Wajciechowskis aren't treated any differently than any other citizen about whom the County receives a complaint. The exact same thing happens no matter who it is and no matter what the business is. If they're violating this ordinance and we receive a complaint about it, we're going to investigate. And if we find a violation then we're going to issue a notice of violation.

Mr. Wajciechowski has mentioned—and I think Mr. Wright pointed this out—that although no body transportation is conducted at the home, clearly the business is run out of the home. This is the only location where the business operates. They answer the phone there, this is where they go to to get the calls. And as evidenced by this picture right here, this is where they store the vehicles that are used in the business. He said it would harm his business if they couldn't store these vehicles there. So clearly these vehicles are necessary for their business and they therefore constitute commercial vehicles.

To speak to a couple other issues. He mentioned that it would be a hardship on the business if they had to park them elsewhere. Yesterday I just did a brief bit of research online. You can rent a commercial parking spot at one of the local storage units for less than thirty dollars a month. So for less than \$100 they could park each of these vehicles at a commercial storage unit with 24/7 access. And that's according to just my Google search of the local storage. And this is off of West Broad Street. So I don't think this would be a huge—would it be more inconvenient? Certainly. But the fact that it's more inconvenient does not give them license to violate the zoning ordinance. It is not a legitimate reason for this Board to find in their favor.

With that I'm open to any questions that you may have.

Mr. Wright - Let me give you an example and ask you a question. Let's assume that they didn't have but one van there, minivan, a personal van. He owns it and it's parked there. And he has the hearse there. Now you're using

1171 that van—he uses it to go places, to go to church or go wherever he goes. But
1172 also if he gets a call he could use that van to go do what he needs to do, pick up
1173 a body or something. Would he be in violation?
1174

1175 Mr. Hart - Yes sir. Under the terms of the ordinance he would be
1176 in violation. Whether it would have been reported, whether we would have
1177 received a complaint if they only had one van that occasionally they used for that
1178 purpose is another question. But under the reading of the ordinance he would be
1179 in violation if he uses that van for commercial purposes.
1180

1181 Mr. Wright - So any person in Henrico County who had something
1182 like hearse or something and he had his personal vehicle, if he used that for any
1183 kind of business activity he'd be in violation of our code.
1184

1185 Mr. Hart - Again, sir, I think technically he would be in violation if
1186 he has two commercial—vehicles used for commercial purposes on the property
1187 even if he uses the other van, even if it just looks like a minivan, and he also
1188 uses it to take the kids to McDonald's on the weekends. If he's using that van for
1189 commercial purposes and has another hearse on the property that is also used
1190 for commercial purposes, then I would argue that he is in violation of the code.
1191 Again, that raises the question of whether that violation would have been
1192 reported. As I said, we're not going out trying to hunt people down we're not
1193 going out looking for these violations. But if the violation was reported—if the
1194 neighbor is upset because the owner is pulling a gurney out of the van and
1195 spraying it down in the driveway, if they're getting body bags delivered to the
1196 residence, and that van is used for commercial purposes, then I would argue that
1197 a notice of violation would have been issued.
1198

1199 Mr. Wright - There is no definition in our code of what a
1200 commercial vehicle is.
1201

1202 Mr. Hart - That's correct.
1203

1204 Mr. Wright - So you have to use some discretion or some way of
1205 thinking about this that would be reasonable. That's my point. Is that a
1206 reasonable position to take that a person can't have his own vehicle in addition to
1207 the other thing and just because he uses it every once in a while for a business--
1208

1209 Mr. Hart - Well I don't think—
1210

1211 Mr. Wright - Do you think that—I mean, there it is. I mean, it's a
1212 matter of how you apply it.
1213

1214 Mr. Hart - Mr. Wright, it's certainly a matter of how you apply it.
1215 But in this instance, I think that the situation is slightly different from the one you
1216 described. He doesn't just have one; he has three vans there. And as I think he's

mentioned, his business could not operate in the way that it operates, in the manner that it operates, and with the success that he has if he were limited to just one vehicle. So I would argue that the three vans are a necessary and integral part to his business. Just having—whether they're vans, whether it's a Jeep Cherokee Wagoneer that he's cleared the back out of, whether it's some other vehicle that he can transport bodies in, I would argue that's a necessary and integral part to his current business model that allows him to function in the way that he does. And therefore, I would argue that it is a commercial vehicle.

Mr. Wright - He's also testified that he has three individuals that live in that house that use those vans as their personal vehicles. It's not identical, but it's related. It's the same idea. Each person has their own vehicle. I have a vehicle; my wife has a vehicle. And most people do that. They have vehicles to take care of their business if they have to go somewhere or do something.

Mr. Hart - And there is certainly a continuum as to what percentage of use or what amount of use would constitute commercial or what amount of use would constitute a personal vehicle. But that, I would argue, is the reason that they don't have a set number of 51 percent of the time used for commercial purposes constitutes a commercial vehicle. It's up to the discretion of the department to make that determination and then up to your discretion to determine whether the department has made that determination correctly. To take away that discretion from the department would knock basically a huge hole through this ordinance and I think amount to a bit of—essentially amending the ordinance to allow any amount of commercial vehicles on the property as long as they had the requisite number of people living in the home or a certain percentage of personal use for them. I don't think that's what this Board would like to do, and I don't think that's what the Board of Supervisors would like to do either. I think the only proper way to read the ordinance is to give the department the discretion to enforce the ordinance when there are situations such as this that although the vehicles may look like they're used for personal purposes and may even sometimes be used for personal purposes, they do constitute commercial vehicles because they necessary and integral to their business.

Mr. Wright - Don't you think the intent of the ordinance is to prevent having big trucks or vehicles that are not really good in appearance parked there? Don't you think that's the intent of the ordinance to prevent—what about having buses or whatever else are used for commercial businesses? Don't you think the idea of commercial as a vehicle is basically a vehicle that is used as a commercial vehicle, which is what I would consider a truck or a big—some vehicle that's obtrusive and is not very attractive.

Mr. Hart - I think clearly that is an intent of the ordinance. However, I would argue that's not the only intent. And if you look at the ordinance, it speaks to one commercial vehicle not exceeding 10,000 pounds. So by the "not exceeding 10,000 pounds" language, you've already eliminated a

1263 whole range of trucks. I don't know how much a commercial bus weighs, but if it's
1264 more than 10,000 pounds then this ordinance wouldn't even apply to it because it
1265 exceeds 10,000 pounds. So necessarily this is only speaking to smaller vehicles.
1266

1267 To speak more closely to that issue, if the Board of Supervisors had wanted to
1268 give it a stricter definition, if they'd wanted to say commercial vehicles with no
1269 noticeable signage, commercial vehicles constituting—and then had a list, they
1270 could have provided that list. In doing it this way and using this language, they
1271 gave the Department of Planning the discretion to determine what constitutes a
1272 commercial vehicle, discretion that necessarily needs to be open because there
1273 could be no list that would envelop all the types of commercial vehicles that are
1274 out there and all the types as you said of big ugly trucks that people don't want
1275 living in their neighborhoods. This ordinance is phrased the way it is in order to
1276 give the department this discretion and enforce violations such as this where
1277 neighbors clearly don't want these vans and don't want this look to be in—don't
1278 want people washing gurneys in the driveways. This ordinance allows the
1279 department to enforce violations such as this whereas it's not a big ugly truck, but
1280 it is still a commercial vehicle.
1281

1282 Mr. Wright - If you just had the hearse and no other vehicles and
1283 you had to wash the gurney in the driveway, would that be a violation of the
1284 ordinance?
1285

1286 Mr. Hart - It would not be a violation of this particular ordinance,
1287 no.
1288

1289 Mr. Wright - Yes. I don't see where that holds any water. Now,
1290 let's assume something else. Let's assume that he did not use these vans for any
1291 part of his business. Could they be parked there?
1292

1293 Mr. Hart - Yes, if they did not use—
1294

1295 Mr. Wright - Well what would be the difference in the appearance
1296 to the neighbors with the vans parked there if he didn't use it and if he did?
1297

1298 Mr. Hart - I'm not sure as to what a particular neighbor would
1299 think, but that's not what the ordinance says. The ordinance doesn't speak to
1300 things that have the appearance of commercial vehicles. The ordinance says
1301 whether they are commercial vehicles. And it's used for his business. It's an
1302 integral part of his business. He said that he couldn't operate the business the
1303 way he does without those vans. So under this ordinance they do constitute
1304 commercial vehicles.
1305

1306 Mr. Wright - Is there any limitation of how many personal vehicles
1307 you can have at a residence like this?
1308

1309 Mr. Hart - I can't speak to that.
1310
1311 Mr. Wright - I don't of any. You could have five personal vehicles
1312 in that same area just so they weren't used at all for any commercial means,
1313 right?
1314
1315 Mr. Hart - Correct.
1316
1317 Mr. Wright - The appearance wouldn't be any difference to the
1318 neighbors whether these vans were used for commercial business or not
1319 because they are personal vehicles.
1320
1321 Mr. Hart - And sir, in that situation the neighbors might just have
1322 to deal with it and might not be able to complain. But in this case, he has
1323 admitted he uses the vans for commercial purposes. They constitute commercial
1324 vehicles and he is in violation of the ordinance.
1325
1326 Ms. Harris - Attorney Hart, so you're contending that whether he
1327 used it for 1 percent of the time or 10 percent of the time or 90 percent of the
1328 time it's still considered—these vehicles are still commercial.
1329
1330 Mr. Hart - Ms. Harris, there's no bright-line rule. There's no rule.
1331 There's no 1 percent, there's no 5 percent. But here—and I can't really speak to
1332 hypotheticals, you know, what if he only uses it once, you know, every five years
1333 for his business. I can't speak to those. But in this circumstance he's stated that
1334 he uses it for his business, that when the hearse is unavailable, he needs one of
1335 these vans because, like he said, grandma can't wait until morning after she's
1336 passed away. He needs one of these vans to go pick up that deceased individual
1337 right then. Therefore, it's a necessary and integral need for his business. So I
1338 would argue that in this situation they are commercial vehicles.
1339
1340 Ms. Harris - Okay. My other question. On the business license
1341 questionnaire, the supplemental, if he had checked "yes," will commercial
1342 vehicles be stored at the home—if he had checked "yes," then it asked how
1343 many. Do you think that this business license would have been approved?
1344
1345 Mr. Hart - I've actually spoken with the Department of Planning
1346 about this issue. And they've said no, that the business license would not have
1347 been approved if he was going to be storing commercial vehicles at the
1348 residence.
1349
1350 Mr. Blankinship - More than one.
1351
1352 Mr. Hart - More than one.
1353
1354 Mr. Blankinship - That's why those questions are on there.

1355
1356 Mr. Wright - Well obviously he didn't consider these commercial
1357 vehicles.
1358
1359 Mr. Blankinship - He didn't own these vehicles at the time they filled out
1360 this form, he testified.
1361
1362 Mr. Baka - The business has grown since then.
1363
1364 Mr. Hart - I would also mention at the Heaven's Coach website,
1365 which has—I mentioned this in my short letter. The vans are pictured prominently
1366 on the website. They're pulling a gurney out of one of the vans on the website.
1367 The website actually right here says it's grown to a three-vehicle operation. I
1368 would argue it's now a four-vehicle operation. But even on their website they're
1369 saying they have more than one vehicle that they're using for this business. As
1370 he stated, there are no other locations for their business. Everything for their
1371 business is stored there. So therefore, all three commercial vehicles that are
1372 used for their business, based on the website, are stored at that residence.
1373
1374 I'm free for any other questions.
1375
1376 Mr. Baka - Just one question in closing. So in summary, if the
1377 three minivans are ever used for commercial purposes—and I realize the
1378 secondary backup to the hearse—it's a fair interpretation in your mind—it's not
1379 an unreasonable interpretation in your mind for us to say hey, if they're ever used
1380 once then—and they're receiving payment for that minivan, too, by the way—
1381 then it is indeed a commercial vehicle. Correct?
1382
1383 Mr. Hart - I think you could make that argument. I don't think
1384 that's the argument here because I think they're using them more than once. I
1385 think that they are necessary for their current business model. But I think you can
1386 make the argument that if the vehicle is used for a commercial purpose, business
1387 purpose, for the receipt of payment, then it constitutes a commercial vehicle.
1388
1389 Mr. Wright - That's what you've said. You either have to be one
1390 way or the other. You can't say—what you're saying is if they use it for 1 percent
1391 of the time it's a commercial vehicle. It has to be.
1392
1393 Mr. Hart - I can't speak in absolutes. And I don't think the
1394 ordinance is written in order to speak in absolutes because there's no definition
1395 of commercial vehicle.
1396
1397 Mr. Baka - But it's not an unreasonable interpretation for the
1398 director to have reached that decision.
1399

1400 Mr. Hart - Correct. That would not be unreasonable at all for him
 1401 to reach that decision.
 1402
 1403 Mr. Baka - Okay. Thank you.
 1404
 1405 Mr. Wright - Any further questions? Anyone else here to speak in
 1406 opposition?
 1407
 1408 Mr. Hart - Thank you very much for your time.
 1409
 1410 Mr. Wright - All right, sir. Anyone else to speak in opposition? All
 1411 right. Mr. Wajciechowski, you have a brief time rebut anything that has been
 1412 presented in opposition.
 1413
 1414 Mr. Wajciechowski - I thank you for your understanding of the issue at
 1415 hand. I live in a very populous neighborhood. I've shown you the pictures of all
 1416 the stuff that goes on. Even though it continues to be stated that that's not what's
 1417 being discussed here, it is. We only have one complaint. I mean we only have
 1418 one. People up and down there every day see us doing—and if it would have
 1419 been obtrusive or very obvious to anybody what we do—we are very discreet.
 1420 Our hearse just sits there pretty much or it's gone. And it's a lot of time mostly
 1421 gone. It sounds like to me with the questions that you're asking and the
 1422 understanding that you have that you are right in the same mindset or the
 1423 understanding that I am. The sole issue being brought up by this paperwork was
 1424 as stated. The sole issue was that there was more than one commercial vehicle
 1425 there. What's really only been shown is that the hearse is one commercial
 1426 vehicle and the intent and all of that.
 1427
 1428 But I leave it to you. And thank you certainly much—oh, yes sir.
 1429
 1430 Mr. Wright - Any other questions?
 1431
 1432 Mr. Bell - On this Heaven's Coach Service, this phone number
 1433 at the bottom, is that answered there where you live?
 1434
 1435 Mr. Wajciechowski - It's a cell phone.
 1436
 1437 Mr. Bell - That's a cell phone number?
 1438
 1439 Mr. Wajciechowski - Yes sir.
 1440
 1441 Mr. Bell - Thank you.
 1442
 1443 Mr. Wright - All right. Any other questions? Thank you very much
 1444 for appearing.
 1445

1446 Mr. Wajciechowski - Thank you. Thank you very much.
 1447
 1448 Mr. Wright - We'll make a decision at the end of the docket.
 1449
 1450 **[After the conclusion of the public hearings, the Board discussed the case**
 1451 **and made its decision. This portion of the transcript is included here for**
 1452 **convenience of reference.]**
 1453
 1454 Mr. Wright - Do I hear a motion on this case?
 1455
 1456 Ms. Harris - I move that we approve the appeal because I think
 1457 that a higher court needs to clarify what constitutes commercial vehicles as far as
 1458 the percentage or anything that would give us better direction.
 1459
 1460 Mr. Blankinship - When you say approve the appeal, do you mean—
 1461
 1462 Mr. Wright - Grant the appeal.
 1463
 1464 Ms. Harris - Yes.
 1465
 1466 Mr. Blankinship - Overturn the notice of violation?
 1467
 1468 Mr. Wright - Right.
 1469
 1470 Ms. Harris - Yes.
 1471
 1472 Mr. Blankinship - Okay.
 1473
 1474 Ms. Harris - So they can go to a higher court for clarification.
 1475
 1476 Mr. Wright - The County would have to appeal that, but that's their
 1477 prerogative if they want to do that. Is there a second to that motion? Is there a
 1478 second to the motion that we grant the appeal? I'll second it. Is there any
 1479 discussion before we vote?
 1480
 1481 Mr. Bell - I'll make a comment. The reason I think that we
 1482 should uphold it is that the facts of this case look to me—not all the facts; some
 1483 of them, as I was thinking. There is no commercial code for the County for
 1484 vehicles. So what we determine here will be actually creating a commercial code
 1485 for the incidents involving those vans in a business for this case. The applicant
 1486 stated that the vans were used for about 10 percent of the time for the business
 1487 in 2012/2013. And for this case, if approved, the BZA is saying that 10 percent of
 1488 the use of the vans is enough to make the vans commercial along with all the
 1489 other information we have. One, we have a business license showing that the
 1490 home has an office that is the office for this particular business. We have
 1491 testimony from the applicant saying thusly, that's correct. The office is located in

the house. The 10 percent use of the vehicle for transportation. And even the advertisement showed the vans as indicated, anyway, as being used for the business. So in this case I think that what the Planning Director did in issuing the subpoena—or the papers was correct and we should uphold the case.

Mr. Wright - Any further discussion?

Mr. Baka - Mr. Chairman, I would concur with Mr. Bell's comments, and at this point I would not be in a position to support Ms. Harris's motion. In looking at this, I think a couple things come to mind. One of the questions is did the Director of Planning or did the inspector have sufficient latitude to make this decision given this code, given 24-13. And I would think certainly, yes, the department has sufficient latitude to reach that decision. We also talked about in testimony that in summary if the three minivans are ever used for commercial purposes, and he mentioned that they previously had payments received for those that are used for commercial purposes. And furthermore, those uses of those minivans became an integral part of the business when the hearse is away. The business could not effectively function without the commercial use of those personal vehicles at that moment in time if the hearse is away. So I think it's fair and I think it's not unreasonable for this Board to uphold this notice of violation. And furthermore, when the inspector reads the code and looks at this and visits the site, it's certainly a reasonable or logical conclusion to reach. With that I would concur with Mr. Bell's comments and not support the motion.

Mr. Wright - I would support Ms. Harris's position. I think what commercial use is could also be what is personal use. And these people use these vehicles as a personal use. I think the intent is to prohibit the use of vehicles that would be unsightly. I don't think these vans are unsightly. My point is if they didn't use them for this little bit of use for commercial use they could park those vehicles there. If you uphold this—of course if they take the hearse away, they could have one vehicle which could be used personally and for business, but it would put a strain on them. I think it's up to the County to have ordinances which are more definite and define what they really want to enforce. This ordinance is not clear. So I think it's up to us to make that decision.

Any further discussion? All in favor of granting this appeal say aye? All opposed say no. All right. The appeal is denied.

Affirmative:	Harris, Wright	2
Negative:	Baka, Bell, Nunnally	3
Absent:		0

Mr. Blankinship - I'm sorry, the appeal—

1538
1539 Mr. Baka - That's the motion.
1540
1541 Mr. Blankinship - Yes.
1542
1543 Mr. Wright - The motion is denied.
1544
1545 Mr. Blankinship - The notice of violation is upheld.
1546
1547 Mr. Baka - Do we need a motion at this point in the affirmative,
1548 Mr. Blankinship? No? Okay.
1549
1550 Mr. Wright - Well, we'll have one just in case.
1551
1552 Mr. Blankinship - You're right.
1553
1554 Mr. Wright - We need a motion—
1555
1556 Mr. Blankinship - You're right, we should.
1557
1558 Mr. Wright - Since that motion is denied—
1559
1560 Mr. Baka - That's fine.
1561
1562 Mr. Blankinship - At this point the Board has taken no action; you're
1563 correct.
1564
1565 Mr. Baka - At this point, recognizing the service and the good
1566 works that the applicant brings to the community, but understanding the zoning
1567 concerns on this case, I would make a motion that we deny the appeal,
1568 APL2014-00001, based on the grounds that were stated in my previous
1569 comments during the discussion of Ms. Harris's motion.
1570
1571 Mr. Wright - All right. There's a motion that we deny the appeal. Is
1572 there a second to that motion.
1573
1574 Mr. Bell - I second it.
1575
1576 Mr. Wright - It's seconded. Any further discussion?
1577
1578 Mr. Bell - Yes. I agree with you that the combination of private
1579 use of vehicles and commercial use of vehicles at times creates a problem for
1580 this particular code. But the facts that we've seen here that it was used in the
1581 growth of the business, I think indicates that there should be some ability for the
1582 Board to do what we're doing today.
1583

1584 Mr. Wright - All right.

1585

1586 Ms. Harris - I have a further question too—I mean further
1587 comment. The percentage of use to me is a concern. Because if you had a
1588 minivan and you just ran out for a short period of time this, application would not
1589 have been granted. So I think percentage of use is important, it's germane to this
1590 case and something that needs to be revisited. And there was another concern
1591 that I had, too, about denying or approving this appeal. On the application, which
1592 was in this case completed in 2010, to me there should be a revisiting of
1593 applications so that if things change then further consideration can be made. So I
1594 think that the County really needs to look at those two things: revisiting the
1595 business license process and revisiting the percentage of use before we can call
1596 a vehicle strictly commercial.

1597

1598 Mr. Wright - All right. Any further discussion? All right. All in favor
1599 of denying the appeal say aye. Opposed? Three to two. It's denied.

1600

1601 After an advertised public hearing and on a motion by Mr. Baka, seconded by
1602 Mr. Bell, the Board **denied** application **APL2014-00001, JOHN A. AND LORRIE**
1603 **B. WAJCIECHOWSKI's** appeal of a decision of the director of planning pursuant
1604 to Section 24-116(c) of the County Code regarding the property at 1013 New
1605 York Avenue (BILTMORE) (Parcel 784-762-8160) zoned R-4, One-Family
1606 Residence District (Fairfield).

1607

1608

1609 Affirmative:	Baka, Bell, Nunnally	3
1610 Negative:	Harris, Wright	2
1611 Absent:		0

1612

1613

1614 **[At this point, the transcript continues with the public hearing on the next**
1615 **case.]**

1616

1617 **VAR2014-00001** **CARY DUNCAN** requests a variance from Sections
1618 24-9 and 24-94 of the County Code to build a one-family dwelling at 7721 Yester
1619 Oaks Lane (Parcel 836-690-1480) zoned A-1, Agricultural District (Varina). The
1620 public street frontage requirement and lot width requirement are not met. The
1621 applicant proposes 100 feet lot width and 0 feet public street frontage, where the
1622 Code requires 150 feet lot width and 50 feet public street frontage. The applicant
1623 requests a variance of 50 feet lot width and 50 feet public street frontage.

1624

1625 Mr. Wright - Anyone desiring to speak with reference to this case,
1626 whether or against, please stand and be sworn.

1627

1628 Mr. Blankinship - Would you raise your right hand, sir? Do you swear
 1629 the testimony you're about to give is the truth and nothing but the truth so help
 1630 you God?
 1631
 1632 Mr. Duncan - Yes sir.
 1633
 1634 Mr. Wright - Will you please state your name for the record and
 1635 then state your case.
 1636
 1637 Mr. Duncan - Cary Duncan. C-a-r-y, D-u-n-c-a-n. This is my first
 1638 time dealing with the property. Okay. I received your paperwork; I looked it over.
 1639 My request is to have a buildable lot, have a useful lot.
 1640
 1641 Mr. Nunnally - Mr. Duncan, would you mind pulling the microphone
 1642 up close to you, please?
 1643
 1644 Mr. Duncan - My intention is to have a useful lot. Looking into it it's
 1645 too narrow as it stands and maybe no street frontage because it's called an
 1646 easement.
 1647
 1648 Mr. Wright - But you have 400 feet depth. You have a big lot,
 1649 right?
 1650
 1651 Mr. Duncan - Yes sir.
 1652
 1653 Mr. Wright - Just not quite wide enough.
 1654
 1655 Mr. Duncan - Just over an acre.
 1656
 1657 Mr. Wright - How do you access this lot normally?
 1658
 1659 Mr. Duncan - Well, I just had Henrico put me in a driveway off of
 1660 Kambis Drive. I had a temporary one there with a black pipe. Mr. Sylvester talked
 1661 to me when I called Henrico. The permanent one's concrete, so I just let them do
 1662 it. And I was accessing from there because the neighbor has horses and his
 1663 horse trailer and everything. When I got this property, I just told him I said, you
 1664 know, don't let me interrupt you. It looks like a dead end where his house is and
 1665 then a grassy lot right in front of my property because it hadn't been used in a
 1666 long time. Another gentleman at Henrico on the phone told me that it might be a
 1667 private road, and I would have to dig into my deeds to prove that I had access
 1668 that way where the address is. As far as I know, there are no problems with the
 1669 access that we have off of Kambis.
 1670
 1671 Mr. Wright - Kambis Drive?
 1672
 1673 Mr. Duncan - Yes sir.

1674
1675 Mr. Wright - How wide is that, do you know? For your property, to
1676 access your property.
1677

1678 Mr. Duncan - The driveway is two sections of pipe, sixteen feet.
1679 And I think I have about—in conversation, one of the fellows told me it looks like I
1680 have nineteen or twenty feet.
1681

1682 Mr. Wright - About twenty feet to access your property from
1683 Kambis Drive.
1684

1685 Mr. Duncan - Yes.
1686

1687 Mr. Wright - And you just—Kambis Drive is a public street, right?
1688

1689 Mr. Duncan - Yes, it's paved.
1690

1691 Mr. Wright - So you just drive right in off of that into your property.
1692

1693 Mr. Duncan - Yes sir.
1694

1695 Mr. Wright - You don't use Yester Oaks Lane. You wouldn't use
1696 Yester Oaks Lane at all?
1697

1698 Mr. Duncan - No, not trying to interfere with the neighbors. Maybe
1699 one day I'll see where I have right-of-way. And still I wouldn't interfere with
1700 anything going on. I'm just trying to make the property useful. This is the first
1701 step, I guess. After you all approve it today, I go to building permit or something.
1702

1703 Mr. Wright - Does Yester Oaks Lane run all the way up to your
1704 property?
1705

1706 Mr. Duncan - Yes.
1707

1708 Mr. Wright - It's a clear driveway.
1709

1710 Mr. Duncan - Yes. On the map it goes—if you're looking at that on
1711 the screen—
1712

1713 Mr. Wright - I see it, yes.
1714

1715 Mr. Duncan - Okay. From one corner to the other corner from my
1716 address on Yester Oaks it's just a grassy—it looks like the old road ends at
1717 Kambis. We've got a couple of boulders put so nobody will cut through there.
1718

1719 Mr. Wright - But you would not use that to access your property.

1720
 1721 Mr. Duncan - No.
 1722
 1723 Mr. Nunnally - When did you purchase this property?
 1724
 1725 Mr. Duncan - It was gifted to me last year.
 1726
 1727 Mr. Nunnally - Last year.
 1728
 1729 Mr. Duncan - In the last year or two. From Mr. Cawthorne. His
 1730 family had it for a while. I think it's like 1950 on the books. It reads that the street
 1731 frontage came about in 1960.
 1732
 1733 Mr. Wright - So actually the street frontage requirement is not
 1734 really binding on your property since you're non-conforming. Your lot was created
 1735 in 1950.
 1736
 1737 Mr. Duncan - Yes.
 1738
 1739 Mr. Wright - So your real concern here is the width of the property.
 1740
 1741 Mr. Duncan - Yes. I think in Henrico you have to have—
 1742
 1743 Mr. Wright - You need 150.
 1744
 1745 Mr. Duncan - You have to have street frontage. You have to have
 1746 150 width. If I may bring up—I have a little note to myself here. Just two things
 1747 that I wanted to mention today that I might have left out. The dwelling might be
 1748 25 by 70. You know, that wasn't exact figures to give or take.
 1749
 1750 Mr. Wright - As long as it conforms to the other requirements of
 1751 the ordinance, I don't think you have any problem with that.
 1752
 1753 Mr. Duncan - Okay. If I could ask for just one more variance on the
 1754 north side, on the side property, on the north side. I didn't realize—I think it's
 1755 twenty-five feet from a house to the side yard. Being that it's narrow—I might not
 1756 have to use it, but maybe ask for ten or fifteen feet. That's a higher elevation, and
 1757 it was in the readings that I might disturb the water flow from the topical view.
 1758 And I'm not trying to do that. It might have to—
 1759
 1760 Mr. Wright - Unfortunately, we can only deal with your application
 1761 in question.
 1762
 1763 Mr. Duncan - Okay, okay.
 1764

1765 Mr. Wright - If you need something else, you have to come back
 1766 and file again.
 1767
 1768 Mr. Duncan - Okay.
 1769
 1770 Mr. Wright - And notice has to be given.
 1771
 1772 Mr. Blankinship - The reason is that that was not—yes. That wasn't
 1773 stated in the advertisement or the notices that we sent out. So the Board can't
 1774 approve anything that hasn't been—
 1775
 1776 Mr. Duncan - Okay. Well, I don't think it's necessary anyway.
 1777
 1778 Mr. Wright - Well you'll have to go with that if it's approved. Have
 1779 you read the conditions that would apply if this is approved?
 1780
 1781 Mr. Duncan - Yes sir.
 1782
 1783 Mr. Wright - And you're in accord with those.
 1784
 1785 Mr. Duncan - Yes sir. And it was just a concern for the water flow.
 1786 And I don't think it'll interrupt that at all.
 1787
 1788 Mr. Blankinship - If it helps you, the minimum side yard is twenty feet
 1789 not twenty-five.
 1790
 1791 Mr. Duncan - Okay, that's good.
 1792
 1793 Mr. Blankinship - We can give you five more anyway.
 1794
 1795 Mr. Wright - Any questions from members of the Board?
 1796
 1797 Ms. Harris - Yes. The picture that we saw with the little white
 1798 picket fence, can we see that picture again, please? I just want to know—
 1799
 1800 Mr. Duncan - That's from the corner of my property looking down
 1801 Yester Oaks Road towards Darbytown.
 1802
 1803 Ms. Harris - Okay.
 1804
 1805 Mr. Duncan - If you're standing there and look back here it's looking
 1806 down my property.
 1807
 1808 Ms. Harris - So the white picket fence is—what street is that?
 1809
 1810 Mr. Duncan - That's Yester Oaks Lane.

1811
1812 Ms. Harris - It is, okay.
1813
1814 Mr. Duncan - It's an unpaved street.
1815
1816 Ms. Harris - And then the other question that I have, you're saying
1817 that you propose placing a building, a 25- by 70-foot home on this property. Do
1818 you have any plans that you could show us?
1819
1820 Mr. Duncan - No. It's actually a modular.
1821
1822 Ms. Harris - Okay.
1823
1824 Mr. Wright - Any further questions from members of the Board?
1825
1826 Mr. Baka - One question.
1827
1828 Ms. Harris - So it's like a single or a double type of modular or is
1829 it—
1830
1831 Mr. Duncan - They put it together.
1832
1833 Ms. Harris - Prefab?
1834
1835 Mr. Duncan - They take it apart and put it together. And once it's
1836 put together it's about 25 by 70.
1837
1838 Mr. Bell - You are seeking fifty feet in variance. Have you asked
1839 or thought about asking the owner of Lot 16 if he would give you or sell you the
1840 fifty feet? Right next to you. There's a lot of wooded space behind his house.
1841
1842 Mr. Duncan - No. And that's also—that's one gentleman I talked to
1843 on the phone. All the water comes down the ditch down Kambis and goes around
1844 the cul-de-sac and through the new pipe. It's better sectioned. And right down the
1845 property line outside of my property is the water flow that goes down. And
1846 eventually it goes around the back of the lot and towards the pond across
1847 Darbytown Road. So I'm thinking that that was—I don't think that can be
1848 interrupted.
1849
1850 Mr. Baka - The only question I have—and I apologize if I missed
1851 this earlier. It appears your parcel on the survey has a small amount of frontage
1852 on the Kambis Drive right-of-way. A small portion of that parcel in the—I'll call it
1853 the northwestern corner—touches the Kambis Drive right-of-way, so you actually
1854 do have—is that correct—
1855
1856 Mr. Blankinship - Yes.

1857
1858 Mr. Baka - —that you have some frontage on that parcel?
1859
1860 Mr. Blankinship - That is correct. Where the code requires frontage it
1861 specifies that abutting the terminus of a right-of-way does not count toward that.
1862 So that's why—
1863
1864 Mr. Wright - That's why he's here.
1865
1866 Mr. Blankinship - That's why we advertised it as zero rather than—it's
1867 still less than fifty.
1868
1869 Mr. Baka - So it says by ten or fifteen feet.
1870
1871 Mr. Blankinship - He would still need a variance in either case. Because
1872 of the way the code is worded we thought it better to advertise it as zero.
1873
1874 Mr. Baka - All right. Thanks. No further questions.
1875
1876 Mr. Wright - Any further questions from members of the Board? Is
1877 anyone here in opposition to this request? Hearing none, that completes the
1878 case. Thank you very much for appearing.
1879
1880 Mr. Duncan - Thank you.
1881
1882 **[After the conclusion of the public hearings, the Board discussed the case**
1883 **and made its decision. This portion of the transcript is included here for**
1884 **convenience of reference.]**
1885
1886 Mr. Wright - Do I hear a motion on this case?
1887
1888 Mr. Nunnally - Mr. Chairman, I move we approve this case. The lot
1889 was created in 1950 and was certainly not created by the applicant. The fifty-foot
1890 frontage came into effect in 1960, I believe you said. I don't see where he has
1891 any beneficial use of this property other than to build a dwelling on it. And he
1892 accepts the five conditions suggested by the staff. No one was here in
1893 opposition. I move we approve it.
1894
1895 Mr. Wright - Second to that motion? Is there a second to that
1896 motion?
1897
1898 Ms. Harris - Second.
1899
1900 Mr. Wright - Motion seconded. Any discussion? All right. All in
1901 favor say aye. All opposed say no. The ayes have it; the motion passes.
1902

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms. Harris, the Board **approved** application **VAR2014-00001**, **CARY DUNCAN's** request for a variance from Sections 24-9 and 24-94 of the County Code to build a one-family dwelling at 7721 Yester Oaks Lane (Parcel 836-690-1480) zoned A-1, Agricultural District (Varina). The Board approved the variance subject to the following conditions:

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

2. Only the improvements shown on the plot plan filed with the application may be constructed pursuant to this approval. Any additional improvements shall comply with the applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements will require a new variance.

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

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

5. The applicant shall access the property from the terminus of the Kambis Drive right-of-way.

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

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

CUP2014-00001 **STEPHEN C. MORRISETTE** requests a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to build a detached carport in the side yard at 1401 Giltspur Road (Parcel 742-743-8999) zoned R-1, One-Family Residence District (Tuckahoe).

Mr. Wright - Everyone desiring to speak with reference to this case, either for or against, please stand and be sworn.

1949
1950 Mr. Blankinship - Would you raise your right hand, please, sir? Do you
1951 swear the testimony you're about to give is the truth and nothing but the truth so
1952 help you God?
1953
1954 Mr. Morrisette - I do.
1955
1956 Mr. Wright - Please state your name for the record and present
1957 your case.
1958
1959 Mr. Morrisette - Stephen C. Morrisette. I have reviewed the suggested
1960 conditions by the staff. I have no problem with that.
1961
1962 Mr. Wright - All right. State your case.
1963
1964 Mr. Morrisette - What I was requesting was a variance to build a
1965 carport on my property. You can see on the map there. It would be attached to
1966 the house by a walkway, covered walkway. The carport itself will be a double
1967 carport with a shingled roof and siding to match the house. The driveway will
1968 remain graveled. What other information do you need?
1969
1970 Mr. Wright - There is some indication by the staff that the carport
1971 construction or the way it would be constructed would not be consistent with the
1972 house or the other houses in the neighborhood. Mr. Blankinship, what is that
1973 about?
1974
1975 Mr. Blankinship - As you look around the neighborhood, there are
1976 several carports that are attached directly to the dwelling. The roofline is
1977 consistent and several of them were either brick wall or brick columns. There is
1978 an example of one there that the foreground of this, the right end of this dwelling
1979 is actually a carport. So it was just our observation for the Board's use that the
1980 typical situation in this immediate area is for the carport to be attached to the
1981 dwelling. And also we did note the brick. That's a characteristic of almost all of
1982 the homes in the area. And the applicant I think by agreeing with the conditions
1983 has agreed to put brick pedestals, which I think will help.
1984
1985 Mr. Morrisette - The house is basically a brick ranch with some siding.
1986 The carport will reflect that. Obviously the house was built in 1960, so I don't
1987 know how close we can match the brick, but we will certainly try and do that.
1988
1989 Mr. Blankinship - I guess the question would be is there some reason
1990 you couldn't have done a design more like one of the others that's more typical of
1991 the neighborhood.
1992
1993 Mr. Morrisette - Given the way the driveway is I don't think we could.
1994

1995 Mr. Blankinship - You don't think you'd be able to swing wide enough to
1996 put—
1997
1998 Mr. Morrisette - No, I don't think so. I have a cobblestone—I don't
1999 know if you can see it. Yes, you can see the cobblestone wall that runs all the
2000 way around one side and on the back of the driveway. I don't think there's
2001 enough room to turn in and go in toward the house, if that's what you're
2002 suggesting.
2003
2004 Mr. Wright - How wide is your breezeway from the house to the
2005 carport or proposed carport? I think it's six feet, isn't it?
2006
2007 Mr. Morrisette - I think it's six feet.
2008
2009 Mr. Wright - The way I understand it, if the breezeway were ten
2010 feet wide, you wouldn't be here.
2011
2012 Mr. Blankinship - Right. In that case he would have to meet the side
2013 yard setback.
2014
2015 Mr. Wright - What's the side yard setback?
2016
2017 Mr. Blankinship - R-1. I'll have to look it up. Give me just a second and
2018 I'll look that up.
2019
2020 Mr. Wright - Well, the house is 18.72 on the other side so. Here
2021 we have what, ten feet?
2022
2023 Mr. Blankinship - The least side would be twenty and the sum of the
2024 sides would have to be fifty.
2025
2026 Mr. Wright - So that wouldn't work. So he could not consider a
2027 detached then.
2028
2029 Mr. Blankinship - Yes. He'd have to apply for a variance.
2030
2031 Mr. Baka - So it has to be less than ten feet for the breezeway?
2032 May I ask a question about that? This diagram up here shows a six-foot distance.
2033 And then if you go to the plat, this diagram, it appears—where it says minimum
2034 ten-foot on the distance from Walton to the edge of the carport, it appears the
2035 breezeway there at a scale of one inch equals forty is a lot more than six feet. So
2036 just wanted to clarify how—will that breezeway be less than ten feet?
2037
2038 Mr. Morrisette - Are you talking about how far the house is to the
2039 proposed carport?
2040

2041 Mr. Baka - Yes sir. If that distance is less than ten feet then
 2042 you're eligible for the variance.
 2043
 2044 Mr. Wright - This is not what you're talking about is it?
 2045
 2046 Ms. Harris - The width.
 2047
 2048 Mr. Morrisette - You're talking about the width of the walkway?
 2049
 2050 Mr. Blankinship - I think what he's saying is in this sketch, this
 2051 illustration—let me make sure it's the one on the screen. Paul, could you bring up
 2052 the sort of isometric drawing? I don't know what it's titled.
 2053
 2054 Mr. Baka - I was wondering how far will it really be from the
 2055 house.
 2056
 2057 Mr. Blankinship - The breezeway would appear to be much wider and
 2058 much longer. But I think that's just a diagram intended to show the relationships.
 2059
 2060 Mr. Morrisette - The guy who is going to build it for me did the sketch
 2061 and it was not to scale or anything.
 2062
 2063 Mr. Baka - Okay. So he'll meet the minimum ten-foot setback
 2064 from the property line with this application.
 2065
 2066 Mr. Morrisette - Yes. As I understood it, we needed ten feet from the
 2067 corner to the right-hand side of this property.
 2068
 2069 Mr. Baka - My only other question at this point is if you have the
 2070 ten-foot setback, if you draw the cursor down to Giltspur Road, you have an
 2071 access—the existing access coming out there near the intersection. That access
 2072 point will remain unchanged onto the road?
 2073
 2074 Mr. Morrisette - Yes.
 2075
 2076 Mr. Baka - Okay. Just wanted to clarify that. Thanks.
 2077
 2078 Mr. Wright - Any other questions from members of the Board?
 2079
 2080 Ms. Harris - Yes. What is the height of your house? I know that the
 2081 tallest point based on what we have on the garage is twelve feet, but what is the
 2082 height of your house? Do you know?
 2083
 2084 Mr. Morrisette - I'm sorry, I don't know.
 2085
 2086 Ms. Harris - Would your carport be taller than—

2087

2088 Mr. Morrisette - No, it will not be taller. It would be—we're trying to
2089 make it level so that the roof lines match. That would be the goal. And there will
2090 be black shingles. I've just had my house re-shingled so we're going to match the
2091 carport with the same shingles. And we'll try and match the brick—to the degree
2092 we can—with the posts. And then the—it has a storage room on the back that will
2093 be siding painted white. I understand about the roofline. We certainly want to try
2094 and make it look like it was originally attached and just moved to the side a little
2095 bit.

2096

2097 Ms. Harris - Okay. Will the breezeway be covered?

2098

2099 Mr. Morrisette - Yes, with a shingled black roof just like the carport.

2100

2101 Ms. Harris - And I have some concerns regarding obstructing the
2102 view at the intersection.

2103

2104 Mr. Morrisette - Actually, the intersection—I just bought this house this
2105 summer. It was totally overgrown on the corner, as you can see. It is obstructed.
2106 And my intent is to remove just about all those shrubs down to that first big tree
2107 so that you can see. I have had trouble seeing around the corner. And we didn't
2108 actually get moved in until September. And I've had a lot of renovations to do on
2109 this house, so I just haven't gotten to that. But I will definitely. And that's one of
2110 the requirements in the application. As part of the carport construction, I'll be
2111 removing all of that shrubbery so you can see.

2112

2113 Ms. Harris - Thank you.

2114

2115 Mr. Wright - Any other questions?

2116

2117 Mr. Bell - Have you had any complaints from any of the
2118 neighbors about where you want to put it?

2119

2120 Mr. Morrisette - No. Actually, my opinion is this will enhance the look
2121 of the property. I don't think the property looks as good now without a carport. I
2122 think the carport will enhance the look of the property when we're finished. That's
2123 my intent.

2124

2125 Mr. Wright - Is anyone here in opposition to this request? Hearing
2126 none, that concludes the case. Thank you very much for appearing.

2127

2128 Mr. Morrisette - Thank you.

2129

2130 **[After the conclusion of the public hearings, the Board discussed the case**
2131 **and made its decision. This portion of the transcript is included here for**
2132 **convenience of reference.]**

2133
 2134 Mr. Wright - Do I hear a motion?
 2135
 2136 Mr. Baka - I make a motion that we approve CUP2014-00001
 2137 with the seven conditions as presented in the staff packet, and discussed, and
 2138 that this use will not adversely impact the neighborhood or surrounding
 2139 properties.
 2140
 2141 Mr. Wright - Motion's made. Is there a second?
 2142
 2143 Mr. Bell - I second it.
 2144
 2145 Mr. Wright - Motion's seconded. Any discussion? Hearing none, all
 2146 in favor say aye. All opposed say no. The ayes have it; the motion passes.
 2147
 2148 After an advertised public hearing and on a motion by Mr. Baka, seconded by
 2149 Mr. Bell, the Board **approved** application **CUP2014-00001, STEPHEN C.**
 2150 **MORRISETTE's** request for a conditional use permit pursuant to Section 24-
 2151 95(i)(4) of the County Code to build a detached carport in the side yard at 1401
 2152 Giltspur Road (Parcel 742-743-8999) zoned R-1, One-Family Residence District
 2153 (Tuckahoe). The Board approved the conditional use permit subject to the
 2154 following conditions:
 2155
 2156 1. This conditional use permit applies only to the construction of a carport in the
 2157 street side yard of a standard corner lot. All other applicable regulations of the
 2158 County Code shall remain in force.
 2159
 2160 2. Only the improvements shown on the plot plan and building design filed with
 2161 the application may be constructed pursuant to this approval. Any additional
 2162 improvements shall comply with the applicable regulations of the County Code or
 2163 as specified in the conditions of approval. Any substantial changes or additions to
 2164 the design or location of the improvements shall require a new conditional use
 2165 permit.
 2166
 2167 3. The new construction shall match the existing dwelling as nearly as practical
 2168 in materials and color. The carport and breezeway columns shall be embellished
 2169 with three foot high matching brick pedestals. The integrated storage room's
 2170 exterior walls shall be covered with vinyl siding complementary to the house
 2171
 2172 4. The proposed carport shall match the front yard setback of the existing
 2173 dwelling.
 2174
 2175 5. No exterior light fixtures shall be allowed on the street side of the carport and
 2176 all others shall be shielded to direct light glare away from the street or adjacent
 2177 property.
 2178

2179 6. All existing landscaping shall be maintained in a healthy condition at all times.
2180 Dead plant materials shall be removed within a reasonable time and replaced
2181 during the normal planting season.

2182
2183 7. At the time of building permit application, the applicant shall submit the
2184 necessary information to the Department of Public Works to ensure compliance
2185 with the requirements of the Chesapeake Bay Preservation Act and the code
2186 requirements for water quality standards.

2187
2188
2189 Affirmative: Baka, Bell, Harris, Nunnally, Wright 5
2190 Negative: 0
2191 Absent: 0

2192
2193
2194 [At this point, the transcript continues with the public hearing on the next
2195 case.]

2196
2197 **CUP2014-00002 MONUMENT HEIGHTS BAPTIST CHURCH** requests
2198 a conditional use permit pursuant to Section 24-95(a)(1)a. of the County Code to
2199 allow a structure to exceed 50 feet in height at 5716 Monument Avenue
2200 (MONUMENT PLACE) (Parcel 770-737-1854) zoned R-3, One-Family
2201 Residence District (Brookland).

2202
2203 Mr. Wright - Anyone desiring to speak with reference to this case,
2204 either for or against, please stand and be sworn.

2205
2206 Mr. Blankinship - Would you all raise your right hands, please? Do you
2207 swear the testimony you're about to give is the truth and nothing but the truth so
2208 help you God?

2209
2210 Mr. Froehlich - I do.

2211
2212 Mr. Wright - All right, please present your case. State your name
2213 for the record, sir, and please present your case.

2214
2215 Mr. Froehlich - Okay. It's Paul Froehlich. And that's F as in Frank, r-
2216 o-e-h-l-i-c-h. On behalf of Monument Heights Baptist Church, we're proposing to
2217 replace and extend the existing steeple at the church from 95 feet to 120 feet in
2218 height. Included in the extension will be—there will be wireless antennas
2219 concealed inside to serve AT&T and provide additional coverage in this area. It's
2220 pretty straightforward. Just tear down the steeple—it's probably fifty to sixty years
2221 old—replace it with a new modern steeple including the antennas.

2222
2223 Mr. Wright - Back up to that picture that we missed there. Is that
2224 the way it would look?

2225
 2226 Mr. Froehlich - Yes. As best as we could simulate. Included in your
 2227 package is an actual view from the same spot and then the proposed view that
 2228 our engineering firm put together. And one of the requests of the church was to
 2229 keep it in proportion so we maintained the same type of look that has been there
 2230 for years.
 2231
 2232 Mr. Wright - Tell us a little bit about what will be done within this
 2233 steeple.
 2234
 2235 Mr. Froehlich - Within the steeple? During the construction phase or
 2236 after it's built?
 2237
 2238 Mr. Wright - Well, the purpose of it.
 2239
 2240 Mr. Froehlich - The purpose of it. The purpose of the extension will
 2241 be one, to replace a steeple that's older and in need of replacement and two, to
 2242 include wireless antennas to provide additional coverage for AT&T in that area.
 2243
 2244 Mr. Wright - If you didn't need to include whatever you needed for
 2245 the coverage would you still want the height of the steeple to be increased?
 2246
 2247 Mr. Froehlich - I'll say I would think probably not. But, I mean, that
 2248 would be up to the church itself. But what we're doing is we're really trying to
 2249 create a win-win situation out of this with the steeple. Yes, it's being extended,
 2250 but we're also meeting the coverage needs that we're looking to meet as well. So
 2251 therefore everybody's going to benefit from it—the church with the steeple and
 2252 then us with the wireless coverage.
 2253
 2254 Mr. Wright - What I had understood from the information we had is
 2255 the whole purpose for extending it was to enable it to put this wireless equipment
 2256 in there.
 2257
 2258 Mr. Froehlich - Yes, correct, correct.
 2259
 2260 Mr. Wright - What's the purpose of that?
 2261
 2262 Mr. Froehlich - Oh, it's to provide increased coverage in that area,
 2263 specifically what we refer to as in-building coverage. A lot of it will go up towards
 2264 the hospital and then the surrounding neighborhoods as well to increase the in-
 2265 building coverage to that, which is really your ability to use the phone inside of a
 2266 building. Specifically, a lot of it will be data-based.
 2267
 2268 Mr. Wright - Has the church been requested to do this by Verizon
 2269 or whoever is—
 2270

2271 Mr. Froehlich - By AT&T?
2272
2273 Mr. Wright - AT&T.
2274
2275 Mr. Froehlich - Yes. A few years ago—
2276
2277 Mr. Wright - In other words, is that what started the—initiated the
2278 idea of extending it?
2279
2280 Mr. Froehlich - Correct. This project has probably been on the books
2281 since way before I was involved in it, about five years. We've been through about
2282 every option that we have in this area. Spent a few years trying to work through
2283 the hospital. We really weren't able to get anything accomplished with them.
2284 Have worked some others as well. Numerous. It just really was a last effort to
2285 provide coverage to this area—or increase coverage to this area.
2286
2287 Mr. Wright - If this request is not granted, you just couldn't put the
2288 equipment in it. Is that correct?
2289
2290 Mr. Froehlich - Could you clarify that? I'm sorry.
2291
2292 Mr. Wright - Yes. This request is to enable you to increase the
2293 height.
2294
2295 Mr. Froehlich - Correct.
2296
2297 Mr. Wright - If you didn't need to increase the height, you wouldn't
2298 be here.
2299
2300 Mr. Froehlich - Correct. We need to get above the tree lines.
2301
2302 Mr. Wright - That's right. So my question is if they did not request
2303 this equipment to be put in here—
2304
2305 Mr. Froehlich - Yes.
2306
2307 Mr. Wright - —would you have gone ahead and had it redone at
2308 the same height it is now?
2309
2310 Mr. Froehlich - At the current height? Most likely, I would say.
2311
2312 Mr. Wright - Anything else—
2313
2314 Mr. Blankinship - Did you say the additional height was necessary to
2315 get above the tree lines?
2316

2317 Mr. Froehlich - To get above the tree lines and keep it in proportion to
 2318 the existing. Obviously, we went in—our first intent was just can we go inside.
 2319 Which we went out, we did all the testing we could do. And you can't get through
 2320 the trees.
 2321
 2322 Mr. Blankinship - Okay.
 2323
 2324 Mr. Froehlich - So we want to get above the trees. And keeping it in
 2325 proportion necessitated the extension of the steeple.
 2326
 2327 Mr. Wright - What I was trying to get at, the whole purpose of the
 2328 extension is to put in this equipment.
 2329
 2330 Mr. Froehlich - Oh, 100 percent, yes. One hundred percent yes.
 2331
 2332 Mr. Wright - All right. Any questions?
 2333
 2334 Mr. Bell - From ground to top how tall is it?
 2335
 2336 Mr. Froehlich - From ground to top, 120 feet.
 2337
 2338 Ms. Harris - That's the proposed.
 2339
 2340 Mr. Froehlich - That's the proposed, yes. The existing is ninety-five.
 2341
 2342 Mr. Bell - And across the street is St. Mary's, which is four
 2343 stories?
 2344
 2345 Mr. Froehlich - Yes. We tried for years to get onto that building
 2346 because that's obviously the easiest way, but they would not entertain the idea.
 2347
 2348 Ms. Harris - I have a few questions.
 2349
 2350 Mr. Wright - All right, Ms. Harris.
 2351
 2352 Ms. Harris - Yes. Couldn't those trees be trimmed?
 2353
 2354 Mr. Froehlich - Not enough. If we cut them ten feet, now we're going
 2355 to 110 feet with the steeple.
 2356
 2357 Ms. Harris - Are you representing the church or are you
 2358 representing the company that wants to install the equipment?
 2359
 2360 Mr. Froehlich - In this case, both. Yes.
 2361
 2362 Ms. Harris - You're employed by whom?

2363
 2364 Mr. Froehlich - Velocitel. We're a contractor for AT&T.
 2365
 2366 Ms. Harris - Okay. You may not be able to answer this question.
 2367 Are you familiar with helicopter traffic? There's a medical helicopter that travels in
 2368 that vicinity. Are you familiar with that?
 2369
 2370 Mr. Froehlich - We run FAA studies on all of our installations. So we
 2371 do get—or we run them when necessary based upon FAA guidelines. So if one
 2372 was necessary and that was an issue, that obviously would be addressed.
 2373 Sometimes that's when you get into where you see lighting on towers and things
 2374 like that, which should not be an issue here.
 2375
 2376 Ms. Harris - So you're not aware of the helicopter traffic for the
 2377 medical.
 2378
 2379 Mr. Froehlich - I'm aware there's a helicopter that goes there, but I
 2380 don't believe that's an issue in terms of the extension of the steeple.
 2381
 2382 Ms. Harris - Okay, my last question. Have you begun
 2383 construction?
 2384
 2385 Mr. Froehlich - Oh no, no, not at all.
 2386
 2387 Ms. Harris - Okay.
 2388
 2389 Mr. Froehlich - We obviously need to get this approval and submit for
 2390 the building permit behind it.
 2391
 2392 Ms. Harris - Okay.
 2393
 2394 Mr. Wright - Anything further?
 2395
 2396 Ms. Harris - No.
 2397
 2398 Mr. Wright - One other question. Have you read the conditions
 2399 proposed?
 2400
 2401 Mr. Froehlich - Yes. And I've discussed them with the church.
 2402
 2403 Mr. Wright - Are you in accord with the conditions?
 2404
 2405 Mr. Froehlich - Yes.
 2406
 2407 Mr. Wright - Any further questions from members of the Board?
 2408

2409 Mr. Baka - Yes, just one. Since there is helicopter traffic at the
 2410 hospital and you're increasing the height, are you required to submit the Zoning
 2411 460 form to the FAA to let them know that hey, there's a slightly taller structure
 2412 here before the approach path? You could be encroaching on an approach path.
 2413
 2414 Mr. Froehlich - Regulatory is not in my department. But I can assure
 2415 you that if it is, it is submitted. AT&T is very cautious. Bill, do you know?
 2416
 2417 Male - [Speaking off microphone; inaudible.]
 2418
 2419 Mr. Wright - Repeat what he said for the record.
 2420
 2421 Mr. Froehlich - Okay. AT&T has submitted a require—is required to
 2422 submit anything required for FAA or FCC.
 2423
 2424 Mr. Baka - And along the lines of Ms. Harris's comment—and I
 2425 don't know if it's necessary to make that a condition or not, but I think it's
 2426 reasonable to understand that there is a helicopter traffic, as Ms. Harris pointed
 2427 out. And if the Board deems it reasonable, simply a third condition might be
 2428 something to the extent of any necessary FAA approvals will be obtained by the
 2429 applicant. Thanks. That's all the questions I have.
 2430
 2431 Mr. Wright - We could certainly put that in if you want.
 2432
 2433 Mr. Baka - If that's necessary.
 2434
 2435 Mr. Froehlich - I'm not even sure of the ground elevation, but I would
 2436 think that we're probably below the hospital as is with 120 feet.
 2437
 2438 Mr. Wright - All right. Any further questions from members of the
 2439 Board?
 2440
 2441 Mr. Froehlich - I can look and get you that information if you want, but
 2442 I'm thinking we are.
 2443
 2444 Mr. Wright - Anyone here in opposition to this request? Hearing
 2445 none that concludes the case. Thank you very much for appearing.
 2446
 2447 Mr. Froehlich - Thank you.
 2448
 2449 **[After the conclusion of the public hearings, the Board discussed the case**
 2450 **and made its decision. This portion of the transcript is included here for**
 2451 **convenience of reference.]**
 2452
 2453 Mr. Wright - Do I hear a motion?
 2454
 2455 Mr. Bell - I move a motion that we approve it.

2456
 2457 Mr. Wright - All right. Motion's made that we approve it. Is there a
 2458 second?
 2459
 2460 Mr. Nunnally - Second.
 2461
 2462 Mr. Wright - It's seconded. Any discussion?
 2463
 2464 Ms. Harris - Yes. Are we going to add the condition about FAA
 2465 approval?
 2466
 2467 Mr. Baka - I know that they're required to do that under the
 2468 processing of the permit, but I would think it's not unreasonable for the Board to
 2469 add it here since it was an item of our discussion. So I would suggest yes, let's
 2470 go ahead and add it.
 2471
 2472 Mr. Wright - All right. Will the person making the motion agree to
 2473 add it?
 2474
 2475 Mr. Bell - I'll agree to it, yes.
 2476
 2477 Mr. Wright - Okay. I think Mr. Blankinship has noted the condition
 2478 that was suggested.
 2479
 2480 Mr. Blankinship - Yes sir, I have.
 2481
 2482 Mr. Wright - All in favor of approving this permit with the
 2483 amendment of the condition, please say aye. All opposed say no. The ayes have
 2484 it; the motion passes.
 2485
 2486 After an advertised public hearing and on a motion by Mr. Bell, seconded by
 2487 Mr. Nunnally, the Board **approved** application **CUP2014-00002, MONUMENT**
 2488 **HEIGHTS BAPTIST CHURCH's** request for a conditional use permit pursuant to
 2489 Section 24-95(a)(1)a. of the County Code to allow a structure to exceed 50 feet
 2490 in height at 5716 Monument Avenue (MONUMENT PLACE) (Parcel 770-737-
 2491 1854) zoned R-3, One-Family Residence District (Brookland). The Board
 2492 approved the conditional use permit subject to the following conditions:
 2493
 2494 1. This special exception authorizes the height of the steeple to be increased to
 2495 120 feet. All other applicable regulations of the County Code shall remain in
 2496 force.
 2497
 2498 2. Only the improvements shown on the plot plan and building design filed with
 2499 the application may be constructed pursuant to this approval. Any additional
 2500 improvements shall comply with the applicable regulations of the County Code.

2501 Any substantial changes or additions to the design or location of the
2502 improvements shall require a new conditional use permit.

2503

2504 3. [Added] At the time of building permit application the applicant shall provide
2505 evidence that the proposed construction is consistent with the requirements of
2506 the Federal Aviation Administration.

2507

2508

2509 Affirmative: Baka, Bell, Harris, Nunnally, Wright 5

2510 Negative: 0

2511 Absent: 0

2512

2513

2514 [At this point, the transcript continues with the public hearing on the next
2515 case.]

2516

2517 **CUP2014-00003** **BRADFORD B. SAUER** requests a conditional use
2518 permit pursuant to Section 24-95(i)(4) of the County Code to allow a pool in the
2519 side yard at 206 S. Erlwood Court (CHESWICK) (Parcel 743-734-3884) zoned R-
2520 1, One-Family Residence District (Tuckahoe).

2521

2522 Mr. Wright - Anyone desiring to speak with reference to this case,
2523 whether for or against, please stand and be sworn.

2524

2525 Mr. Blankinship - Do you swear the testimony you're about to give is the
2526 truth and nothing but the truth so help you God?

2527

2528 Mr. Scottow - Yes.

2529

2530 Mr. Wright - All right, sir. Please state your name for the record
2531 and present your case.

2532

2533 Mr. Scottow - Good morning, Mr. Chairman, ladies and gentleman
2534 of the Board of Zoning Appeals, County staff. My name is Gary Lee Scotto. And
2535 I'm the senior landscape architect with E D Lewis and Associates here in
2536 Henrico. I am here to represent our applicant in the case, Mr. Brad Sauer. I have
2537 a brief PowerPoint presentation I would like to share with you regarding this
2538 case.

2539

2540 The case before you this morning is a request for a conditional use permit to
2541 allow a private swimming pool in the side yard at 206 South Erlwood Court in the
2542 Cheswick neighborhood in the Tuckahoe District. And I have a shot. I don't know
2543 how to use the clicker.

2544

2545 As you can see, this is an aerial view of 204 and 206 South Erlwood Court at the
2546 Sauer property. Basically they own both properties. This is a view that's looking

2547 at the street approach as you come down South Erlwood Court toward the
2548 property. 204 is immediately to your right; 206 is up at the end of the cul-de-sac.
2549 This is looking into the property at 206 South Erlwood from the cul-de-sac. Notice
2550 most of the plant material along this edge is all evergreen. This is panning back
2551 around toward the residence at 204. Again, it has mostly evergreen trees along
2552 this edge.

2553
2554 Mr. Wright - Back up to that one again, please.

2555
2556 Mr. Scottow - Yes sir.

2557
2558 Mr. Wright - Now, is this the residence over to the right?

2559
2560 Mr. Scottow - The residence is over to the right, correct.

2561
2562 Mr. Wright - And this area to the left would be where the pool
2563 would be?

2564
2565 Mr. Scottow - Correct. And I'm going to get to that in a second.

2566
2567 Mr. Wright - Okay.

2568
2569 Mr. Scottow - I have closer shots that will show you a little bit better.
2570 This is the primary residence. This is at 204 South Erlwood. This is the
2571 conceptual master plan that was drawn by Rick Gorrell with Higgins and
2572 Gerstenmaier showing the location of the pool on the property. If you look on this
2573 plan and look closely, on the left margin of this plat it basically shows that there's
2574 an existing variable width easement for drainage and utilities. Within that
2575 easement there is an existing sanitary sewer line and forty-two-inch storm sewer
2576 pipe that runs through this easement. The storm sewer line runs almost directly
2577 on top of the property line, and the sanitary sewer runs about three feet off the
2578 edge of that.

2579
2580 We've looked at the evaluation, and the applicant is in agreement with the
2581 conditions because they were asking that they do some additional landscaping, if
2582 needed, along the southern property line.

2583
2584 Mr. Wright - You say the applicant is in accord with the suggested
2585 conditions?

2586
2587 Mr. Scottow - Correct. This is another view looking into the property.
2588 Again, looking at the vegetation along the frontage. I've gone in there and you
2589 can see that's noted in red. The red arrow to the left essentially is the property
2590 line, which is right directly behind that storm sewer invert. The red line to the right
2591 is the edge of the easement. And you can see it basically runs east to west. And
2592 then this is basically—I stepped right inside the tree line. The property line is the

2593 line to the left. The easement line is the line to the right. The pool would be
2594 located on the back side of the line to the right. So the basketball hoop and
2595 backboard and all that stuff will be demoed.

2596

2597 Mr. Wright - That will be removed.

2598

2599 Mr. Scottow - Will be removed. There's an existing little building
2600 back there, and the building is actually shown on the master plan. That will be
2601 retained. You can see, again, this is the easement line. The primary reason why
2602 they have the pool located in the position they have it located is that they're trying
2603 to maintain as many of the big mature trees as possible. We've looked at the
2604 possibility of moving it. What would happen is if we try to move the pool any
2605 further in any direction, you would start infringing on the survivability of some of
2606 those big trees because most of the stuff that's in there are all oaks. If you get
2607 within the roots under those trees, you pretty much will kill them all.

2608

2609 We've looked at staff recommendations and the suggested conditions, and we
2610 are agreeable with all that. I can answer any questions you might have.

2611

2612 Mr. Wright - This is an in-ground pool of course.

2613

2614 Mr. Scottow - Correct.

2615

2616 Mr. Wright - Any questions from members of the Board?

2617

2618 Ms. Harris - Are there other visible swimming pools in this area?

2619

2620 Mr. Scottow - Not that I have found.

2621

2622 Ms. Harris - Because of the trees, the wooded area?

2623

2624 Mr. Scottow - Correct. And a lot of them will be behind fences so
2625 you really can't tell. And I usually don't walk into people's yards unless invited.

2626

2627 Ms. Harris - Okay. The residence at 204 and 208, have you heard
2628 from them?

2629

2630 Mr. Scottow - 204 is actually our client. They own the property on
2631 204 and 206. And one of the conditions is basically that prior to the issuance of a
2632 building permit that the property line between the two properties, between 204
2633 and 206, will be vacated.

2634

2635 Mr. Blankinship - Have you heard from 208?

2636

2637 Mr. Scottow - No sir. I'll go back a slide. As you can see along this
2638 edge—well, go back one. As you can see along this edge to the left, they have a

2639 pretty thick buffer on their property. So they pretty much won't be able to see the
2640 pool from their house.

2641
2642 Mr. Blankinship - Just to clarify, 208 is on the left side of the—

2643
2644 Mr. Scottow - Correct.

2645
2646 Mr. Wright - Left side of that line.

2647
2648 Mr. Scottow - Correct.

2649
2650 Mr. Wright - You have that screening there.

2651
2652 Mr. Scottow - Correct. It's actually existing and it's their property.

2653
2654 Mr. Wright - Right. All right. Any other questions from members of
2655 the Board? Is anyone here in opposition to this request? Hearing none that
2656 concludes the case. Thank you very much for appearing.

2657
2658 Mr. Scottow - Thank you very much.

2659
2660 **[After the conclusion of the public hearings, the Board discussed the case**
2661 **and made its decision. This portion of the transcript is included here for**
2662 **convenience of reference.]**

2663
2664 Mr. Wright - Do I hear a motion?

2665
2666 Mr. Baka - I make a motion we approve CUP2014-00003 with
2667 the six conditions as presented in the staff report with no changes, due to the
2668 screening and the size of the properties and that this will not adversely affect the
2669 neighborhood.

2670
2671 Ms. Harris - I second.

2672
2673 Mr. Wright - Seconded. Any discussion? Hearing none, all in favor
2674 say aye. All opposed say no. The ayes have it; the motion passes.

2675
2676 After an advertised public hearing and on a motion by Mr. Baka, seconded by
2677 Ms. Harris, the Board **approved** application **CUP2014-00003, BRADFORD B.**
2678 **SAUER's** request for a conditional use permit pursuant to Section 24-95(i)(4) of
2679 the County Code to allow a pool in the side yard at 206 S. Erlwood Court
2680 (CHESWICK) (Parcel 743-734-3884) zoned R-1, One-Family Residence District
2681 (Tuckahoe). The Board approved the conditional use permit subject to the
2682 following conditions:

2683

1. This conditional use permit applies only to the placement of an in-ground swimming pool in the side yard. All other applicable regulations of the County Code shall remain in force.

2. Only the improvements shown on the plans filed with the application may be constructed pursuant to this approval. Any additional improvements shall comply with the applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements shall require a new conditional use permit.

3. Prior to the issuance of a building permit for the proposed swimming pool, the applicant shall record a deed of consolidation that consolidates both lots 26 and 27, block A, section C into a single parcel. A copy of the recorded deed shall be included with the building permit application.

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

5. All exterior lighting shall be shielded to direct light away from adjacent property and streets.

6. The swimming pool shall be enclosed by a fence as required by the Building Code.

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

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

CUP2014-00004 **RAKESH AGARWAL** requests a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to build a detached garage in the side yard at 9518 Arrowdel Court (RIVER ROAD FARMS) (Parcel 744-738-5629) zoned R-1, One-Family Residence District (Tuckahoe).

Mr. Wright - All persons having an interest in this case, either for or against, please stand and be sworn.

Mr. Blankinship - All raise your rights hands, please. Do you swear the testimony you're about to give is the truth and nothing but the truth so help you God?

2730
 2731 Mr. Agarwal - I do.
 2732
 2733 Mr. Wright - Thank you. Please state your name for the record and
 2734 present your case.
 2735
 2736 Mr. Agarwal - Good morning. My name is Rakesh Agarwal. The last
 2737 name is A-g-a-r-w-a-l. I am applying for a conditional use permit to build a
 2738 detached garage on my property, 9518 Arrowdel Court. Let me just give you a
 2739 little bit of history.
 2740
 2741 I built this house about two and half years ago. And just poor planning and poor
 2742 design on my part, there are two major issues I think with this house. One is the
 2743 garage is extremely small. You can see on the picture the minivan's parked
 2744 outside. It actually won't fit in the garage. The doors are eight feet. The other
 2745 vehicle we have will fit in the garage, but we can't even open the doors on one
 2746 side when we park the car in there. The other problem we have is we don't have
 2747 a useable attic space. The way the roofline was designed we have no storage.
 2748
 2749 So my thought was to build a detached garage and put it at the end of the
 2750 driveway. If you look at sort of the plot plan of my lot, there is really no other
 2751 place to put this structure because of the RPA in the back. Because of the width
 2752 of my lot it would have be a front-loading garage. And so the plans we came up
 2753 with were a two-car garage, front loading, right at the end of the driveway. It'll be
 2754 attached to the house with a short breezeway. The breezeway is going to have to
 2755 be less than ten feet wide because I have air conditioning units, HVAC units right
 2756 next to the house, which would be covered by a breezeway that was any bigger.
 2757 And then above the garage, because we don't have a lot of storage space in the
 2758 house, I was going to make it a finished space. Initially I think my wife and I were
 2759 thinking we could use that as like an exercise room. That's why we had like a
 2760 little space for a beverage center or something. And then I also have three boys,
 2761 two which are bunking right now in a room together. But I figured eventually may
 2762 want their own bedroom. So we wanted to put a full shower in there in case
 2763 somebody wanted to do that.
 2764
 2765 And under your conditions one of the sticking points I think was cooking facilities.
 2766 There will be no cooking facilities at all, just the beverage center and a sink.
 2767
 2768 Mr. Wright - Wait a minute, I want to get this straight. You have a
 2769 concern with one of the conditions?
 2770
 2771 Mr. Agarwal - Yes.
 2772
 2773 Mr. Wright - Which one?
 2774

2775 Mr. Agarwal - Well, one of the conditions I received says that—one
 2776 of the suggestions was that it be approved without—as a single-story garage
 2777 without a finished space above.
 2778

2779 Mr. Wright - Do you know which number condition you're referring
 2780 to?
 2781

2782 Mr. Blankinship - Number two, I believe, yes. Condition #2. The second
 2783 sentence.
 2784

2785 Mr. Wright - Oh, okay.
 2786

2787 Mr. Blankinship - However, the garage shall be limited to a single story
 2788 with no cooking facilities or full bath. You say you're okay with no cooking
 2789 facilities, but you do want to have a second story and you do want to have a full
 2790 bath.
 2791

2792 Mr. Agarwal - Correct.
 2793

2794 Mr. Blankinship - I don't know how the Board feels.
 2795

2796 Mr. Wright - If you'd address this. It seems there's a concern
 2797 because you're not permitted under our code to have living quarters in any other
 2798 building except the primary dwelling. It looks from the appearance of what you
 2799 have here that this could very easily be used as an apartment. That's the
 2800 concern. And you can say well I won't do it, but down the road if you sell to
 2801 someone else, they could come in and put an apartment in it. That's what we're
 2802 trying to safeguard against.
 2803

2804 Mr. Agarwal - Sure. I absolutely understand that.
 2805

2806 Mr. Wright - You need to help us with that. Give us some
 2807 discussion or idea about how that could be handled.
 2808

2809 Mr. Agarwal - A couple things. There are no cooking facilities. And I
 2810 don't know that it could be modified easily to put in cooking facilities. You'd have
 2811 to do some serious wiring and other issues to do that, is my understanding, you
 2812 know, for any kind of a stove or a microwave, even a full-size refrigerator. I think
 2813 it would be very difficult to—
 2814

2815 Mr. Wright - Right now explain what you would propose to have in
 2816 that upper story.
 2817

2818 Mr. Agarwal - Right now what our plans show is a bath with a
 2819 shower. Not a tub, just a shower. And then outside that probably a sink and like a
 2820 beverage refrigerator and that was it.

2821
 2822 Mr. Wright - Is that considered cooking facilities?
 2823
 2824 Mr. Blankinship - No sir. What he's described would not be cooking.
 2825
 2826 Mr. Wright - A sink and a refrigerator.
 2827
 2828 Mr. Agarwal - Yes sir.
 2829
 2830 Mr. Wright - No place for any range or cooking or stove or
 2831 anything like that.
 2832
 2833 Mr. Agarwal - No sir. I don't even think there would be enough
 2834 space to do that.
 2835
 2836 Mr. Wright - Let's address that. What he has proposed,
 2837 Mr. Blankinship, would that cause you some concern about having cooking
 2838 facilities?
 2839
 2840 Mr. Blankinship - No, that would not constitute cooking facilities.
 2841
 2842 Mr. Wright - So you could live with no cooking facilities—
 2843
 2844 Mr. Agarwal - Absolutely.
 2845
 2846 Mr. Wright - And how about the bath.
 2847
 2848 Mr. Agarwal - The bath, I would like the bath because, like I said, I
 2849 have three boys and two of them are currently in a room together. I could see
 2850 when they're teenagers that not being a good situation. I would like to have the
 2851 ability for them to—one of them to maybe sleep up there and have a shower.
 2852
 2853 Mr. Wright - Would that violate the code if they occupied that place
 2854 as a room?
 2855
 2856 Mr. Blankinship - I think if they occupied it on a permanent basis it
 2857 would, yes. The code does allow for a guesthouse where you would have a guest
 2858 who would stay over whatever period of time a guest would come and go. And
 2859 there's no prohibition on the guesthouse having a full bath.
 2860
 2861 Mr. Agarwal - Okay, well—
 2862
 2863 Mr. Blankinship - It's not anticipated that you would have a separate
 2864 detached structure with family members living in it full time.
 2865

2866 Mr. Agarwal - The other option too—and, you know, I guess—we
 2867 have a guestroom, so we could move one of the kids in the guestroom. And then
 2868 if we have guests, they could stay in that room.
 2869
 2870 Mr. Blankinship - Now if you have a kid away at college and they're
 2871 home a week at a time or two weeks or four weeks over break—
 2872
 2873 Mr. Agarwal - Right. Summer vacation is what I was thinking.
 2874
 2875 Mr. Blankinship - That would be consistent with a guestroom.
 2876
 2877 Mr. Wright - So it could be used by guests on a temporary basis.
 2878
 2879 Mr. Blankinship - Yes sir.
 2880
 2881 Mr. Wright - But not by someone on a full-time basis. That's the
 2882 idea.
 2883
 2884 Mr. Agarwal - I mean, I think that—that works for me too. We have
 2885 one guestroom. I could conceivably move that. Call that a guestroom and have
 2886 my son be—
 2887
 2888 Mr. Wright - Well, let's get at it now. This says you can't have a full
 2889 bath. Can you have a full bath for guests?
 2890
 2891 Mr. Blankinship - The code does not prohibit a full bath. So if it was left
 2892 in this condition, he would not be able to do what he intends to do. But if you took
 2893 the condition out or if you struck those words from the condition, he would be
 2894 allowed a full bath under the code. But he still would be limited in the occupancy
 2895 of the space.
 2896
 2897 Mr. Wright - You could put that in the condition, but would that
 2898 concern you? If you take "full bath" out of this #2, would that bother you? Would
 2899 that be a concern from the County's viewpoint?
 2900
 2901 Mr. Blankinship - We typically would write the condition in a restrictive
 2902 manner and leave it to the Board's judgment whether you want to make it less.
 2903
 2904 Mr. Wright - I understand that. I understand all of that. I'm just
 2905 addressing it now from a practical viewpoint. The applicant has requested to take
 2906 the full bath requirement out. In other words, strike that. Would the County have
 2907 a problem with that?
 2908
 2909 Mr. Blankinship - No sir, if that's the Board's decision.
 2910

2911 Mr. Wright - So he could have the full bath, no cooking facilities.
 2912 Now, the other thing we need to address is the height. You're saying be limited to
 2913 a single story.
 2914

2915 Mr. Blankinship - Right. The way the condition is written he couldn't
 2916 have anything above it.
 2917

2918 Mr. Agarwal - My thinking on that was that I'm building a fairly
 2919 expensive structure. To make use of the additional roof space—you know, it's
 2920 going to have knee walls, but it's going to have some space for storage or make
 2921 it an exercise room or something. Since I'm already spending all the money to
 2922 build the structure, why limit the space above it. It just seems like a waste. That
 2923 was sort of my thinking when we started doing this. Initially, it was just the
 2924 garage, but after talking with my design people and builders, you know, we could
 2925 do this reasonably easily. Why not use the space efficiently. It would add to the
 2926 value of my property, too, by having the extra storage because I don't have that.
 2927

2928 Mr. Wright - So your request is that—you said only the
 2929 improvements shown on the plot plan—. Your request is that we strike the
 2930 restriction to a limited single story.
 2931

2932 Mr. Agarwal - Yes sir.
 2933

2934 Mr. Wright - And the full bath. Those two things you'd like—you
 2935 request the Board to take out of that condition #2.
 2936

2937 Mr. Agarwal - Yes sir.
 2938

2939 Mr. Wright - What else would that area be used for, the so-called
 2940 second story?
 2941

2942 Mr. Agarwal - I think the only thing, I mean, I'm going to use it for in
 2943 the near future is, honestly, storage. And we may put some gym equipment in
 2944 there because it's loud.
 2945

2946 Mr. Wright - I didn't know whether you were using it for a
 2947 recreational area or not, whether it would lend itself to that.
 2948

2949 Mr. Agarwal - I don't think it's enough space, honestly, to do much
 2950 of anything else in there. I think it's a pretty small space.
 2951

2952 Mr. Wright - What's the size of the garage?
 2953

2954 Mr. Agarwal - The footprint is 28 by 28.
 2955

2956 Mr. Wright - The garage is 28 by 28.

2957
 2958 Mr. Agarwal - Correct.
 2959
 2960 Mr. Wright - All right. Anything else to offer? Any questions from
 2961 members of the Board while we're at the point?
 2962
 2963 Ms. Harris - Yes. You said you could not open the doors of your
 2964 garage?
 2965
 2966 Mr. Agarwal - Oh no. The car. So basically, you know, the minivan
 2967 won't fit in the garage.
 2968
 2969 Ms. Harris - I understand that one. But then you said you couldn't
 2970 open—it's a two-car garage.
 2971
 2972 Mr. Agarwal - Right. So the other vehicle—my wife's SUV, we can
 2973 actually get in the garage just barely. And then the driver's side you can't open
 2974 the door all the way. You have to kinda squeeze out of it. It's really tight, actually.
 2975 And we've already dinged up the door and the wall. It's a 20 by 20 garage. The
 2976 other issue, honestly, is when we put two cars—at one point we had a car that
 2977 would fit in there—we had two cars that would fit in there. To get by the first car
 2978 you'd have to open the main garage door to walk around it because there was
 2979 actually no room at all. It just was poorly designed.
 2980
 2981 Ms. Harris - So you would not have this problem with your second
 2982 two-car garage.
 2983
 2984 Mr. Agarwal - Oh no. No, absolutely not. The doors are going to be
 2985 ten feet wide, I believe, and it's 28 by 28.
 2986
 2987 Mr. Wright - It's going to be 28 by 28. You will have no problem. A
 2988 twenty-foot width is very small for a two-car garage.
 2989
 2990 Mr. Agarwal - It's very small.
 2991
 2992 Ms. Harris - And I noticed that the garage is going to be
 2993 constructed out of brick.
 2994
 2995 Mr. Agarwal - Correct.
 2996
 2997 Ms. Harris - But your house is not, right?
 2998
 2999 Mr. Agarwal - No, the house is brick. Three sides brick.
 3000
 3001 Ms. Harris - Okay.
 3002

3003 Mr. Agarwal - So it's going to be matching the existing brick.
 3004
 3005 Ms. Harris - Do we have a picture of this house? So you said the
 3006 house is constructed out of brick.
 3007
 3008 Mr. Agarwal - Yes
 3009
 3010 Ms. Harris - And the garage will have the same white exterior?
 3011
 3012 Mr. Agarwal - Yes ma'am.
 3013
 3014 Ms. Harris - Okay. Thank you.
 3015
 3016 Mr. Wright - Any further questions.
 3017
 3018 Mr. Baka - Yes. Further down—Paul, further down there it says
 3019 "view of adjacent lot" on the photos underneath "rear view house", like right there.
 3020 So this is the picture of Lot 8? As you face Arrowdel it's on your left? Actually,
 3021 this may be a question for the builder; you may not know. Is that owned by the
 3022 builder or is there a contract purchase on that property.
 3023
 3024 Mr. Agarwal - It's owned by Gumenick Properties.
 3025
 3026 Mr. Wright - Excuse me.
 3027
 3028 Mr. Baka - I'm sorry. I should have asked that—
 3029
 3030 Mr. Wright - We need to have you come before the microphone
 3031 and speak. You've been sworn. Just state your name again.
 3032
 3033 Mr. Shade - My name is Charles Shade—S-h-a-d-e. I'm here on
 3034 behalf of Mr. Agarwal. I am the designer of this structure on record. This
 3035 development, there are three or four lots. I don't believe that they're all
 3036 necessarily buildable because of the RPA and because of some setbacks. I know
 3037 that there is a statement within the conditions for evaluation that related to the lot
 3038 being denuded of trees. I don't believe that Mr. Agarwal did that. I believe that
 3039 this was a field at some time, and now it's been developed into some separate
 3040 lots.
 3041
 3042 If I could, I'd like to specifically address this idea between six feet that had to do
 3043 with Mr. Morrisette's case, the seven feet, and ten feet—all of this about what
 3044 constitutes a breezeway. One of the things that comes into play is in Chapter 3 of
 3045 the Building Code, which defines what a room is. A room is seventy square feet
 3046 with its least dimension being no less than seven feet. For this reason, if a
 3047 breezeway—in our case here, which is at least ten feet away from the building.
 3048 This breezeway can be made seven feet wide. All of a sudden magically that

3049 could become a room and this building would become attached. And therefore
3050 the building currently where it's being placed meets all the setbacks required of a
3051 dwelling in that area and would therefore now become a part of the structure. It
3052 would be an attached structure and would meet all the requirements for being
3053 any other space in the home.

3054
3055 This home has a basement. In that basement I suspect there could be a full bath.
3056 And if there's a kitchenette down there—by your exact same reasoning, this
3057 house should not be allowed to have a basement because then you could rent
3058 that basement. Same thing. I design homes regularly with mother-in-law suites
3059 where we're putting full baths off of the first floor master. Specifically first floor
3060 master because there's a master upstairs as well. What keeps that current
3061 owner, future owner, someone a hundred years from now from taking that room
3062 and renting it out?

3063
3064 Some of these conditions exist throughout the County. Last year or a year and a
3065 half ago in *Our Home* magazine there was an article written, front page, about a
3066 family who had moved their mother-in-law into the home and specifically created
3067 an apartment. I saw that, looked at it. I thought goodness, I hope no one from
3068 Henrico County reads this magazine, because they're going to go down there
3069 and require this family to rip this structure out of their home. This happens all the
3070 time. Zoning law has gotten way behind the times that we have with families
3071 moving in, parents moving in. These things are going on.

3072
3073 I don't believe that Mr. Agarwal is here to build an apartment to rent to enhance
3074 his bottom line. He's looking to build a structure, a structure where it sensibly
3075 makes sense to place a roof pitch that is complementary to the home. I believe
3076 the neighborhood wouldn't require a roof pitch below eight or nine in twelve
3077 anyway. At that point, you're almost there. You're building this roof pitch. It
3078 makes some sense to continue to finish the interior spaces and make some use
3079 of that second floor interior space as opposed to just building a roof that you
3080 have absolutely nothing to do with.

3081
3082 Mr. Wright - All right, sir. Any questions from members of the
3083 Board?

3084
3085 Mr. Baka - The only question I had is for Mr. Blankinship. Was
3086 there any objection received from that adjacent property owner?

3087
3088 Mr. Blankinship - Not that I'm aware of.

3089
3090 Mr. Baka - Okay. That's all.

3091
3092 Mr. Wright - They're not here.

3093
3094 Mr. Baka - I understand. Thanks.

3095
3096 Mr. Blankinship - We do sometimes get a phone a call.
3097
3098 Mr. Agarwal - Actually, I'll say for the record when I was building this
3099 house and I realized the garage was too small, Gumenick properties who own
3100 the other lots had designed this same kind of garage for me. But at the time, it
3101 was just too expensive for me to do, so I turned it down. I talked to them already
3102 about this, so they're all for it.
3103
3104 Mr. Bell - They're the ones that own 9516?
3105
3106 Mr. Agarwal - Yes. I think it's 9516.
3107
3108 Mr. Bell - The one adjacent to you.
3109
3110 Mr. Agarwal - Yes. There are three lots around my house. They own
3111 all three lots.
3112
3113 Mr. Wright - Anyone here in opposition to this request? Hearing
3114 none, that concludes the case. Thank you very much.
3115
3116 Mr. Agarwal - Thank you.
3117
3118 [The Board takes a five-minute recess and then returns to start discussion of the
3119 cases.]
3120
3121 Mr. Wright - Do I hear a motion on this?
3122
3123 Mr. Baka - I have some comments, I guess, before I make a
3124 motion. Hearing the testimony from the applicant and what the applicant is under
3125 oath stating he would do, I don't have significant concerns about the draft
3126 language in Condition #2. I don't have significant concerns about a second story.
3127 I think that would be okay. I don't have significant concerns about having a
3128 bathroom that has both a shower, toilet, and a sink, a full bath. And yes, I would
3129 have concerns if there were ever full cooking facilities in there, but the applicant
3130 stated that's not to be there. It won't be there today, and he understands that this
3131 Board's dealt with that issue in the past, and there's no opportunity for that in the
3132 future. With that, I would make a motion to approve the case, it's my motion, with
3133 the seven conditions adjusting Condition #2 to allow for a second story and allow
3134 for a full bath, but still prohibiting no cooking facilities.
3135
3136 Ms. Harris - Second the motion.
3137
3138 Mr. Wright - All right. Motion's made and seconded that we
3139 approve this request but that Condition #2 be amended to strike the language
3140 "however, the garage shall be limited to a single story."

3141
3142 Mr. Baka - Would you like me to restate that?
3143
3144 Mr. Wright - It will have no cooking facilities. Period. Is that the
3145 idea?
3146
3147 Mr. Baka - Yes.
3148
3149 Mr. Wright - Okay.
3150
3151 Mr. Baka - No separate cooking facilities.
3152
3153 Mr. Wright - Yes. All right. Is there a second?
3154
3155 Ms. Harris - Yes, I seconded it.
3156
3157 Mr. Wright - Okay. Any further discussion. Hearing none, all in
3158 favor say aye. All opposed say no. The ayes have it; the motion passes.
3159
3160 After an advertised public hearing and on a motion by Mr. Baka, seconded by
3161 Ms. Harris, the Board **approved** application **CUP2014-00004, RAKESH**
3162 **AGARWAL's** request for a conditional use permit pursuant to Section 24-95(i)(4)
3163 of the County Code to build a detached garage in the side yard at 9518 Arrowdel
3164 Court (RIVER ROAD FARMS) (Parcel 744-738-5629) zoned R-1, One-Family
3165 Residence District (Tuckahoe). The Board approved the conditional use permit
3166 subject to the following conditions:
3167
3168 1. This conditional use permit applies only to the location of the proposed
3169 detached garage in the side yard. All other applicable regulations of the County
3170 Code shall remain in force.
3171
3172 2. [Amended] Only the improvements shown on the plot plan and building design
3173 filed with the application may be constructed pursuant to this approval. However,
3174 the garage shall not have cooking facilities. Any additional improvements shall
3175 comply with the applicable regulations of the County Code. Any substantial
3176 changes or additions to the design or location of the improvements shall require
3177 a new conditional use permit.
3178
3179 3. The garage shall not be used for dwelling purposes.
3180
3181 4. The new construction shall match the existing dwelling as nearly as practical
3182 in materials and color.
3183
3184 5. At the time of building permit application, the applicant shall submit the
3185 necessary information to the Department of Public Works to ensure compliance

3186 with the requirements of the Chesapeake Bay Preservation Act and the code
3187 requirements for water quality standards.
3188

3189 6. All exterior lighting shall be shielded to direct light away from adjacent
3190 property and streets.
3191

3192 7. The southeastern side of the garage facing 9516 Arrowdel Court shall be
3193 landscaped with shrubbery, including evergreens. At the time of building permit
3194 application, a landscape plan shall be submitted for review and approval by the
3195 Planning Department. All landscaping shall be maintained in a healthy condition
3196 at all times. Dead plant materials shall be removed within a reasonable time and
3197 replaced during the normal planting season.
3198
3199

3200 Affirmative:	Baka, Bell, Harris, Nunnally, Wright	5
3201 Negative:		0
3202 Absent:		0

3203
3204

3205 Mr. Wright - That brings us to the minutes. Do I hear a motion on
3206 the minutes?
3207

3208 Mr. Nunnally - I move the minutes be approved.
3209

3210 Mr. Wright - Motion's made. Is there a second?
3211

3212 Ms. Harris - Second.

3213 Mr. Wright - Motion's made and seconded the minutes be
3214 approved with no corrections. All in favor say aye. All opposed say no. The ayes
3215 have it; the motion passes.
3216

3217 On a motion by Mr. Nunnally, seconded by Ms. Harris, the Board **approved as**
3218 **submitted the Minutes of the December 19, 2013**, Henrico County Board of
3219 Zoning Appeals meeting.
3220
3221

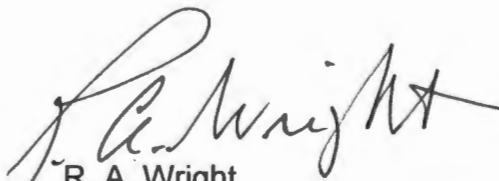
3222 Affirmative:	Baka, Bell, Harris, Nunnally, Wright	5
3223 Negative:		0
3224 Absent:		0

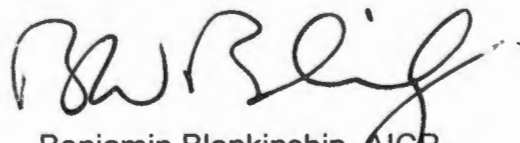
3225
3226

3227 Mr. Wright - Anything further to come before the Board,
3228 Mr. Blankinship?
3229

3230 Mr. Blankinship - No sir.
3231

3232 Mr. Wright - All right. Do I hear a motion that we adjourn?
 3233
 3234 Ms. Harris - So moved.
 3235
 3236 Mr. Wright - Motion is made. Is there a second?
 3237
 3238 Mr. Baka - Second.
 3239
 3240 Mr. Wright - Motion is made and seconded we adjourn. Any
 3241 discussion? Hearing none, all in favor say aye. All opposed say no. The ayes
 3242 have it; the motion passes.
 3243
 3244
 3245 Affirmative: Baka, Bell, Harris, Nunnally, Wright 5
 3246 Negative: 0
 3247 Absent: 0
 3248
 3249
 3250 The Board is adjourned.
 3251
 3252
 3253
 3254
 3255
 3256
 3257
 3258
 3259
 3260
 3261
 3262
 3263


 R. A. Wright
 Chairman


 Benjamin Blankinship, AICP
 Secretary