

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 MARCH 22, 2018 AT 9:00
5 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-
6 DISPATCH MARCH 5, 2018 AND MARCH 12, 2018.
7
8

Members Present: William M. Mackey, Jr., Chair
Helen E. Harris, Vice Chair
Gentry Bell
Terone B. Green
James W. Reid

Also Present: Jean M. Moore, Assistant Director of planning
Benjamin Blankinship, Secretary
Paul M. Gidley, County Planner
R. Miguel Madrigal, County Planner
Kuronda Powell, Account Clerk

9
10
11 Mr. Mackey - Good morning and welcome to the March 22, 2018
12 meeting of the Henrico County Board of Zoning Appeals. All who are able, will
13 you please stand and join us in the Pledge of Allegiance.
14

15 Thank you. Now I'll ask Mr. Ben Blankinship, our Board secretary, if he will read
16 the rules for today's meeting.
17

18 Mr. Blankinship - Good morning, Mr. Chair, ladies and gentlemen,
19 members of the Board, ladies and gentleman, the rules for this meeting are as
20 follows: Acting as secretary, I will announce each case. At that time, we will ask
21 everyone who intends to speak to that case to stand and be sworn in. Then a
22 member of the staff will present an overview of the case. Then the applicant will
23 present their case to the Board. After the applicant has spoken, anyone else who
24 wishes to speak to that case will be given an opportunity. We usually call for the
25 support first and then the opposition. After everyone has had a chance to speak,
26 the applicant, and only the applicant, will have an opportunity for rebuttal.
27

28 After the Board has heard all the evidence on each case, they will open the
29 public hearing on the next case. At the end of the meeting, they'll go back
30 through the agenda, discuss each case, and then make the decision on each
31 case at that time. If you wish to hear their decision on a specific case, you can
32 either stay until the end of the meeting, or you can check the Planning
33 Department website—we usually get it updated within an hour of when the
34 meeting ends—or you can call the Planning Department this afternoon.
35

36 This meeting is being recorded, so we'll ask everyone who speaks to speak
37 directly into the microphone on the podium. State your name, and please spell
38 your last name just to make sure we get it correct in the record.

39
40 Finally, Mr. Chair, we do have one withdrawal this morning. This came by email
41 last night at 7:30. It is the first case on the agenda, CUP2018-00004, Douglas
42 Christopherson.

43
44 **CUP2018-00004 DOUGLAS CHRISTOPHERSON** requests a
45 conditional use permit pursuant to Section 24-12(e) of the County Code to allow
46 a noncommercial kennel at 3016 Overton Road (PINEHURST GARDENS)
47 (Parcel 775-747-2027) zoned One-Family Residence District (R-4) (Brookland).

48
49 Mr. Blankinship - This case has been withdrawn, so it will not be heard
50 this morning.

51
52 Mr. Mackey - Thank you, Mr. Blankinship. May we call our first
53 case?

54
55 Mr. Blankinship - The first case is CUP2018-00005, Robert C. And
56 Brenda C. Brown.

57
58 **CUP2018-00005 ROGER C. AND BRENDA C. BROWN** request a
59 conditional use permit pursuant to Section 24-95(i)(4) of the County Code to build
60 an accessory structure at 9001 Lydell Drive (Parcel 778-757-7278) zoned One-
61 Family Residence District (R-2) (Fairfield).

62
63 Mr. Blankinship - Would everyone who intends to speak to this case
64 please stand and be sworn in. Raise your right hands, please. Do you swear the
65 testimony you're about to give is the truth, the whole truth, and nothing but the
66 truth so help you God? Thank you. Mr. Madrigal?

67
68 Mr. Madrigal - Mr. Secretary, Mr. Chair, members of the Board, good
69 morning.

70
71 Before you is a request to build a detached garage in the front yard of a corner
72 lot. The subject property is located at the northeast corner of Lydell Drive and
73 Parham Road. The lot is a residual acreage parcel not part of the North Run Hill
74 subdivision, which was established in the late 1950s and 1960s. The lot is
75 improved with a one-story, 3,700-square-foot residence with a finished walk-out
76 basement and an attached carport. The home was built in 1968. Access to the
77 property is by way of an asphalt driveway off of Lydell Drive, and that is visible
78 right here.

79
80 Although the lot fronts on Parham Road, the home is oriented towards Lydell
81 Drive and is consistent with the homes to the north of it. Consequently, the home

82 has a 45-foot front setback from Lydell, and a 10-foot setback from the northern
83 property line, which is technically the lot's rear lot line.

84
85 The property owners acquired the lot in 1998 and now wish to construct a large,
86 detached three-car garage made of steel on the property. The proposed building
87 will be placed to the rear of the residence and ten feet distant from the existing
88 carport in what is the lot's front yard. This is the proposed structure. The
89 proposed garage will be oriented towards Lydell and will capitalize on the existing
90 driveway for vehicular access. The building will measure 24 feet deep by 36 to 40
91 feet wide and will be approximately 10 feet in height as measured to the midpoint
92 of the sloped roof. The steel building will be painted a tan color and will have a
93 black roof.

94
95 The property is zoned R-2, and is designed SR-2 on the 2026 Land Use Plan. A
96 one-family residence is a principally permitted use in the R-2 District and is
97 consistent with the land use designation. Although the proposed garage is an
98 accessory use that is customary and incidental to a one-family dwelling, it is
99 required to be placed in the rear yard. In this case, it will be technically located in
100 the front yard, which requires the approval of a conditional use permit.

101
102 The applicant's have a one-story brick rancher with a walk-out basement off the
103 rear of the home. It has an attached carport at the southern end of the home.
104 This layout is consistent with most of the homes along Lydell Drive, which have
105 either open parking or carport parking integrated into the design of the home.
106 There is only one example of a detached garage along this block face. In that
107 example, the garage is located in the rear yard and is of typical wood frame
108 construction. You can see the garage in the back here. The front facade is
109 finished with brick and remaining facades are improved with vinyl siding
110 consistent with the finished architecture of surrounding homes.

111
112 The proposed steel building will be inconsistent with respect to scale, location,
113 and finished materials as compared to the subject home and the rest of the
114 neighborhood. The installation of a large, metal building could detrimentally
115 impact nearby property, diminish the architectural character of the neighborhood,
116 and establish a negative precedent. Furthermore, it appears that the proposed
117 location for the garage conflicts with an existing drainage easement running
118 along the rear of the home, and that's visible right here.

119
120 In conclusion, the applicant's property is not officially part of the subdivision, but it
121 is a part of the neighborhood. Its prominent location makes it a highly visible
122 example and entrance feature to the community. Although the lot fronts on
123 Parham, the home is oriented toward Lydell, which is technically a side street.
124 The proposed garage will be located in the front yard in full view of two public
125 and highly traveled streets impacting the streetscape. The proposed garage is
126 out of scale and architectural context with the existing home and the

neighborhood. And the finished materials are inconsistent with the neighborhood's established character.

As presented, the proposed garage poses a detrimental impact to nearby property, neighborhood character, and if approved could establish a negative precedent. Based on the facts of the case, staff recommends denial. Although if the applicant were to change his proposal to a 24-by-24-foot typical wood frame structure with brick on the street-facing facades, staff could support the request.

This essentially concludes my presentation. As a side note, staff has received two phone calls in opposition to the applicant's request. I'll be happy to answer any questions you may have.

Mr. Mackey - All right, thank you. Are there any questions from the Board for staff or Mr. Madrigal? Thank you, sir. Can we hear from the applicant?

Mr. Brown - Good morning, Mr. Chair. In this proposal—

Mr. Mackey - For the record, can we get you to state and spell your name?

Mr. Brown - Yes. Roger Brown, B-r-o-w-n, along with Brenda Brown.

Mr. Mackey - Okay. All right, thank you, sir.

Mr. Brown - The construction of this three-car garage, even though it says metal, the design would be so similar to vinyl that you probably couldn't tell the difference. When I spoke to the builder, he has a product that looks very similar to vinyl. The only part that would be obvious is the tin roof.

Mr. Mackey - Did you bring any pictures or anything of what it would look like?

Mr. Brown - Not at this time.

Mr. Mackey - All right. Did anyone from the Board have any questions for Mr. Brown?

Mr. Bell - Did you read the conditions of the report?

Mr. Brown - Yes sir.

Mr. Bell - Were you familiar with what Mr. Madrigal said about if you were to match it to the existing brick of your house and make it look more like your house, in essence, as the other garage down the street does, and

173 reduce it in size that we might be able to discuss whether we can approve that or
174 not.

175

176 Mr. Brown - Okay. Could I bring a proposal back maybe not with
177 brick because of the cost? My home has vinyl siding on the A section

178

179 Mr. Bell - Our condition, as far as I'm concerned now, would be
180 the condition that's already been proposed.

181

182 Mr. Brown - I'm sorry. Repeat that again?

183

184 Mr. Bell - I would say that you would have to stick with our
185 condition that we've already proposed, which is condition #4 of the report.

186

187 Mr. Brown - Which is all brick?

188

189 Mr. Bell - Well it doesn't say that.

190

191 Mr. Brown - Okay.

192

193 Mr. Bell - We would discuss it, Planning would, if you could
194 stick to this.

195

196 Mr. Brown - Okay. I'll go back and review it and see what the
197 contractor could do for me.

198

199 Ms. Harris - Mr. Brown, you said you could reduce it? Condition #3
200 says that the size should be no greater than 24 feet by 24 feet. Do you think you
201 could reduce it to that size? I know you wanted a three-car garage.

202

203 Mr. Brown - If I could, I would prefer—to accommodate what I
204 have, to have it not visible to the public so I can park those cars in there, a three-
205 car would be substantial enough for me. Nothing larger. If I go smaller, then it
206 wouldn't be sufficient enough for me to build it.

207

208 Ms. Harris - So you're saying no to condition #3, that you could
209 not limit the size?

210

211 Mr. Brown - To a 24 by 24?

212

213 Ms. Harris - Yes.

214

215 Mr. Brown - It would not be feasible for me at this time.

216

217 Ms. Harris - Okay. Were you aware of the easement that's running
218 across your land?

219
 220 Mr. Brown - In the rear?
 221
 222 Ms. Harris - Yes.
 223
 224 Mr. Brown - Yes. I didn't know I was that close to it. It's at least
 225 another fifteen to twenty feet from the rear of the garage where it's supposed to
 226 be built.
 227
 228 Ms. Harris - Okay. Because the garage will be so large, are you
 229 aware the proposal you have kind of creates an industrial feel rather than a
 230 residential feel. Are you concerned about that?
 231
 232 Mr. Brown - I will consider it, yes.
 233
 234 Ms. Harris - So do you think your architect or your contractor can
 235 come up with a structure that looks more like your house?
 236
 237 Mr. Brown - Yes.
 238
 239 Ms. Harris - But it would not be 24' by 24'. Is that what you're
 240 saying?
 241
 242 Mr. Brown - I prefer not. The larger size would be more beneficial
 243 to me. If I had to go to the twenty-four, it wouldn't be substantial enough for the
 244 purpose.
 245
 246 Ms. Harris - Are there any more accessory structures in your
 247 backyard?
 248
 249 Mr. Brown - I have a shed to the left in the back, yes.
 250
 251 Ms. Harris - Just one?
 252
 253 Mr. Brown - Two.
 254
 255 Ms. Harris - I drive by there a lot. I was just trying to imagine this
 256 huge three-car garage that we could see when we turn into Lydell from Parham
 257 or that you could see from Parham.
 258
 259 Mr. Brown - Okay.
 260
 261 Ms. Harris - I think you should probably look seriously at the
 262 conditions and consider those.
 263
 264 Mr. Brown - Okay. I will reconsider.

265

266 Mr. Bell - As Ms. Harris said, Parham is almost like your front
267 yard anyway. With a large metal building up, my concern is making it look more
268 commercial than residential. And also, it's not just Lydell. Your backyard or side
269 of your yard facing the rear of those two houses behind you. So they, too, have
270 to see whatever you put up. So it is a problem that deals with fitting what you
271 want into the lot that you want it to be put on. So in order for more consideration
272 to be given to you, I think when you carry it back to your architect, keep those
273 factors in mind.

274

275 Mr. Brown - Okay. I will.

276

277 Mr. Green - Could you go back to the picture of the house, yard,
278 and that? So you want a three-car garage, but you also want to still keep your
279 carport.

280

281 Mr. Brown - Correct. That's not enclosed right now.

282

283 Mr. Green - Have you ever thought about converting your carport
284 into a three-car then making it more consistent?

285

286 Mr. Brown - That can be a two-car, but not a three.

287

288 Mr. Green - But what I'm saying is if you bring it out a little bit
289 more, just wrap it around . . .

290

291 Mr. Brown - Okay. I can speak with the contractor.

292

293 Mr. Green - Then you'd basically have a five-car facility. Right?

294

295 Mr. Brown - I could. Could possibly, yes.

296

297 Mr. Green - Are you going to use five cars or are you going to use
298 three cars?

299

300 Mr. Brown - I'm going to use three.

301

302 Mr. Green - So what happens with the carport?

303

304 Mr. Brown - It would remain there, basically an open area.

305

306 Mr. Green - And you would consider seeing if your architect could
307 potentially convert your carport into your three car since you're only going to use
308 three cars. That way you achieve what you want.

309

310 Mr. Brown - Okay, I will.

311
312 Mr. Green - Or is it a matter of cost?
313
314 Mr. Brown - It is a matter of cost, too, but I will see, and look at the
315 proposal of the 24' by 24'.
316
317 Mr. Mackey - Mr. Brown, you did receive a copy of the conditions?
318
319 Mr. Brown - Yes.
320
321 Mr. Mackey - Okay, I was just making sure. All right. Were there
322 any other questions for Mr. Brown or Mrs. Brown?
323
324 Mr. Blankinship - I would just ask, do you have a sense of how long you
325 would like to have to reconsider?
326
327 Mr. Brown - Thirty days?
328
329 Mr. Blankinship - This board meets once a month, so if the board
330 decided to defer, it could either be the April meeting or the May meeting, or
331 farther out, if it's better for you.
332
333 Mr. Brown - April will be fine.
334
335 Mr. Blankinship - April meeting, okay.
336
337 Mr. Green - It's always hard to get an idea. If you're saying they're
338 using a new material, could you get them to give you a sample or what that new
339 material looks like?
340
341 Mr. Brown - I will.
342
343 Mr. Mackey - All right.
344
345 Ms. Harris - Mr. Mackey, are we're going to defer this case until
346 next month?
347
348 Mr. Mackey - Well, we have to make a motion. I have to give an
349 opportunity if anybody else wants to speak since we started the case.
350
351 Ms. Harris- Okay.
352
353 Mr. Mackey - Was there anything else, Mr. Brown?
354
355 Mr. Brown - No. Do you have any other questions of me?
356

357 Mr. Mackey - Not at this time.
 358
 359 Mr. Brown - Okay.
 360
 361 Mr. Mackey - All right. Is there anyone here who would like to speak
 362 in support of this application? Is there anyone who would like to speak in
 363 opposition of it? All right, thank you. Can we have the next applicant?
 364
 365 **[After the conclusion of the public hearings, the Board discussed the case**
 366 **and made its decision. This portion of the transcript is included here for**
 367 **convenience of reference.]**
 368
 369 Mr. Mackey - The applicants requested a deferral. Do we have a
 370 motion?
 371
 372 Mr. Green - So moved.
 373
 374 Ms. Harris - Second.
 375
 376 Mr. Mackey - It's been moved and properly seconded. We need to
 377 set a date. He said thirty days would be good enough?
 378
 379 Mr. Green - That's what he said.
 380
 381 Mr. Mackey - Does anyone know the date of the next meeting?
 382
 383 Mr. Blankinship - That would be April 26th.
 384
 385 Mr. Mackey - Okay. So this one would be deferred to the next
 386 meeting, April the 26th. All in favor say aye. Those opposed say no. There is no
 387 opposition; that motion passes. The ayes have it 5 to 0.
 388
 389 After an advertised public hearing and on a motion by Mr. Green seconded by
 390 Ms. Harris, the Board **deferred** application **CUP2018-00005, ROGER C. AND**
 391 **BRENDA C. BROWN**, to its meeting on April 26, 2018.
 392
 393
 394 Affirmative: Bell, Green, Harris, Mackey, Reid 5
 395 Negative: 0
 396 Absent: 0
 397
 398
 399 **[At this point, the transcript continues with the public hearing on the next**
 400 **case.]**
 401

Mr. Blankinship - That is the end of our conditional use permits. We'll now begin variances. VAR2018-00003 and 00004, Meridian Development Incorporated, are companion cases.

VAR2018-00003 **MERIDIAN DEVELOPMENT INC.** requests a variance from Section 24-95(b)(5) of the County Code to build a one-family dwelling at 101 S Confederate Avenue (SANDSTON) (Parcel 825-715-9922) zoned One-Family Residence District (R-3) (Varina). The lot width requirement is not met. The applicant proposes 60 feet lot width, where the Code requires 65 feet lot width. The applicant requests a variance of 5 feet lot width.

VAR2018-00004 **MERIDIAN DEVELOPMENT INC.** requests a variance from Section 24-95(b)(5) of the County Code to build a one-family dwelling at 103 S Confederate Avenue (SANDSTON) (Parcel 825-715-9922) zoned One-Family Residence District (R-3) (Varina). The lot width requirement is not met. The applicant proposes 60 feet lot width, where the Code requires 65 feet lot width. The applicant requests a variance of 5 feet lot width.

Mr. Blankinship - Would everyone who intends to speak to either case, please stand and be sworn in. Raise your right hands, please. Do you swear the testimony you're about to give is the truth, the whole truth, and nothing but the truth so help you God? Thanks. Mr. Madrigal?

Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, members of the Board, before you is a request to build two, single-family dwellings on substandard-sized lots. The subject property is located at the southwest corner of Confederate Avenue and W. Berry Street in the Sandston subdivision, which was established in the early 1900s. The property abuts the Richmond International Airport at its southern and western boundaries. Both W. Berry and S. Confederate terminate at or near the property. A section of West Berry Street abutting and running along the northern edge of the property is unimproved. You can see that right along here.

The property consists of two lots measuring approximately 60 feet wide by 162 feet deep. It is currently improved with a one-story, 1,085-square-foot residence with open parking, constructed in 1918. The house sits on the middle of the property, straddling the property line. Additionally, there is a one-story, 360-square-foot metal storage shed in the rear yard.

The applicant purchased the property in November 2017 with the intent of improving it similar to the recent renovations he completed across the street at 106 S. Confederate Avenue. Here's that property on the screen. Instead of renovating the subject residence, the applicant intends to demolish it and build a new home on each of the two lots that comprise the property. Although the lots are subject to the pre-1960 exception standards, they are substandard in width

and would require a variance to be developed independently. The code requires sixty-five feet of lot width and each lot is only sixty feet wide.

By statute, a variance is a reasonable deviation from certain provisions of the code when strict application would unreasonably restrict the utilization of the property or it corrects an inequity as compared to other properties. In this case, the subject property is an oversized lot that has an existing beneficial use. Although the applicant would like to demolish the existing home and develop each lot independently, the lots do not meet minimum lot width requirements. Additionally, the existing home is original to the property and is one hundred years old. The two lots that make up the property have been in this configuration all that time. The property as a whole has a beneficial use, and there is no basis for the variance. Thus the request does not satisfy the threshold question.

With respect to the five subtests, item #1 requires that the property was acquired in good faith and any hardship was not created by the applicant. Although it appears that the applicant acquired the property in good faith, by attempting to develop the lots separately, he is creating a self-inflicted hardship. The property has an existing beneficial use and has no deficiencies when compared to other lots in the subdivision. Furthermore, the property has the advantage of being an oversized lot with greater options for its use and enjoyment as compared to other properties in the neighborhood.

Item #2 requires that the granting of the variance will not be a substantial detriment to adjacent and nearby property. The home is part of a cluster of dwellings in this neighborhood built in 1918 by the U.S. Housing Corporation during World War I to support the munitions plants. Many of these homes remain intact on the street and the surrounding area. Most of these homes are on lots ranging in size from seventy to eighty feet in width. Preservation of the architectural and historical integrity of the neighborhood is of concern to the County. Granting the variance would not necessarily result in a substantial detriment, but it would lead to an increase in density, added traffic, and the removal of an architecturally contributing structure in a small and historically significant neighborhood.

Item #3 requires that the condition or situation of the property is not of a general or recurring nature requiring an amendment to the Zoning Ordinance. Although lot-width waiver requests are common, they are examined on a case-by-case basis to determine their merit. In this case, the applicant owns property consisting of two independent substandard lots that abut the airport on two sides. It has sufficient street frontage and abuts an unimproved right-of-way at its northern edge. Although the applicant can't acquire private land to increase his property dimensions to satisfy code, it is possible to request a vacation of the unimproved right-of-way as an alternative, especially since there's little chance of the County improving it as it dead-ends into the airport.

Items 4 and 5 are satisfied, as outlined in the staff report.

In conclusion, the existing home on the subject lot was constructed in 1918 and is a contributing example of the architectural character of this historically significant neighborhood. The property in its current configuration complies with the lot width requirements for the underlying zoning district and has an existing beneficial use. Demolishing the existing home to make room for two new dwellings would create two substandard lots needing variances. Because this would create a self-imposed hardship, there is no legal basis to grant the variance. Also, the applicant has several available options to improve the property without the need for the variances. He can renovate the existing home. He can demolish it and build a new home. Or he can explore the street-vacation option to acquire additional land to enlarge the property for further development.

Based on the facts of this case, staff recommends denial. This concludes my presentation. I'll be happy to answer any questions.

Mr. Mackey - All right. Thank you, sir. Are there any questions from the Board or staff?

Mr. Bell - Quick question. You last stated "acquire additional property." Are you referring to street frontage?

Mr. Madrigal - I'm referring to this unimproved section of roadway here. Right now it's just a treed area. The County doesn't have any intention of developing it, primarily because there's really no use for it. It dead-ends into the airport. So there's no public benefit. So the applicant could apply for a vacation of that portion of the street. He would get half; the neighbor would get the remaining half. He could also explore retaining the entire width by purchasing the other half that the neighbor would get.

Mr. Bell - Thank you.

Ms. Harris - Mr. Madrigal, do you know how wide that adjacent property is?

Mr. Madrigal - It's about forty feet. So he'd end up twenty feet. Or if he attempted to purchase the other twenty, he'd have forty additional feet.

Mr. Mackey - Currently, he's ten feet short total?

Mr. Madrigal - He's five feet short on each lot, so a total of ten.

Mr. Mackey - On each one. So ten feet, okay. All right. Thank you. Any other questions for Mr. Madrigal? All right, thank you, sir. Can we hear from

538 the applicant? When you approach, please state and spell your name for the
539 record.

540
541 Mr. Austin - Good morning. My name is Marty Austin. A-u-s-t-i-n.
542 I'm the owner and president of Meridian Development. I'm the only owner and
543 the only employee of the company. Thank you for hearing my case this morning.

544
545 Mr. Mackey - You're welcome, sir.

546
547 Mr. Austin - Let me first say that my original intent when I
548 purchased this property, which is two lots with the dwelling currently in the
549 center, was to renovate this property, just like the one in the previous picture that
550 you saw. Unfortunately, when we went to start demolishing the property, the
551 significance of the deterioration from the house being vacant and open to the
552 elements over the years is to an extent that it's not cost-feasible to renovate it,
553 unfortunately. There is significant damage to the foundation. The house itself,
554 there's a lot of rot in the wood. I guess the straw that broke the camel's back was
555 when we started to pull the sheetrock back. We noticed a substantial amount of
556 mold on the interior of the walls, which I didn't encounter when I first inspected it.
557 When we moved upstairs, because of the damage to the roof, the attic has mold
558 in it as well.

559
560 I'm not in the new construction business; I'm in the renovation business. I like
561 taking old properties and making them look new again, improving the appeal of
562 the neighborhood. Unfortunately, I can't save this property. I just can't save it.
563 Based on the cost that I had for the property itself because of the two lots, to be
564 able to demolish it and then renovate and put a new house up, just one house, it
565 would exceed the marketable value for a house in that neighborhood.

566
567 So what I'm proposing is to put two houses of identical width, just like the two lots
568 across from it that also received variances to put the same size house at the end
569 of this street. One thing that you don't see by the overhead shots here—if I may
570 approach, I'd like to show you what the house that I purchased in September of
571 this past year looked like before it was renovated. This is what I'm trying to do in
572 this small neighborhood. While I understand the significance of the historical
573 impact in this area, quite frankly there are a lot of houses on this street that are
574 rundown and are in need of major repair. What I'm trying to do by putting two
575 brand new residences up in this neighborhood is to improve the appeal of it. Not
576 only to add an additional house for additional family housing for Henrico County,
577 but to add to the tax base as well.

578
579 That's what I'm trying to do. I would really like to renovate this property, but
580 unfortunately the cost associated with just having a single property there would
581 far exceed the marketable value.

Mr. Mackey - Mr. Austin, the County greatly appreciates the work that you do to improve the neighborhood any way you can and everything. But the duty of the Board—I think I speak for everybody—is what the law and code allow, which is to grant a variance when we can. What you're asking us to do would be creating two variances, and that's not what we're here for.

As Mr. Madrigal spoke earlier, you have some other options that you could look into that would alleviate your situation and you wouldn't need a variance at all. Have you looked into those other options?

Mr. Austin - I have. Here's the issue with the other options. Two of three options are to renovate the existing structure or demolish it and rebuild another one, both of which, as I've identified, are cost-prohibitive based upon the size of houses in this area. They're all about the same size. There are no additional structures. There are no garages. They're all single-family dwellings. And the lot itself is significant in size; it's just the narrowness of that lot.

The third option would be the vacation of the right-of-way. Unfortunately, I found out the hard way that—if you look at the initial picture of the house, the one across the street, that right-of-way has a substantial amount of tree growth on it, including some I'm sure 100-year-old live oak trees and a substantial amount of bamboo on it. That right-of-way, I asked the airport about, because these houses butt up against the airport property. If you'll notice in that first picture, there's a significant amount of overgrowth in trees that I felt like would do damage to the roof on this house.

Mr. Mackey - Can we see the picture across the street please?

Mr. Austin - The original picture. If we were to vacate that right-of-way, if we were to use that right-of-way and clear that property, you're getting rid of all those trees. And what I found on the one across the street is when you cut those trees back, the jets on the airport, when they fire their engines up, it's an incredible sound. It's a sound issue. If we take away that right-of-way, and I'd have to take that running bamboo and those trees out, then you're creating a noise issue for the rest of the neighborhood. Obviously, there's a cost associated with clearing that lot and getting it to where it would be usable. But when you take out forty feet of trees, you can already hear these jets in this neighborhood, and I think it would be a nuisance to the rest of the neighborhood.

Mr. Mackey - Yes, Mr. Green.

Mr. Green - Could you go back to the original picture where you had the lot across the street? No, the one that had . . . no, go back. No, the one that showed the plat.

Mr. Mackey - The aerial?

629
630 Mr. Green - Yes, the aerial. Across the street, what you said is
631 that there are two—it looks to me as though that house is sitting one lot. Across
632 there are two lots. A variance was given for that.

633
634 Mr. Austin - Yes sir.

635
636 Mr. Green - Could somebody explain how that happened and his
637 can't happen? If it happened across the street where there are two houses, looks
638 like his—is the lot the same size?

639
640 Mr. Madrigal - Yes sir. The subdivision is originally from the 1900s.
641 That corner lot across the street, when it was developed it was built with that one
642 house in 1918. I'm not sure if the lots were one property at that point. But in
643 1975, that second home was basically moved onto the property. It wasn't built
644 there. It was a move-on. And there was a variance granted for the lot width
645 requirement. I'm assuming because of the architecture and the size of the home,
646 it's consistent with everything else in the neighborhood, it was probably
647 something that was moved from another lot in the neighborhood and brought
648 onto that property. That occurred in 1975.

649
650 Mr. Blankinship - Those two lots were never owned by the same person
651 at the same time.

652
653 Mr. Madrigal - That I'm not sure of.

654
655 Mr. Blankinship - Those two lots I think were sold separately,
656 developed separately. A house was built on one back in 1918. The other one, the
657 house was moved there in 1975. In this case, they originally developed the
658 property by building the one house on the two lots.

659
660 Mr. Green - I guess what I'm asking is what's the difference
661 between what he wants to do on the left side versus what's on the right side. It's
662 the same thing. You have two houses on the right side. He wants to do two
663 houses on the left side. They're at the end. What's the difference?

664
665 Mr. Blankinship - The outcome would be the same. What he's
666 proposing would be the same outcome as what you have across the street.

667
668 Mr. Green - I know we have to follow the variance requirements,
669 but it appears it's okay for the right side but it's not okay for the left side. I'm just
670 perplexed as to why.

671
672 Mr. Mackey - One of those lots may have already had a house
673 there, and they deemed the other one was unable to be developed without a
674 variance. We don't have that same situation with this lot that he's requesting

675 because there are two lots there, and he owns both those lots. So we can't say
676 that he cannot build a house there. He does have the opportunity to build a
677 house there because he has two lots. If we allow him to split it, then we're
678 making two variances.

679
680 Mr. Green - Why can't we do that?

681
682 Mr. Mackey - Because the code says we're not supposed to.

683
684 Mr. Green - Okay.

685
686 Mr. Blankinship - Because he has reasonable use of his lot. The person
687 at 106 across the street at that time in 1974 did not have reasonable use of their
688 lot because all they owned was the sixty-foot lot. There was already a house on
689 the other lot. So they had no other option.

690
691 Mr. Green - Could we give him a variance if we wanted to?

692
693 Mr. Blankinship - It's possible. I mean if it doesn't go to court, it stands.

694
695 Mr. Mackey - You'd be—well, I'll leave it alone.

696
697 Mr. Blankinship - If a variance is granted and it's challenged in court,
698 then there is the possibility—and nobody knows—that the Circuit Court would
699 reverse the decision.

700
701 Mr. Green - Challenged by other neighbors you mean.

702
703 Mr. Blankinship - Yes. And anyone who had standing to challenge.

704
705 Mr. Austin - I purchased that other lot in September. The family
706 that owned that lot—

707
708 Mr. Mackey - What are you talking about, Mr. Austin?

709
710 Mr. Austin - I purchased the one across the street that you have
711 the laminated copy of.

712
713 Mr. Blankinship - 106 S. Confederate Avenue.

714
715 Mr. Austin - I'm sorry. 106 S. Confederate. The family for this
716 property across the street came to me, asking me if I would like to purchase this
717 property to keep the home from going into foreclosure on the family because of a
718 death in the family. So obviously I did what I thought to be my due diligence. But
719 the cost associated with that entire lot, by the time I put one house on it, it's just
720 not going to be feasible. Unfortunately, this is at the end of the street. There are a

721 lot of children in the neighborhood. When you have a vacant lot there, it's an area
722 where unwelcome elements tend to congregate. I'm trying to make this new
723 again at the end of the street. With all due respect to the historical aspect, this
724 house can't be saved.

725
726 The two lots directly across from it, 106 South Confederate and the one next
727 door are identical. Both did receive variances. I'm putting an identical-width
728 house on the two lots.

729
730 Mr. Blankinship - Just to clarify, you said both received variances. At
731 100 South Confederate, the house was built in 1918 before the zoning was in
732 place. At 106 South Confederate, that did receive a variance.

733
734 Mr. Austin - Correct. I apologize.

735
736 Mr. Mackey - The zoning that he's speaking of came into effect in
737 1960. So anything built before that would be grandfathered. So some of those
738 would not need variances.

739
740 Mr. Green - The house that I'm looking at now and the house on
741 the left are on the same sized lots that you're trying to do across the street.

742
743 Mr. Austin - Identical.

744
745 Mr. Blankinship - Yes. As far as the outcomes, yes, we are looking at
746 the same situation.

747
748 Ms. Harris - Mr. Austin, you purchased this in November 2017?

749
750 Mr. Austin - Yes ma'am. As I was renovating this property, the
751 family that owned the vacant property across the street approached me to buy
752 this property with the intent of continuing to—. They saw what I was doing with
753 this. I have gotten a lot of feedback from adjacent neighbors that really
754 appreciate the fact that we're trying to improve this end of the street. So they
755 asked me to purchase this property, and I did so in November.

756
757 Ms. Harris - Okay. So you had total knowledge that this would
758 require a variance when you purchased the land?

759
760 Mr. Austin - No ma'am, I did not.

761
762 Ms. Harris - So your plan was when you purchased it to build two
763 houses there or to renovate. I know you had reasons for not being able to
764 renovate. But when you purchased the land, did you plan to erect two structures?

Mr. Austin - Let me say it this way. I've never applied for a building permit as a business. What I've done in the last fifteen years is 100 percent renovation. So my goal was to renovate this property. When I had taken the walls out and looked at the property, I found it cannot be saved. I've done dozens of properties. Unfortunately on this one—my heart breaks because I love to do this. I'd love to renovate it, but I can't. My fear is that with the cost associated with putting just one property . . . it's just not cost-feasible. I would probably have to vacate that and leave that there. I don't have any other options.

So to answer your question, my intent was to renovate that property to a new state. And I found that the repairs are . . .

Ms. Harris - Now your intent is to what, to sell it and have someone else build on it? What is your intent now?

Mr. Austin - My intent is to put up a house that is identical in width and square footage, two houses, which is in here. There is a picture of the house. I didn't see it in the presentation, but there's a picture of the new construction house that I would like to put on each lot.

Ms. Harris - I understand that. But you said your business is to renovate, but yet you say you're going to erect two houses? So are you building?

Mr. Austin - Yes ma'am.

Ms. Harris - Okay.

Mr. Austin - I would build. And obviously there's a permitting process associated with that that I'm familiar with. But again, my goal, whenever possible, is just to renovate. I'm not in the new construction business. But I have no other option but to put two new houses here that would obviously be put up by licensed contractors.

Ms. Harris - Okay. And you do understand that this Board votes on a case-by-case basis? And you do understand that we have variance guidelines, and I don't think you meet any of them? You're really asking us to vacate the guidelines, the code, for the variance.

Mr. Austin - I understand the significance of what I'm asking you to do. In the interest of the neighborhood and this particular area at the end of the street that is difficult enough with the airport being there. But this other property has been purchased by an older couple that I hope will continue to bring stability to this neighborhood and act as good stewards for the neighborhood. So what I'm trying to do is the same thing here that was done across the street with the lots that are identical in size.

812 Ms. Harris - Okay. Have you priced the lot next to the dead-end
813 street? Have you priced that? The one that has the oak trees on it and the
814 bamboo—

815
816 Mr. Blankinship - The right-of-way?

817
818 Ms. Harris - The right-of-way, yes.

819
820 Mr. Austin - Honestly, as I a single employee, I wouldn't
821 understand the requirement to purchase a right-of-way. I'm sure there is a
822 bureaucratic process that has to take place in order for that to happen. And quite
823 honestly, I don't have the resources to pursue that.

824
825 Ms. Harris - But you don't know how much—

826
827 Mr. Austin - I do know that the cost of improving that improved lot
828 with the substantial cost of eradicating the bamboo on it, which is also going to
829 be an issue on this property, which I can overcome with two homes as opposed
830 to one. But there are live oak trees. I know that they are over 100 years old. To
831 clear that entire lot would be a substantial cost, not to mention—if you'll go back
832 to the picture of the home, you'll see a twelve-foot privacy fence. I had no other
833 option but to put that privacy fence up. When the airport cut the other trees back
834 for me that were encumbering the roof, the noise level went up substantially. So
835 I'm really in fear of clearing that lot and having that noise level be a nuisance to
836 the neighborhood.

837
838 Ms. Harris - Don't you think the noise level is already a nuisance
839 to the neighborhood?

840
841 Mr. Austin - Believe me, I'm in the risk business. I know what the
842 risk involvement is when renovating properties. I was very concerned with that,
843 which is why I put the twelve-foot privacy fence up. It basically just goes right
844 over top of the airport fence.

845
846 Mr. Mackey - Thank you, Mr. Austin. Yes, go ahead.

847
848 Mr. Bell - You've heard us say this three times, but I'm not
849 going to go over it again. We are restricted on this because of a code as to what
850 we can do. I'm a little confused when she was asking you your original intent and
851 what you're going to do now. If the house, like you said, which I truly believe, is
852 all disheveled and it had to go, and you decided for this old couple to build a new
853 house just there, we wouldn't be here. And yet now you're saying that you
854 couldn't build a house, but can build two. So I'm a little confused there.

855

856 Mr. Austin - The purchase price for this home was half the price of
857 the other home that was going into foreclosure. So by the time I renovate the
858 existing property—basically, that's not an option.

859
860 Mr. Bell - No, no, I didn't say that you could build another house
861 with the property. You could tear it down and build a house.

862
863 Mr. Austin - Yes I could do that. But the cost of that when you
864 factor in—I've got the cost of demolition and the eradication of all the bamboo
865 that you see in the backyard there. The cost of that is more substantial than what
866 I could sell one single lot, one single property in that neighborhood for based on
867 the size of all the other properties in the neighborhood. So it would exceed the
868 marketable value for the neighborhood.

869
870 Mr. Bell - Thank you.

871
872 Mr. Mackey - All right. Thank you, Mr. Austin.

873
874 Mr. Green - Question.

875
876 Mr. Mackey - For Mr. Austin?

877
878 Mr. Green - For staff. How can we resolve this? I certainly
879 understand. I've been in that business myself when you go and look at a house,
880 you just can't save it, and it's just cost-prohibitive. Under normal circumstances I
881 could understand what we're trying to do. But if they've got two similar houses
882 across the street with the same width, same lot, what could be worked out.
883 What's the cost of that right-of-way? Does anybody know? Has anybody given
884 him the price of that?

885
886 Mr. Blankinship - If the Board of Supervisors vacated the right-of-way,
887 half of it would automatically revert to this property without any cost at all. If that
888 was the case, he would have enough land to create two buildable lots. The other
889 half would go to the property adjoining on the other side. If he could purchase
890 that, he would have even more land and he could come up to current standards
891 on both sides.

892
893 There is an application fee. And as he said, there is a bureaucratic process. It
894 does take some time to go through that. But it's a matter of I want to say six
895 weeks of so to get a case like that on the Board's agenda.

896
897 Mr. Green - So in other words, the Board of Supervisors would
898 basically give him and the other person that right-of-way. It would solve his
899 problem to then be able to build two houses. And it would alleviate us. Well that's
900 the solution. Why wouldn't you—

901

902 Mr. Austin - I heard somebody say I would have to purchase it. I
903 heard someone else say we would give it away.
904

905 Mr. Blankinship - If a right-of-way is vacated, half of it goes to the
906 adjoining property on each side. So half of it would go to you automatically. And
907 the other half would automatically revert to your neighbor. If you initiated the
908 process, you could work something out with that neighbor that you would buy his
909 half from him. So you could do that, or you could just take your half. Even with
910 just the one half, you'd be able to make two buildable lots. If you had both halves,
911 you could make lots that meet the current standards. You could bring one lot up
912 to the 1960 standard and the other up to the current standards with just your half
913 of the right-of-way. If you had both halves, you could build two lots at the current
914 standards, which is eighty feet of width.
915

916 Mr. Austin - Right. But it would require that I negotiate with a
917 neighbor to purchase.
918

919 Mr. Blankinship - No. To get both of them, you'd have to buy his half.
920 But you could still do what you want to do with just one half of the right-of-way.
921

922 Mr. Green - What I'm hearing is that if you went to the County, the
923 Board of Supervisors, and they granted the vacation, that means you would
924 get—
925

926 Mr. Blankinship - You would get twenty feet automatically. It's a forty-
927 foot right-of-way.
928

929 Mr. Austin - And there would be no cost associated with that?
930

931 Mr. Blankinship - Just the cost of filing the application, which is a
932 hundred dollars or something, I think.
933

934 Mr. Green - So six weeks you get—
935

936 Mr. Austin - If it was approved.
937

938 Mr. Blankinship - Right, yes. We can't guarantee that it would be
939 approved.
940

941 Mr. Austin - Right. And I'm sure, as with this one, there would be a
942 study done because of the noise problem of having to improve that lot. That's my
943 fear there.
944

945 Mr. Blankinship - The main factor, though, is the Berry Street is never
946 going to be extended. It dead-ends into the airport. There's no reason to think
947 that it would ever be extended.

948
 949 Mr. Green - I would surmise that because you're putting two new
 950 houses on there and it's generating taxes and revenue and sale prices versus
 951 leaving it with a house that's unable to be renovated, I would go that route if it's
 952 only \$100.
 953
 954 Mr. Blankinship - I'm not sure about the hundred dollar figure. It's in
 955 that range.
 956
 957 Mr. Austin - But then the cost of improving that lot and the cost of
 958 improving that right-of-way. In my opinion, it's the identical house to the lots
 959 across the street, one of which there's precedent there that it was granted a
 960 variance.
 961
 962 Mr. Green - I'm the newest person on the Board, so I'm trying to
 963 understand everything myself. As they're saying, we really can't do that. So while
 964 I would be supportive of what you're trying to do, and I see what you're saying,
 965 and I'm saying the same thing, I also have to follow the rules. Your only option, to
 966 me, is I go would forward with trying to acquire that land from the county. If I'm a
 967 supervisor, why would I not want you to build two properties that will be
 968 generating taxes and revenues and improving the neighborhood?
 969
 970 Mr. Austin - Would that request be heard by the same Board?
 971
 972 Several - No.
 973
 974 Mr. Green - The Board of Supervisors. I would think that if you're
 975 presenting the case to them that I have a dilapidated piece of property there that
 976 if I don't do anything with it, it's just going to sit there, versus giving me that
 977 twenty extra feet and I'm going to improve the neighborhood substantially, I don't
 978 see why anybody would push back on that. The only thing that it's going to
 979 require from you is time.
 980
 981 Mr. Austin - Well time and money. I don't know what would be
 982 involved with re—not rezoning, but basically now you're taking two lots that are
 983 already established that they're 60.01 feet. Now they're going to be 65 feet. So
 984 one lot width is going to be moved over, and I'm sure that there's a plot that has
 985 to occur for that. And whatever licensing requirements. Again, I'm one person.
 986
 987 Mr. Mackey - I don't want to cut you short, but you're going to kind
 988 of have to talk to the County and get a few more tips on what you can possibly
 989 do. We have a lot more cases to hear.
 990
 991 Mr. Green - That's what I was going to recommend. Is there
 992 somebody from the County that can explain to him the process?
 993

Mr. Blankinship - We've been meeting with him and talking with him, and we'll continue to do so.

Mr. Austin - Thank you.

Mr. Mackey - Thank you, Mr. Austin. Is there anyone here who would like to speak in support of the application? Anyone who would like to speak in opposition? All right, can we hear our next application, please?

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

Mr. Mackey - What is the pleasure of the Board? Being the Varina magistrate, I think it would be a good thing if the applicant could improve the lot with a new home. I don't think it's up to this Board to set up a situation where we would create two more variances when the applicant has other options that would keep him from having to have a variance. Having said that, I make a motion that we deny the applicant's request for the variance.

Mr. Green - Second.

Mr. Mackey - It's been moved and seconded. Is there discussion?

Ms. Harris - Yes. I think the report gives different choices that this owner can pursue. So hopefully he will try at least one of those.

Mr. Mackey - Okay, thank you. Any other discussion? Okay. It's been moved and properly seconded. All in favor to deny the application say aye. Those opposed say no. The ayes have it 5 to 0.

After an advertised public hearing and on a motion by Mr. Mackey seconded by Mr. Green, the Board **denied** application **VAR2018-00003, MERIDIAN DEVELOPMENT INC.'s** request for a variance from Section 24-95(b)(5) of the County Code to build a one-family dwelling at 101 S Confederate Avenue (SANDSTON) (Parcel 825-715-9922) zoned One-Family Residence District (R-3) (Varina).

Affirmative:	Bell, Green, Harris, Mackey, Reid	5
Negative:		0
Absent:		0

Mr. Mackey - The next case is the second lot adjoining that one, which is VAR2018-00004. It's the same argument, that the two lots are next to

1040 each other and the variance would make a big enough lot to build the first home.
1041 Having said that, my argument is the same. I don't think that it meets the subtest
1042 to receive a variance, so I make a motion that we deny VAR2018-00004. Is there
1043 a second?

1044

1045 Mr. Green - So moved.

1046

1047 Mr. Mackey - It's been moved and seconded. Discussion? No
1048 discussion. All in favor of denying the variance say aye. Any opposed? The ayes
1049 have it, the motion carries, and the variance is denied.

1050

1051 After an advertised public hearing and on a motion by Mr. Mackey seconded by
1052 Mr. Green, the Board **denied** application **VAR2018-00004, MERIDIAN**
1053 **DEVELOPMENT INC.'s** request for a variance from Section 24-95(b)(5) of the
1054 County Code to build a one-family dwelling at 103 S Confederate Avenue
1055 (SANDSTON) (Parcel 825-715-9922) zoned One-Family Residence District (R-3)
1056 (Varina).

1057

1058

1059 Affirmative: Bell, Green, Harris, Mackey, Reid 5

1060 Negative: 0

1061 Absent: 0

1062

1063

1064 **[At this point, the transcript continues with the public hearing on the next**
1065 **case.]**

1066

1067 **VAR2018-00005 MARK REMPE** requests a variance from Section 24-
1068 94 of the County Code to build a one-family dwelling at 6099 Old LaFrance Road
1069 (Parcels 834-706-5793 and 834-708-8616) zoned Agricultural District (A-1)
1070 (Varina). The lot width requirement is not met. The applicant proposes 104 feet
1071 lot width, where the Code requires 150 feet lot width. The applicant requests a
1072 variance of 46 feet lot width.

1073

1074 Mr. Blankinship - Would everyone who intends to speak to this case
1075 please stand and be sworn in. Raise your right hands, please. Do you swear the
1076 testimony you're about to give is the truth, the whole truth, and nothing but the
1077 truth so help you God? Thank you. Mr. Gidley?

1078

1079 Mr. Gidley - Thank you, Mr. Secretary. Members of the Board,
1080 good morning. At your desk, you should have a letter from the Carl family that
1081 was provided. That was the letter of opposition to this case.

1082

1083 This is a request for a lot-width variance for property located near the intersection
1084 of LaFrance Road and Interstate 295. The subject property contains just over
1085 one half of an acre of land and is the remnant of a larger portion that was

1086 acquired by VDOT for the construction of Interstate 295. It is owned by Mr.
1087 Michael McQuade, who also owns an eighteen-acre parcel to the rear. This is the
1088 subject property here. As I said, this is the eighteen-acre parcel here that he also
1089 owns. This is a picture of Old LaFrance Road where it terminates, and then the
1090 subject property is on the left side here. Through the trees you can see Interstate
1091 295.

1092
1093 The property is zoned A-1, Agricultural District, which requires a minimum lot
1094 area of one acre and a minimum lot width of 150 feet. Because Mr. McQuade
1095 owns both of these lots, he can adjust the common lot line to make this half-acre
1096 lot a one-acre lot that meets the lot area requirement. However, that would not
1097 assist with the lot-width issue. The property here has 104 feet of lot width and
1098 150 is required. Because of the interstate located here, and this lot to the west
1099 here which has limited width as well, he does not have the ability to acquire
1100 additional land to meet code for the lot width requirement.

1101
1102 A variance was granted back in 2010 for lot width, but this has expired. So today
1103 the new applicant, Mr. Rempe, is applying for a second variance for lot width on
1104 this property.

1105
1106 In the evaluation, does the Zoning Ordinance unreasonably restrict the use of the
1107 property. Prior of the acquisition of this land by VDOT for Interstate 295, the
1108 property complied with lot width and area. After the construction of the interstate,
1109 however, it no longer complied with either of these. Again, the property owner
1110 can adjust the lot line to provide the required lot area, but he has no option for
1111 the width. As a result, the applicant would lack a reasonable beneficial use of the
1112 property absent a variance being granted.

1113
1114 As far as the five subtests are concerned, the applicant acquired the property in
1115 good faith from VDOT back in 2008, and he is not responsible for the hardship.

1116
1117 Substantial detrimental impact on nearby property. The applicant is proposing to
1118 construct this two-story, 1,440-square-foot home. It would have vinyl siding and a
1119 brick foundation on the front of the home and concrete on the remaining
1120 foundation sides. Given the semi-rural residential character of the surrounding
1121 area, the proposed dwelling should not pose a substantial detriment to the
1122 nearby property.

1123
1124 I will note, however, that staff has received several phone calls from people
1125 nearby who are opposed to the variance, I think part of this is because last year
1126 the land to the rear was the site of a proposed sober living facility that was
1127 eventually withdrawn. And I think there is some concern that this is a continuation
1128 of that rather than a separate case, which today's case is a separate case. There
1129 has also been some opposition expressed due to this lot being smaller and
1130 narrower than what typically is found in the area.

As far as the condition of the property being addressed through an ordinance amendment, variances for lot width are fairly common. The Board heard seven such requests last year. The events that led to this situation are unusual, and they're not easily addressed by an amendment to the ordinance.

A one-family dwelling is a permitted use in the A-1 District, so this is not a use variance.

And finally, a special exception or modification is not an option in this case.

In conclusion, the property was acquired in good faith by the applicant. Absent a variance, it would lack a reasonable, beneficial use due to the lack of lot width. The proposed dwelling that you see here should not pose a substantial detriment to nearby property. Because of this and the fact that the remaining subtests are met, staff recommends approval of this request subject to the conditions found in your staff report.

This concludes my presentation, and I will be happy to answer any questions you may have. Thank you.

Mr. Mackey - Thank you, Mr. Gidley. Are there any questions from the Board or from staff for Mr. Gidley?

Ms. Harris - Mr. Gidley, what type of business or building did they want to construct in previous years that makes them a little leery of this project?

Mr. Gidley - Last year, some of this land back here, along with a parcel further west that abuts it that's owned by Mr. McQuade as well, was proposed, as I recall, to have several buildings on it that would have served as a sober living facility for people who are recovering from addiction. Due to several issues in constructing this and providing utilities to the site, it was eventually withdrawn. There was a lot of opposition to that from nearby residences. When the sign came out on the road in the same basic area, I think there was a concern that hey, this is this coming back. But as I've noted here, this is a request to construct the single-family dwelling that was shown to you.

Mr. Mackey - Any other questions from Mr. Gidley? All right, thank you. Can we hear from the applicant?

Mr. Gidley - Thank you, Mr. Chair.

Mr. Rempe - Good morning, Mr. Chairman, Board members, and staff. My name is Mark Rempe (R-e-m-p-e). I'm with Emerald Land Development. We concur with staff's findings on approving the variance. We appreciate staff's time. We've met all the tests. The variance was approved before. The house

1177 that's going to be built will conform with the neighborhood, with all the other
1178 single-family detached dwellings. I'm here to answer any of the questions.

1179
1180 Mr. Mackey - All right. Mr. Rempe, if it were approved, have you
1181 seen the conditions of the approval and agree with all six of them?

1182
1183 Mr. Rempe - Yes.

1184
1185 Mr. Mackey - You're not in any way affiliated with the previous
1186 applicant that they were speaking of, the sober living?

1187
1188 Mr. Rempe - No sir, no sir. The spec house will be sold to some
1189 homebuyers.

1190
1191 Mr. Blankinship - You said it was a spec house? You don't have a
1192 contract at this time?

1193
1194 Mr. Rempe - We don't have a contract, but it will be a first-time
1195 homebuyer.

1196
1197 Mr. Mackey - Okay. Any other questions for Mr. Rempe?

1198
1199 Ms. Harris - Mr. Rempe, do you know what else could be
1200 constructed on the lot behind this one we're considering now? If this house is
1201 built, what about the rest of this property? Do you know what else could be
1202 constructed there?

1203
1204 Mr. Rempe - I do not. There's probably just going to be single-
1205 family residential houses. That's what I would think.

1206
1207 Ms. Harris - But there is no public right-of-way, right?

1208
1209 Mr. Rempe - Yes, there is no public right-of-way back there. They
1210 would have to create some kind of roadway going through a neighboring
1211 property.

1212
1213 Ms. Harris - Do you foresee a subdivision?

1214
1215 Mr. Rempe - I do not know. But based upon the Comprehensive
1216 Plan, and based upon what's out there, that seems very reasonable.

1217
1218 Mr. Green - Do you own that property back there?

1219
1220 Mr. Rempe - I do not.

1221
1222 Mr. Green - So you can't speak to what—

1223
1224 Mr. Rempe - I can't. I'm just speculating based on the
1225 Comprehensive Plan and what's out there.
1226
1227 Mr. Green - Even if something were to be done, it would still have
1228 to come back before this Board.
1229
1230 Mr. Mackey - Absolutely.
1231
1232 Mr. Green - So the only concern that we have is this one case.
1233 And what's going to happen back there, until it's brought to us, it's none of our
1234 business. If it's not his.
1235
1236 Mr. Rempe - Yes sir.
1237
1238 Mr. Gidley - If I could, Mr. Green, that's a good point that you bring
1239 up. Mr. McQuade also owns this parcel here on your screen. If in the future they
1240 chose to develop it as a subdivision, the public street could come in here and
1241 access the property right here. So that was a concern staff had initially that
1242 perhaps they would be cutting off their only source of access. But because the
1243 same property owner also owns this lot here, that tends to resolve the access
1244 concern, if that's where you're coming from.
1245
1246 Mr. Green - No. My concern is that we're dealing with just that one
1247 little piece right there. To be speculative about what's going to happen with
1248 something that hasn't been brought before us and what somebody else owns is
1249 not our business at this point. We're dealing with this one piece. If they're going
1250 to develop that back part, and then if he's going to do something, then it
1251 potentially has to come back before us. That's when we have to deal with it. Am I
1252 correct or incorrect?
1253
1254 Mr. Blankinship - Yes sir, absolutely.
1255
1256 Ms. Harris - The reason I asked him that question is because you
1257 have people who are opposing this particular case. Listening to Mr. Gidley,
1258 maybe they're opposing it because they suspect that another sober living facility
1259 is going to be constructed on the property behind the land that we are dealing
1260 with. So if we can flush it out now let's do it, because it's a part of the legal
1261 proceedings. If it goes to the Circuit Court, it's all documented. If things come
1262 back, we do have that to rely on.
1263
1264 Mr. Green - But Mr. Gidley has articulated that you don't own that
1265 land behind it that was proposed for the sober living.
1266
1267 Ms. Harris - Yes, right now.
1268

1269 Mr. Green - And not only has he articulated that, but the
 1270 documentation shows who owns it. If it's not him, then he can't speak for it.
 1271
 1272 Mr. Gidley - Mr. McQuade owns it, so you're correct that the
 1273 applicant cannot speak for the future use of Mr. McQuade's parcel. It's only for
 1274 this site up front here.
 1275
 1276 Mr. Green - The other point is he would be impacted just as the
 1277 other neighbors if a sober living facility was put back there. So I'm not going to
 1278 ask him how he feels about that, because he's just only dealing with that one
 1279 piece of property. If he meets the conditions then . . . you talk about time. I don't
 1280 want to get into speculative stuff.
 1281
 1282 Ms. Harris - One question, Mr. Gidley. The lot we're dealing with
 1283 today is undevelopable if we do not approve this variance?
 1284
 1285 Mr. Gidley - Yes ma'am, because it lacks the required lot width,
 1286 and there are no options to obtain additional land.
 1287
 1288 Ms. Harris - Thank you.
 1289
 1290 Mr. Mackey - All right. Thank you, sir. Are there any questions for
 1291 the applicant?
 1292
 1293 Mr. Bell - Real quickly. Has your company received any
 1294 complaints from the neighbors?
 1295
 1296 Mr. Rempe - I have not.
 1297
 1298 Mr. Bell - Okay, thank you.
 1299
 1300 Mr. Mackey - We have a letter. All right. Thank you, Mr. Rempe.
 1301
 1302 Mr. Rempe - Thank you.
 1303
 1304 Mr. Mackey - Is there anyone here who would like to speak in
 1305 support of the application? All right. Is there anyone who would like to speak in
 1306 opposition of it? Please come forward. Yes ma'am.
 1307
 1308 Ms. Fore - I have concerns about—
 1309
 1310 Mr. Mackey - Excuse me, ma'am. For the record, we need you to
 1311 state and spell your name.
 1312
 1313 Ms. Fore - My name is Barbara Fore (F-o-r-e)
 1314

1315 Mr. Mackey - All right. Thank you, Ms. Fore.
 1316
 1317 Ms. Fore - My concern is what if Mr. McQuade were to approach
 1318 this gentleman and buy that house and use it for a drug house—a drug rehab
 1319 house. We call them *drug houses*. But for rehab. We know there's a need, but we
 1320 have concerns. There have already been problems on LaFrance Road as a
 1321 result of the house on that property now.
 1322
 1323 Mr. Green - With all due respect, Ms. Fore—
 1324
 1325 Ms. Fore - I live on the same side of the road, 6041.
 1326
 1327 Mr. Green - What happens if they approach you and double or
 1328 quadruple the price?
 1329
 1330 Ms. Fore - Approach me?
 1331
 1332 Mr. Green - No, I'm just saying that scenario could happen with an
 1333 array of individuals where they may want to purchase property and turn it into a
 1334 sober living facility. Correct?
 1335
 1336 Ms. Fore - I don't know.
 1337
 1338 Mr. Mackey - Ms. Fore, I'm pretty sure—we can check with staff,
 1339 but I believe that would enter a whole different realm of ordinances and
 1340 everything if they wanted to turn a residential house into a sober living home.
 1341
 1342 Mr. Blankinship - The question before the Board concerns the 104-feet
 1343 of lot width in lieu of 150 feet of lot width.
 1344
 1345 Mr. Green - I understand.
 1346
 1347 Ms. Fore - Thank you. I was just concerned I guess what the
 1348 house that he builds is going to be used for. Somebody else might to explain it
 1349 better than me.
 1350
 1351 Mr. Green - He just stated that it's going to be a single-family use.
 1352
 1353 Mr. Blankinship - His statement on the record was that it would be sold
 1354 to a first-time homeowner. Mr. Rempe is familiar to this Board, and that's the
 1355 business he's been in for some time.
 1356
 1357 Ms. Fore - Which could be Mr. McQuade.
 1358
 1359 Mr. Blankinship - If he's a first-time homebuyer, then yes. I don't know if
 1360 Mr. McQuade already owns a home.

1361

Ms. Fore - Thank you.

1362

1363

1364

Mr. Mackey - Thank you, Ms. Fore. Is there anyone else who would like to speak in opposition?

1365

1366

1367

Ms. Barbara Moore - Good morning, my name is Barbara Moore (M-o-o-r-e). We are a rural community down there. We have a very nice area where you have a lot of space between each home. We do not want to see our little rural community become a congested neighborhood with houses one on top of the other one. We feel that if this variance is allowed, then down the road, how many other people are going to say, "Well hey, I can sell some of my land and squeeze another house in here as well." So we are just very concerned.

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And yes, he brought up the past. The past has come to mind. Besides, if this is going to be sold as a single-family dwelling, who would like to buy a single-family dwelling—thinking of it being their first home, who would like to buy next door or very, very close to a sober living home, particularly when you have children? I cannot say for sure, but I have been told that there are also sex offenders in this home now. That is definitely not something that if I were to buy a new home to start with my family that I would want next door to me.

1376

1377

1378

1379

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1382

1383

Mr. Blankinship - Are you saying the home next door is currently used as a sober living facility?

1384

1385

1386

Ms. Barbara Moore - Correct.

1387

1388

Mr. Green - So that is a sober living facility, and that's next to—

1389

1390

Ms. Barbara Moore - Right next to where they propose to build this home. As to what's there, I cannot say. We were told that they have to be residents there for one month. Well, going up and down the road, you will see different vehicles there. But I have never been aware of seeing a vehicle there for any length of time. I'm not going to knock on the door and ask how long have you lived here or how long do you plan to live here.

1391

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1393

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1397

We want to keep our neighborhood, our little country road neighborhood a nice place to raise our families. We have lots of young couples with new babies. In fact, we have two babies under a year old on this road now. We want safety for our children. Most of the people bought down there because they have space that the children can play. We just don't want to see it come up where you have a house—no offense to the gentleman that was ahead of us. Their houses are right on top of each other. We like space down there, and that's the way our setting looks.

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1405

1406 Mr. Green - A staff question. From this perspective, could you
 1407 show me where that sober living house is?
 1408
 1409 Mr. Blankinship - It's right in the middle of the screen there. It is a little
 1410 bit difficult to read on the aerial photo. I guess there are trees over top of it. The
 1411 area indicated right there.
 1412
 1413 Mr. Green - The individuals that are speaking before us, where
 1414 are their houses?
 1415
 1416 Mr. Blankinship - I believe Ms. Moore, if I'm not mistaken, lives a little
 1417 bit south on LaFrance Road on the other side of the interstate.
 1418
 1419 Ms. Barbara Moore - I live on the other side of the interstate.
 1420
 1421 Mr. Blankinship - And Ms. Fore, who spoke previously, is the opposite
 1422 direction on LaFrance Road to the west.
 1423
 1424 Ms. Barbara Moore - Ms. Fore lives much closer to it than what I do, yes
 1425 sir.
 1426
 1427 Mr. Green - My other question to staff is if someone wanted to
 1428 take that property behind this house and build more sober living, it would have to
 1429 come before us again?
 1430
 1431 Mr. Blankinship - It would depend on how it was designed. Once a
 1432 single-family dwelling is created, it can be occupied by a family or it can be
 1433 occupied by a group of people who live together as a family. That's a matter of
 1434 federal fair housing law. We cannot discriminate whether the people who live in
 1435 the home are related by birth, marriage or adoption, or whether they just agree
 1436 among themselves to live together as a family.
 1437
 1438 Mr. Mackey - His question was the property behind. He was saying
 1439 if—
 1440
 1441 Mr. Green - To bring some comfort to the individuals speaking.
 1442 The property behind it. Then the property that he owns, which is undeveloped,
 1443 that would have to come back before us?
 1444
 1445 Mr. Blankinship - Not if he built a public street to the public street back
 1446 into there. He could build a subdivision with additional houses that would not
 1447 come back to this Board. That would go through the Planning Commission. The
 1448 subdivision of the property would be reviewed by the Planning Commission. This
 1449 lot is before you because there is already an existing lot that cannot be used.
 1450

1451 Mr. Mackey - Right. Thank you. I have a follow-up question for
 1452 Mr. Rempe.
 1453
 1454 Ms. Barbara Moore - And I'm sorry, sir. I'm hard of hearing, and I can't
 1455 hear. Would you speak up?
 1456
 1457 Mr. Mackey - Ms. Harris has a question for you.
 1458
 1459 Ms. Barbara Moore - Oh, okay.
 1460
 1461 Ms. Harris - Ms. Moore, did you see the picture of the house that
 1462 would be constructed on this lot? Did you see the picture? May we see the
 1463 picture of the house?
 1464
 1465 Ms. Barbara Moore - Yes ma'am, I saw the picture.
 1466
 1467 Ms. Harris - Okay. Do you think that would be an improvement
 1468 over what's going on there now? For example, we have no jurisdiction of whether
 1469 or not the sober living facility is there or not there. But we do have jurisdiction
 1470 over what's going to happen now with this particular house. Do you think that this
 1471 would be an improvement in the neighborhood rather than the opposite?
 1472
 1473 Ms. Barbara Moore - Well I can't see it being an improvement to the
 1474 neighborhood if we're going to continue getting houses on top of each other.
 1475
 1476 Ms. Harris - Right. I drove down there I think it was Tuesday
 1477 before the snow. There's a sharp turn there, and you go to the end of the street. I
 1478 would think that this would be an improvement over—the wooded area, it's
 1479 overgrown. That's my opinion, but I don't know if that's the way you feel about it.
 1480 It's like a dead end, right? The road is a dead end.
 1481
 1482 Ms. Barbara Moore - That little Old LaFrance Road, yes ma'am, it's a dead
 1483 end. When they rerouted LaFrance Road when they did 295, it became just a
 1484 little short section.
 1485
 1486 Ms. Harris - Right. And you don't think the house would be an
 1487 improvement over the wooded lot?
 1488
 1489 Ms. Barbara Moore - No.
 1490
 1491 Ms. Harris - You do not?
 1492
 1493 Ms. Barbara Moore - I'm sorry. Would you repeat that?
 1494
 1495 Ms. Harris - You don't think that the two-story house would be an
 1496 improvement over the wooded lot that's at the dead end of the street right now?

1497
 1498 Ms. Barbara Moore - No ma'am, I do not, because that's what we like. We
 1499 like the country setting.
 1500
 1501 Ms. Harris - Okay. Thank you.
 1502
 1503 Mr. Bell - The house that we were talking about that you
 1504 suspect is being used for rehabilitation, how long has that house been there, do
 1505 you know?
 1506
 1507 Ms. Barbara Moore - How long has the house that is a sober living been
 1508 there?
 1509
 1510 Mr. Bell - Yes.
 1511
 1512 Ms. Barbara Moore - My husband might could answer that. I've been down
 1513 there for fifty-six years, and that house was there when I got there. But it was not
 1514 a sober living home then.
 1515
 1516 Mr. Blankinship - The house was built in 1948, but I don't know how
 1517 long it's been used as it is today.
 1518
 1519 Ms. Barbara Moore - But it's only been, I think, a sober living house for
 1520 what, maybe a year. If a year even. I'm not sure that it's even been that use for a
 1521 year.
 1522
 1523 Mr. Moore - My name is Raymond W. Moore (M-o-o-r-e). I've
 1524 been in that neighborhood a little over eighty-three years. I had a house right
 1525 there that was about 150 feet further back, and they moved it out toward the
 1526 road. If you give this house a right-of-way to come out there, what keeps him
 1527 from putting a right-of-way in there and starting to build houses right on top of
 1528 each other? People say why don't you move? You don't leave a good
 1529 neighborhood with good people. If you move in that neighborhood, I'm going to
 1530 come visit you. If you're sick, you need your grass cut, I'll cut your grass. I don't
 1531 want to see a bunch of riffraff come in there and ruin our neighborhood.
 1532
 1533 Mr. Mackey - Thank you, Mr. Moore. Any questions for Mr. Moore?
 1534
 1535 Mr. Green - I guess that we have to kind of resolve your fear of
 1536 what could potentially happen versus what is actually happening. We can't get
 1537 into what is going to potentially happen in the future. We have to deal with what's
 1538 happening currently.
 1539
 1540 Ms. Barbara Moore - I understand that, sir. And that's why we would like for
 1541 our neighborhood and our community to stay a rural-looking neighborhood and
 1542 not houses one on top of the other. We feel that if they get to do this, then

1543 somebody else is going to come along and think they can squeeze in another
1544 house. Some of these houses do have good road frontage. They could think of
1545 the possibility that they could sell off a strip or build a house and rent it and sell
1546 the house. We just love our rural community.

1547
1548 Mr. Blankinship - This Board would not approve a creation of a new lot
1549 that did not meet the standards. The reason this case is ever before us is before
1550 this lot already exists.

1551
1552 Ms. Barbara Moore - But they could come before another board and get
1553 approval.

1554
1555 Mr. Blankinship - The property could be subdivided, but there are
1556 zoning ordinances and subdivision regulations that would require the size of lots,
1557 the width of lots. They would have to all meet the regulations. Any new lot that's
1558 being created has to meet the regulations.

1559
1560 Ms. Barbara Moore - We just love our rural community setting, and we
1561 would like to see it stay that way.

1562
1563 Mr. Blankinship - Yes ma'am.

1564
1565 Mr. Mackey - All right. Thank you. Are there any other questions for
1566 Ms. Moore? Thank you, Ms. Moore. Is there anyone else who would like to speak
1567 in opposition? Please come down, sir.

1568
1569 Mr. Crostic - Good morning. My name is Ray Crostic (C-r-o-s-t-i-c).
1570 I do not live on LaFrance Road. I'm about a mile, maybe a mile and a half away.
1571 All these people are my friends; I've known them for all my life. The only reason
1572 I'm here this morning is because I'd like to know—can I ask this gentleman how
1573 he became aware of this specific piece of property?

1574
1575 Mr. Blankinship - We can ask him that, but what would be the relevance
1576 of that?

1577
1578 Mr. Crostic - I'm like Mrs. Moore. I'd like to know if he builds his
1579 house, and a family moves in here, are they going to be made aware of what's
1580 right next door to them? I know we're not here for that reason. But there is a
1581 concern. I was at the meeting last year in Sandston when two or three hundred
1582 residents were there. The man supposedly dropped the idea of developing this
1583 land for this rehab facility. I do go through there quite often. I do see individuals
1584 walking the roads that are not residents in the area. I have no facts that that's
1585 where they live, but my assumption is it is. There's a resident right next door that
1586 has complained several times to the police department—on the left-hand side of
1587 this property—that they've been harassed by these people.

1589 My concern is with as much property as there is in the area, why this piece of
1590 property? To be bought and build a house on it right next door to this rehab? So
1591 I don't have the right to ask this gentleman?

1592

1593 Mr. Blankinship - We can ask him that. He will have an opportunity for
1594 rebuttal, and we can ask him that question.

1595

1596 Mr. Crostic - Okay. That was my question. Again, like Mrs. Moore
1597 said, if this house is built and the gentleman that owns this adjacent property
1598 decides he wants to buy it . . . I know I don't have any facts. It's just things
1599 running through all of our heads of what might take place. That's all I have.

1600

1601 Mr. Blankinship - Thank you.

1602

1603 Mr. Mackey - Any questions for Mr. Crostic? Thank you, sir. Would
1604 anybody else like to speak in opposition? At this time, I'd like to ask Mr. Rempe
1605 to come back to the podium, please. I have a question. Were you aware that the
1606 property beside yours was a sober living facility or home?

1607

1608 Mr. Rempe - No, I was not.

1609

1610 Mr. Mackey - You were not.

1611

1612 Mr. Rempe - I would like to point out that, you know, a variance is a
1613 very technical matter. We have met our tests and our obligation here. As
1614 everyone knows, there are certain tests. If you meet them, you meet them; if you
1615 don't, you don't. So we feel that we've met the tests. We understand and respect
1616 your position. This is going to be a large lot, so it's going to have the feel of a
1617 rural setting. It's just lacking the lot width requirement. That's all.

1618

1619 Ms. Harris - Mr. Rempe, can you answer the question that
1620 Mr. Crostic posed? How did you learn of this property?

1621

1622 Mr. Rempe - It was for sale on the MLS, so anybody could have
1623 bought the property. I think this property's been up for sale for a long time.

1624

1625 Mr. Mackey - Any other questions for Mr. Rempe? All right. Thank
1626 you. Can we have the next applicant?

1627

1628 **[After the conclusion of the public hearings, the Board discussed the case**
1629 **and made its decision. This portion of the transcript is included here for**
1630 **convenience of reference.]**

1631

1632 Mr. Mackey - What is the pleasure of the Board? I am the Varina
1633 magistrate. This is a very tough case. Having heard what many of the neighbors
1634 have said, we definitely feel the concerns. But the applicant has met the five

1635 subtests in order to receive a variance, so there's really nothing under the code
1636 that we can do to deny them. Having said that, I make a motion that we grant the
1637 variance for VAR2018-00005. Is there a second?

1638
1639 Mr. Green - So moved.

1640
1641 Mr. Mackey - Okay, it's been moved and seconded. Discussion?

1642
1643 Ms. Harris - Yes. I think the neighbors do have a problem, but I
1644 think that they're going to have to address that problem. If the sober living facility
1645 is not meeting standards, I think they need to address that problem. Get other
1646 people involved in it. I don't think that we are indifferent to problems of this
1647 nature. But as far as this case I concerned, I think the subtests have been met.

1648
1649 Mr. Mackey - Any other discussion?

1650
1651 Mr. Bell - Yes, very briefly. I am also very understanding about
1652 all the concerns presented to us by the property owners. Fortunately, on some of
1653 their problems, in order for it to happen it has to come back through us. In that
1654 case, they'll be looked at again. Unfortunately, we act on what we know, what the
1655 facts are, not the speculations. And yet if you have a piece of property, you
1656 speculate on a lot of things, whether too much snow is going to get on your roof
1657 and cause it to break, whether you want to stay rural and you find that a
1658 subdivision has moved in. There is not much you can do without breaching the
1659 code. But I understand, and I just wanted to say that. I think all of us up here
1660 understand it. But as was already said, what we know is what we rule on, and
1661 that's what we did. Thank you.

1662
1663 Mr. Mackey - Any other discussion? All right, it's been moved and
1664 seconded. All in favor of granting the variance say aye. Any opposed? The ayes
1665 have it, and the motion is carried 5 to 0.

1666
1667 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
1668 Mr. Green, the Board **approved** application **VAR2018-00005, MARK REMPE**
1669 requests a variance from Section 24-94 of the County Code to build a one-family
1670 dwelling at 6099 Old Lafrance Rd (Parcels 834-706-5793 and 834-708-8616)
1671 zoned Agricultural District (A-1). The Board approved the variance subject to the
1672 following conditions:

1673
1674 1. This variance applies only to the lot width requirement for one dwelling only.
1675 All other applicable regulations of the County Code shall remain in force.

1676
1677 2. Only the improvements shown on the building design filed with the application
1678 may be constructed pursuant to this approval. Any additional improvements shall
1679 comply with the applicable regulations of the County Code. Any substantial

1680 changes or additions to the design or location of the improvements will require a
1681 new variance.

1682
1683 3. Approval of this request does not imply that a building permit will be issued.
1684 Building permit approval is contingent on Health Department requirements,
1685 including, but not limited to, soil evaluation for a septic drainfield and reserve
1686 area, and approval of a well location.

1687
1688 4. Clearing, grading, or other land disturbing activity shall not begin until the
1689 applicant has submitted, and the Department of Public Works has approved, an
1690 environmental compliance plan.

1691
1692 5. Prior to the approval of a building permit, the property owner shall adjust the
1693 lot line between the property (GPIN 834-706-5793) and Parcel 834-708-8616, in
1694 order to ensure the property contains at least one acre of lot area. The remainder
1695 of Parcel 834-708-8616 shall be consolidated with Parcel 834-707-5482.

1696
1697 6. A street sign and post for Old LaFrance Road shall be installed by the
1698 applicant prior to the issuance of a certificate of occupancy. Signs for non-
1699 maintained rights-of-way shall have a blue background (#3M product # 1175C or
1700 approved equivalent) with white letter(#4090 or approved equivalent).

1701
1702
1703 Affirmative: Bell, Green, Harris, Mackey, Reid 5
1704 Negative: 0
1705 Absent: 0

1706
1707
1708 **[At this point, the transcript continues with the public hearing on the next**
1709 **case.]**

1710
1711 **VAR2018-00006** **SHURM HOMES** requests a variance from Section
1712 24-94 of the County Code to build a one-family dwelling at 3789 Darbytown
1713 Place (Parcel 827-692-6694) zoned Agricultural District (A-1) (Varina). The lot
1714 width requirement is not met. The applicant proposes 135 feet lot width, where
1715 the Code requires 150 feet lot width. The applicant requests a variance of 15 feet
1716 lot width.

1717
1718 Mr. Blankinship - Would everyone who intends to speak to this case
1719 please stand and be sworn in. Mr. Rempe is still under oath. No one else? All
1720 right, Mr. Gidley, you may begin.

1721
1722 Mr. Gidley - Thank you again, Mr. Secretary, members of the
1723 Board.

1724

1725 This is also a request for a lot-width variance, this time for property located near
1726 the intersection of Interstate 295 and Darbytown Road. The history of this
1727 property is a little bit complicated. The original site was roughly seven acres, but
1728 when Interstate 295 was put in, Darbytown Road was relocated. It ended up
1729 splitting the seven-acre tract. To the north of Darbytown Road, you had a 3.1-
1730 acre parcel, which included this parcel here and the one that is the subject to
1731 today's request. It contained 3.1 acres and had adequate lot width on Darbytown
1732 Road.

1733
1734 In 1995, the owner of the property divided the property. That created two parcels,
1735 one that met code here on Darbytown. Unfortunately, in dividing the property, it
1736 created a second parcel here that did not have the required lot width. This parcel
1737 has 137 feet of lot width on Darbytown Place rather than the required 150 feet.

1738
1739 Following the division in 1995, the owner at the time applied for and obtained a
1740 variance in 1996. Sweet Homes subsequently acquired the property before
1741 selling it to the current owner in 1997. The original variance eventually expired,
1742 and the new owner applied for and received a second variance for lot width in
1743 2007. This has also expired. Today, Shurm Homes and Mark Rempe have
1744 applied for what's essentially the third lot-width variance on this property. This
1745 would allow for the construction of a single-family dwelling on the parcel.

1746
1747 This is the view of the property from Darbytown Place. As you can see here, it's
1748 fairly level and open right here. Once you get to the wooded area behind it, it
1749 does slope down significantly, and there are environmental constraints in the
1750 back.

1751
1752 As far as the evaluation of the variance, does the Zoning Ordinance
1753 unreasonably restrict the utilization of the property? In this case, again it
1754 shouldn't have been created, but the reality as it stands right now is you have a
1755 large area up front here where a home could be developed. Yet absent a
1756 variance, a home could not be developed on the property due to the lack of
1757 adequate lot width.

1758
1759 As far as the five subtests are concerned, when the current owner, Mr. Kenney,
1760 acquired the property in 1997, a variance was still in effect on the property. He
1761 did not create the hardship, and he purchased the property in good faith with a
1762 reasonable expectation that it was a buildable lot, due to the variance that was in
1763 effect at the time. This is the property right here in front of you, and this is looking
1764 across the street at some adjacent homes.

1765
1766 When it comes to any detrimental impact on nearby property, the proposed use
1767 of this property is a one-family dwelling. As you can see, it's consistent with the
1768 properties in the area. Staff, however, has not received any information from the
1769 applicant regarding the proposed dwelling for this specific property. The adjacent
1770 homes, as you can see, are a mix of vinyl and brick siding, and they also have

1771 brick foundations on four sides. They range in area from 1,302 square feet up to
1772 2,208 square feet. Assuming the new home will be of similar design, it should not
1773 pose a substantial detrimental impact on nearby property.

1774
1775 As far as an ordinance amendment to resolve this issue, variances for lack of lot
1776 width are fairly common. Again, you heard seven such requests last year, and
1777 you just heard one a moment ago. The events that led to this situation are
1778 unusual and are not easily addressed by an amendment to the Zoning
1779 Ordinance. This is not a use variance because the property is zoned A-1,
1780 Agricultural, and a one-family dwelling is a permitted use in that district.

1781
1782 And finally, a special exception or modification is not an option in this case.

1783
1784 In conclusion, allowing a home to be constructed would provide a beneficial use
1785 for the property. Although the parcel should not have been created, the current
1786 owner was not responsible for its creation and purchased it in good faith. There
1787 have also been two previous variances approved here. Since the remaining
1788 subtests are also met, assuming the home's design is compatible with nearby
1789 property, staff can recommend approval of the request subject to the conditions
1790 in the staff report.

1791
1792 This concludes my presentation. If you have any questions, I'll certainly be happy
1793 to answer them.

1794
1795 Mr. Mackey - Thank you, Mr. Gidley. Has the staff been provided by
1796 the applicant any pictures of what the home would look like?

1797
1798 Mr. Gidley - No sir, we have not.

1799
1800 Mr. Mackey - All right. Any other questions?

1801
1802 Ms. Harris - Yes. Mr. Gidley, this lot is bit shallow, right? I was
1803 wondering how many feet from the public right-of-way would they be allowed to
1804 construct a home and still have the required number of feet.

1805
1806 Mr. Gidley - It's a pretty good distance. On here you can see 225
1807 feet to here. I would say it goes probably 100 feet, 125 feet, something like that.
1808 So there is adequate room to put the proposed home on it.

1809
1810 Mr. Blankinship - The code requires fifty feet of setback, and they've
1811 not even applied for a variance from that.

1812
1813 Ms. Harris - Right. When I drove by there, it just seemed so
1814 shallow. The lot seemed shallow, like a big drop. I was curious as to how many
1815 feet before that ravine.

1816

1817 Mr. Gidley - The ravine starts shortly after you get to the wooded
1818 area here. On the adjacent properties, you can see they're roughly in line with
1819 the cleared area on this site. You have two homes here. So there's no reason to
1820 suspect you can't place a home here and have a similar front yard as the two
1821 adjacent homes. And then whether this is wooded or a ravine or not, you can still
1822 count this towards your rear setback requirement.
1823
1824 Ms. Harris - All right, thank you.
1825
1826 Mr. Gidley - Yes ma'am.
1827
1828 Mr. Mackey - Any other questions for Mr. Gidley? All right, thank
1829 you, sir.
1830
1831 Mr. Gidley - Thank you, Mr. Chair.
1832
1833 Mr. Mackey - Can we hear from the applicant?
1834
1835 Mr. Rempe - We appreciate staff's time and effort on the case, and
1836 we concur with staff's findings. We feel that we meet the tests for the variance.
1837
1838 Mr. Green - Could you tell us what kind of home you're going to
1839 put there?
1840
1841 Mr. Rempe - The home will be for a first-time homebuyer. It will be
1842 1,400 to probably 1,800 square feet. We don't know the exact model yet. The
1843 next step will be filing a permit, and we'd work with the County on making sure
1844 everything's right with the permit.
1845
1846 Mr. Green - And it will be similar to the other homes?
1847
1848 Mr. Rempe - It'll be similar. We're in the homebuilding business,
1849 and as you probably know, you build to make money within that neighborhood.
1850
1851 Ms. Harris - Mr. Rempe, would it be two stories or one-story? I
1852 know that other homes in that community seem to be one-story homes, mostly
1853 ranchers.
1854
1855 Mr. Rempe - We do have plans for a rancher, so that's a good
1856 possibility. But I just don't know right now.
1857
1858 Mr. Mackey - Any other questions?
1859
1860 Ms. Harris - Yes. How did you learn of this lot? I'm just curious.
1861

1862 Mr. Rempe - There are a lot of lots that are for sale in Henrico. I'm
1863 in the affordable home business for first-time homebuyers.
1864
1865 Ms. Harris - So an electronic search?
1866
1867 Mr. Rempe - Electronic search.
1868
1869 Mr. Blankinship - He's not giving away his trade secrets.
1870
1871 Mr. Mackey - Mr. Rempe, have you seen all five conditions, if they
1872 were approved?
1873
1874 Mr. Rempe - Yes.
1875
1876 Mr. Mackey - Do you agree with all five conditions?
1877
1878 Mr. Rempe - Yes.
1879
1880 Mr. Mackey - All right.
1881
1882 Mr. Blankinship - I see why it's important now. We did point out a
1883 minimum square footage of 1,300 square feet. The code only requires 900, so
1884 that is a little bit of a bump up to make it more compatible with the surrounding
1885 neighbors.
1886
1887 Mr. Mackey - And you do agree to comply with that?
1888
1889 Mr. Rempe - Yes.
1890
1891 Mr. Mackey - Okay. Any other questions for Mr. Rempe? All right,
1892 thank you sir. Is there anyone here who would like to speak in support of this
1893 application? Anyone to speak in opposition? All right, thank you. Before we go on
1894 to our last case, I'd like to take ten-minute recess so we can—
1895
1896 Mr. Blankinship - Do you want to go through the decisions first and then
1897 take the recess?
1898
1899 Mr. Mackey - Yes, let's do that. That would be better.
1900
1901 **[After the conclusion of the public hearings, the Board discussed the case**
1902 **and made its decision. This portion of the transcript is included here for**
1903 **convenience of reference.]**
1904
1905 Mr. Mackey - What is the pleasure of the Board?
1906

1907 Ms. Harris - I would like to make a motion on this. I move that we
1908 approve this variance. Looking at the report that we were given, it seems that the
1909 five subtests are met. I think that a rancher or something similar on that property
1910 would be an improvement in that neighborhood. It's an attractive neighborhood
1911 as it is. I see no detrimental harm to the neighborhood if we approve this case.
1912

1913 Mr. Mackey - All right, it's been moved by Ms. Harris. Is there a
1914 second?

1915
1916 Mr. Bell - Second.
1917

1918 Mr. Mackey - Seconded by Mr. Bell. Discussion? I agree with
1919 Ms. Harris's statements and Mr. Bell. I think all the subtests have been met. I do
1920 think it would be an improvement to the area if the variance was approved. Any
1921 other discussion? All right, it's been moved and seconded. All in favor of granting
1922 the variance say aye. Any opposed. The motion is carried 5 to 0.
1923

1924 After an advertised public hearing and on a motion by Ms. Harris, seconded by
1925 Mr. Bell, the Board **approved** application **VAR2018-00006, SHURM HOMES**
1926 requests a variance from Section 24-94 of the County Code to build a one-family
1927 dwelling at 3789 Darbytown Place (Parcel 827-692-6694) zoned Agricultural
1928 District (A-1) (Varina). The Board approved the variance subject to the following
1929 conditions:
1930

1931 1. This variance applies only to the lot width requirement for one dwelling only.
1932 All other applicable regulations of the County Code shall remain in force.
1933

1934 2. Approval of this request does not imply that a building permit will be issued.
1935 Building permit approval is contingent on Health Department requirements,
1936 including, but not limited to, soil evaluation for a septic drainfield and reserve
1937 area, and approval of a well location.
1938

1939 3. Clearing, grading, or other land disturbing activity shall not begin until the
1940 applicant has submitted, and the Department of Public Works has approved, an
1941 environmental compliance plan.
1942

1943 4. There shall be no further division of the property.
1944

1945 5. The proposed home shall have brick and/or vinyl siding with a brick
1946 foundation on all four sides. It shall contain a minimum of 1,300 square feet of
1947 livable floor area.
1948

1949
1950 Affirmative: Bell, Green, Harris, Mackey, Reid 5

1951 Negative: 0

1952 Absent: 0

1953
 1954
 1955 Mr. Mackey - At this time before hearing the deferred case of The
 1956 East End Landfill, we're going to take a ten-minute recess while we gather our
 1957 materials.
 1958
 1959 [The Board takes a ten-minute recess.]
 1960
 1961 Mr. Mackey - I call the meeting back to order, and we can proceed
 1962 with our final applicant.
 1963
 1964 Mr. Blankinship - This case is CUP2013-00014, The East End Landfill.
 1965 The director of planning requests revocation of a conditional use permit at 1820
 1966 Darbytown Road.
 1967
 1968 **CUP2013-00014 THE EAST END LANDFILL:** the director of planning
 1969 requests revocation of a conditional use permit at 1820 Darbytown Road (Parcels
 1970 808-706-6679, 808-707-7024 and 809-707-1585) zoned Business District (B-3)
 1971 and General Industrial District (M-2) (Varina).
 1972
 1973 Mr. Blankinship - Would everyone who intends to speak to this case
 1974 please stand and be sworn in. Raise your right hands, please. Do you swear the
 1975 testimony you're about to give is the truth, the whole truth, and nothing but the
 1976 truth so help you God? Mr. Tokarz?
 1977
 1978 Mr. Tokarz - Good morning, members of the Board. My name is
 1979 Tom Tokarz. I am here representing the director of planning regarding the latest
 1980 round of The East End Landfill's noncompliance with the Henrico County Code
 1981 and the use permit issued by this Board. Indeed, TEEL's excuses for its
 1982 noncompliance with the conditions imposed in CUP2013-00014 are eerily
 1983 reminiscent of what Ms. Harris and I remember about TEEL's illegal deposit of
 1984 coal ash several years ago. As Yogi Berra famously said, "It's déjà vu all over
 1985 again."
 1986
 1987 We're here today on Mr. Emerson's petition asking the BZA to revoke the use
 1988 permit for noncompliance with the use permit and to give the landfill ninety days
 1989 to stop accepting waste. I explained the reasons for the petition in my December
 1990 1, 2017 letter, and today I want to address TEEL's response in a little more detail
 1991 than my letter to you earlier this week.
 1992
 1993 Because TEEL argues about what the Board has the power to do, I want to start
 1994 with the Board's authority to impose conditions on conditional use permits. So I'll
 1995 take us to slide #1. This is Virginia code 15.2-2309, subsection 6. This states that
 1996 the BZA has the power to hear and decide applications for special exceptions as
 1997 may be authorized by the ordinance, which is what the BZA did in 2013, and that

1998 the Board may impose such conditions relating to the use for which a permit is
1999 granted as it may deem necessary in the public interest.

2000
2001 When the BZA approved the use permit in 2013, it imposed thirty-two conditions
2002 in its approval. If you read the transcript of that hearing, the applicant agreed to
2003 those thirty-two conditions in the approval. So here's what condition #1 said: The
2004 use permit is subject to all provisions of the County code. This is important
2005 because Section 24-116(c) of the County code on June 27, 2013, had this
2006 provision: "Construction or operation shall be commenced within one year of the
2007 date of issuance of a special use permit or it shall become void." The reason this
2008 is important is because the power of the BZA to issue use permits is what is
2009 decided by the Board of Supervisors. When they gave the power to issue a use
2010 permit, they also gave the conditions under which use permits can be granted.
2011 And 24-116 specifically provided that the construction or operation must be
2012 commenced within one year or it shall become void. This requirement of the
2013 County code, in our view, was incorporated into the use permit by condition #1.

2014
2015 There is no dispute that TEEL did not commence construction or operation of the
2016 added area. The added area was the area that was added as part of CUP2013-
2017 00014—I'll just keep calling that the use permit—when the use permit was
2018 submitted and approved by the BZA. The added area was an area that had been
2019 added to the landfill, not previously part of the 2007 use permit. Therefore, as to
2020 the added area, it is our position that the use permit became void on June 27,
2021 2014, because operation and construction did not commence within one year in
2022 the added area as required by Henrico County code.

2023
2024 Now TEEL says it didn't have to commence construction or maintenance in the
2025 added area because it was operating in the main area of the landfill, and that was
2026 sufficient to satisfy Section 24-116(c). However, this argument ignores the fact
2027 that one of the two purposes of the use permit was to add the added area to the
2028 landfill. In addition, this argument ignores the requirement of section 24-116(c) to
2029 commence construction or operation within one year. Because TEEL was
2030 already operating in a portion of the landfill, the word *commence* in 24-116(c)
2031 applies to the added area, which was not in operation at that time. Because
2032 TEEL did not commence construction or operation in the added area within one
2033 year of the use permit, TEEL did not comply with condition 1, and the use permit
2034 was void.

2035
2036 If you do nothing else today, the director of planning asks the Board to revoke the
2037 permit as to the added area to give effect to condition 1 of the use permit and
2038 Section 24-116(c) of the Henrico County Code.

2039
2040 Mr. Emerson also seeks revocation of the use permit for TEEL's noncompliance
2041 with condition 4. Condition 4 provides that the applicant shall obtain and maintain
2042 all applicable permits from the Virginia Department of Environmental Quality.
2043 TEEL admits it has not obtained permits from DEQ for the added area. TEEL

claims it's been unable to get the necessary permits for reasons beyond its control. But there are two responses to this argument.

First, TEEL could have come to the BZA in 2014 and asked for an amendment of the use permit when it realized it was not going to comply with condition #4. It did not do so. It can't complain now because it failed to do so at the time.

Secondly, although TEEL blames DEQ and CVWMA and the County for not obtaining its permits for the added area, none of them did anything to stop TEEL from submitting responses to DEQ's technical review #1 during the twenty months between March 2016 and October 2017. In fact, before the BZA hearing on this use permit last August, TEEL admitted to the BZA it had deliberately chosen not to submit anything to DEQ for over seventeen months as a permitting strategy.

Now TEEL also claims it did not need to obtain a permit for the added area because it does not intend to use the added area until sometime in the future. Therefore, it says the word *applicable* doesn't apply to the added area yet. However, condition 4 required TEEL to obtain all applicable permits. There is not dispute that TEEL needs DEQ permits for land-filling operations in the added area. And this is proven by the fact that TEEL started the DEQ application process for the added area in September 2013. There is simply no provision in condition #4 for TEEL to delay getting a permit for the added area until TEEL decides it needs to. TEEL's position is apparently that TEEL gets to decide how to comply with the use permit simply by claiming that it's not ready to start work in the added area.

Therefore, the BZA should also determine TEEL has not satisfied condition 4 of the use permit.

The third ground for revocation of the use permit is violation of condition 20, and this is new. This is new from last August. Condition #20 is up here on the screen. "The landfill shall only accept construction, demolition, and debris waste...No hazardous waste as defined by the Virginia Hazardous Waste Management Regulations, nor any biodegradable material other than woody waste from construction, demolition, and land-clearing operations, shall be deposited in the landfill or used as fill or cover material."

On April 28, 2017, TEEL's annual report certified to the BZA that the materials received by TEEL met the requirements of condition #20. That's attachment T in materials submitted in the December petition. That was a certification to the BZA. Flat statement. No exceptions. But then we found out that certification's not true, subsequent to our meeting in August.

In 2017, DEQ gave TEEL a Notice of Violation, which is attachment R to the Petition for Revocation that was filed on December 1st. In the Notice of Violation,

2090 it included a copy of a March 8, 2017, Generator's Waste Profile form for what's
2091 called *spent bauxite mud*, generated during aluminum sulfate production that
2092 TEEL has accepted and mixed with soil and used as progressive cover. We
2093 would submit to the Board that spent bauxite mud generated during an industrial
2094 process is not construction, demolition, or debris waste, nor is it woody waste
2095 from construction, demolition, or land-clearing operations.

2096
2097 The September 2017 Notice of Violation also included a copy of a June 6, 2017,
2098 Generator's Waste Profile form, for what Sunoco Products, the generator,
2099 classified as *pre-sell industrial waste*. Pre-sell industrial paper mill sludge waste
2100 is not construction, demolition, or debris waste. Nor is it biodegradable material
2101 that is woody waste from construction, demolition, and land-clearing operations.
2102 It is paper sludge generated in an industrial process. TEEL's claim that it falls
2103 within the use permit because it originally came from wood should be rejected.
2104 You can see from these two pictures in the September 2017 DEQ Notice of
2105 Violation that this industrial waste did not come from construction, demolition, or
2106 land clearing.

2107
2108 For these reasons, the director of planning requests revocation of the use permit
2109 for TEEL's failure to comply with conditions 1, 4, and 20 of the use permit. I'll be
2110 glad to answer any questions.

2111
2112 Mr. Mackey - All right. Any questions from the Board of staff? None
2113 at this time. Thank you.

2114
2115 Mr. Tokarz - Thank you.

2116
2117 Mr. Mackey - Can we hear from the applicant?

2118
2119 Mr. Plumlee - Good morning. I appreciate everyone's patience
2120 today. My name is Bryan Plumlee. We're here in support of TEEL.

2121
2122 Mr. Mackey - Can you spell that, Mr. Plumlee?

2123
2124 Mr. Plumlee - Yes sir. My last name is P (as in Paul), l-u-m-l-e-e.

2125
2126 Mr. Mackey - Thank you, sir.

2127
2128 Mr. Plumlee - I wasn't born as tall as the Plumlee brothers that play
2129 basketball, but it's the same spelling.

2130
2131 We're here, obviously, to object to this petition to revoke. I think I'm going to take
2132 about fifteen minutes to go through my presentation. We have two witnesses
2133 here to talk very briefly about TEEL as a company and also a little bit about the
2134 process of submitting for applications.

2136 Mr. Schmidt is also here with my office to address some items if necessary. I'll try
2137 to make this brief, answer your questions, and do this as quickly as I can. The
2138 fact that I have a lot of slides actually allows me to move more quickly because
2139 I'm just going to speed through them.

2140
2141 First, I want to make sure my objections get put on the record here. We object to
2142 the County's discussion of prior incidents by Mr. Tokarz before the 2013 CUP.
2143 We object to the County's submission of a DEQ Notice of Violation as it is not a
2144 finding of fact that's admissible as part of this proceeding. We object to the
2145 County attorney presenting himself as an expert witness in solid waste matters.
2146 And the County has presented no competent evidence in this hearing. We object
2147 to the County's revised petition, because the County has shifted its position. If
2148 you recall in August when we came here, the County came specifically to revoke
2149 a permit for an expansion. We pointed out that they were trying to revoke our
2150 only permit. Well I think they've come around to agree to the point that if our
2151 permit is revoked, we're shut down as an operation. In the period of time since
2152 we came in August, the Notice of Violation from the DEQ was gathered by the
2153 County, and they're using that as a separate matter now under condition 20 to try
2154 to shut down our operation. We object to that shifting of position. I'll go through
2155 the specifics.

2156
2157 First, a little bit of background on this landfill. I'm sure you all have heard a lot
2158 about the landfill over the years, but I'm just going to give you a quick summary.
2159 These landfills have been in operation in this county since the 1980s. In 2007,
2160 two landfills were combined into one permit. The 2007 permit that was approved
2161 December 21, 2007, combined the East End Landfill with the Darbytown Landfill.
2162 The DEQ Solid Waste Permit 524 is the current DEQ permit for this landfill, held
2163 by TEEL as the only permit required by DEQ. The CUP in 2013 actually
2164 superseded the 2007 CUP, and it was approved by this Board in June 2013 at a
2165 hearing.

2166
2167 First, the application for the 2007 was very similar to the 2013 in that it said it was
2168 to combine operations of two landfills under one permit and add additional
2169 property to the permit. Here's the approved permit from December 21, 2007.

2170
2171 Looking first at condition 4, if you go back to 2007 and look at condition 4, you
2172 see it says that the applicant shall obtain and maintain a permit or permits from
2173 the DEQ and specifically stated if this condition is not satisfied within one year of
2174 approval, the use permit shall be void. There was a very specific reason for that
2175 condition. That was— what you see in the narrative that was submitted in 2007, it
2176 states quite plainly given the need to obtain a DEQ permit, the applicant requests
2177 that the effectiveness of the CUP be conditioned upon the issuance of a new
2178 DEQ permit. They needed a new DEQ permit. That was obvious from the
2179 application.

2181 This information is contained in exhibit E from the County's petition to revoke.
2182 You see that Solid Waste Permit 525 was indeed obtained by TEEL on January
2183 1, 2008. So the very next month from the date of the hearing, the granting in
2184 December 2007 of the first CUP, they obtained their DEQ permit 525. The Solid
2185 Waste Permit 524 they'd already possessed walking into that hearing. They had
2186 possessed it as early as May 2006.

2187
2188 What happened then was that TEEL consolidated Solid Waste Permit 525 into
2189 Solid Waste Permit 524 to make it one. And here is the permit modification #10
2190 dated March 23, 2012, and it simply says this tenth mod of the permit includes
2191 merging permit 525 and permit 524 into one facility operating under permit #524.

2192
2193 When we came for approval of the CUP in 2013, we held one permit with the
2194 DEQ. That's the same permit we have now. That's the same permit we're going
2195 to have into the future. That's why—you see first—I want to go back to the
2196 application in 2013. We're asking you to add the Simons' tract, which is about
2197 eleven acres of property, to the East End Landfill—which at the time of this
2198 application was 107 acres—with the effect of replacing and superseding the prior
2199 conditional use permit. So the 2013 replaced the 2007, adds the Simons' tract to
2200 it.

2201
2202 And now condition 4 has been changed by the Board. Condition 4 says the
2203 applicant shall obtain and maintain all applicable permits. Not the permit or
2204 permits from the DEQ, but all applicable permits. It removes the one-year
2205 deadline. You see it right there in the condition. It removed the one-year
2206 deadline. I'll flip back so you can see the prior condition 4 said if this condition's
2207 not satisfied within a year, the use permit is void. That was removed in 2013.

2208
2209 So there is no other DEQ permit required. That is a basic misunderstanding the
2210 County had at the outset of this. It's shifted its position because it was mistaken.
2211 It thought it was revoking a permit just for an expansion. We know that's not true.
2212 The only permit we need from DEQ we currently have. In fact, the technical
2213 review that Mr. Tokarz presented to you, you see it references permit #524. That
2214 is the permit we hold. All we're seeking is a modification to add the expansion in
2215 the landfill. We're not seeking any new permits. That's a very important
2216 distinction. Again, this is the condition. The applicant shall obtain and maintain all
2217 applicable permits from the DEQ. We possess it.

2218
2219 What the Board did instead, instead of having the one-year termination period in
2220 that condition #4, the Board put different language in this conditional use permit
2221 in 2013. You see it at the very end, the very last page of the conditional use
2222 permit. It said the rules of the Board provide that this approval must be acted
2223 upon by June 27, 2014, or it becomes void. Acted upon. Okay. So what do we do
2224 to act upon it?

2226 Mr. Mackey - I just have one question for clarification. TEEL is the
 2227 portion that was the southwest property?
 2228
 2229 Mr. Plumlee - I believe so.
 2230
 2231 Mr. Mackey - Okay. And you bought Darbytown and—okay.
 2232
 2233 Mr. Plumlee - Darbytown. And they were combined. That was in
 2234 2007 that that combination occurred.
 2235
 2236 Mr. Mackey - All right. Sorry.
 2237
 2238 Mr. Plumlee - So 2013 came, and we wanted to add the Simons'
 2239 eleven acres to it. That's what 2013 was about. In addition to wiping out the old—
 2240
 2241 Mr. Mackey - Now 2013, is it still two properties or is it one now?
 2242
 2243 Mr. Plumlee - They had been merged before the presentation in
 2244 2013. Both as a permit before the Board, the CUP, and the DEQ permit 524.
 2245
 2246 Mr. Mackey - All right. So before 2013, they came together.
 2247
 2248 Mr. Plumlee - That's correct.
 2249
 2250 Mr. Mackey - Okay. All right. Sorry for the interruption.
 2251
 2252 Mr. Plumlee - No concern at all. That's a good question.
 2253
 2254 The Board actually decided to put the restriction on time in this language, which
 2255 is starkly different than the 2007 language. So the language becomes extremely
 2256 important to understand and consider here, saying we have to act upon it by
 2257 June 27, 2014, or it becomes void. Well we acted upon this right away. We
 2258 began immediately to operate. You see our inspections that we're receiving from
 2259 the County. These are County inspections through the years that we've received,
 2260 and you'll see more as I go through.
 2261
 2262 We also acted upon the conditional use permit by requesting an extension and
 2263 submitting our part A application. You see September 25, 2013? We submit our
 2264 part A application with the DEQ. So we are acting upon it. There's no dispute that
 2265 we have acted upon this.
 2266
 2267 Condition 1 I want to address very quickly. It's a very similar concept in that you
 2268 have to act within a certain period of time is what the code section is saying. But
 2269 Mr. Tokarz has cited us as violating. But if you look at the language, the condition
 2270 says the use permit is subject to all requirements of County code, and the code
 2271 section that Mr. Tokarz has cited—116(d) actually—says construction or

operation shall commence within two years of the date of issuance of the conditional use permit or it shall become void. Well, that's simply not the type of CUP that was being requested at the time. It was truly an operating facility. It was operating at that time. So this code section was never going to be violated. It was never subject—really, this landfill was never subject to it. The expanded area only comes into play when the expanded area is required. We're still an operating landfill. Since the 1980s.

Mr. Mackey - This 2013 one wasn't for the expanded area?

Mr. Plumlee - It was only for the addition of the expanded area, but it actually superseded the prior. Okay. So in other words, if you look at the application, the wording of it, it's eleven acres being added to a 107-acre site. Okay. And the application is saying to add the Simons' contracting yard to the East End Landfill with the effect of replacing and superseding the prior conditional use permit. So this is not a CUP just for an expansion. It is a CUP for the landfill. Okay. It's an operating facility. So there is no distinction made here in any of the language of the CUP saying we understand you're operating, but you have to operate now the expanded area. There's nothing in the CUP that directs us to do anything to the expanded area. In fact, if you read these conditions, they're to be enacted now. Stop signs, entrances, the way the trucks drive—all of that is to happen now. Nobody says wait for a year; they say take these conditions and apply them now. Okay. So the conditional use permit is in effect. That's why that County code section can't be violated by the landfill at that time.

Let me get back to my spot very quickly. Okay.

So the summary here is we've been operating under a solid waste permit for the DEQ 524 since May of 2006. Solid waste permit 525 was merged in 2012, and they were seeking to modify 524 for the expansion, which is not needed until the landfill is filled. Right now we're still with a brand new cell that's just been built. So the expanded area isn't going to be needed for many years down the road, two or three years down the road.

As a practical matter, you wouldn't force us to build the expanded area when it's not needed by the operation. We're an operating facility. That's where I think there's a basic misunderstanding here. We obtained and maintained all applicable permits. We still have our DEQ permit. No problems. TEEL acted upon the permit prior to June 27, 2014, and we operated within two years. So we've met both condition 1 and condition 4 clearly without question.

Now I want to address condition 20 that Mr. Tokarz raised regarding the materials that have been taken at the landfill. Now there's been no evidence presented by the County at all.

First, it's important to understand the DEQ regs which the County does not have the expertise the DEQ holds with regards to the materials that are taken there. However, the County does inspect and conducts monthly inspections of the facility. With regards to bauxite mud and woody sludge, number one, it is not waste under the regs. It is not waste under the regs. When you operate a landfill, you put down the C&D material. But to meet all the requirements of operating, you also then have to put dirt or fill—or cover material in order to cover that C&D during daily operations. You can't leave the area exposed to the wind and the elements. You must on a daily basis put cover over the C&D to properly operate under the regulations. That's what the bauxite mud and the woody sludge were being used for, for cover.

This is a very important thing to understand. Cover is not what is brought for depositing in the landfill. It is a product for use to operate the landfill. There is an important distinction. If you go into the DEQ regs, it states the following materials are not solid waste for the purpose of this chapter. Materials that are used or reused or prepared for use or reuse as an ingredient in an industrial process to make a product or as effective substitutes for commercial products or natural resources. Bauxite mud can be mixed with and used as effective substitute for daily cover, which is a natural resource like dirt. Bauxite mud is an appropriate substitute for soil.

Same thing with woody sludge. It meets the same definition. It can be mixed and used as an effective substitute for daily cover, a natural resource. Woody sludge is an appropriate substitute for soil. That's why it's used. It really doesn't have any other purpose. You wouldn't use woody sludge to deposit it in a landfill. It would simply be a blob sitting in your landfill. You spread it out thinly mixed with soil, and you use it as cover. It will hold things down while you can then operate with your trucks and bring in more C&D. That's what we're talking about.

I want to address the next misunderstanding I think I see in the County's petition to revoke. They're asserting to you somehow that industrial waste is prohibited under condition 20. It is not. If you look at condition 20, it does not prohibit industrial waste used as cover, in the process of cover.

Now I want to give just a little bit of history again about 2007. In 2007 when you look at condition 20, it does not regulate cover. Condition 20, if you look specifically it says the material to be deposited in the landfill. It's talking about what's to be deposited shall not include hazardous waste or any biodegradable material other than woody waste from construction, demolition, and land-clearing operations. So in 2007, you did not regulate the cover; it was what was being deposited.

What happened next is the County got into a dispute with TEEL over the use of fly ash specifically in tires. There was a lawsuit that occurred. And there was a resolution, a settlement of that. Okay. That's not why we're here, but that was

2363 raised at that time as a problem after the 2007 CUP. So how was that
2364 addressed?

2365
2366 If you look in the approval letter of 2013 when you talk about condition 20, now in
2367 condition 20 you're regulating fill for the first time. Did not regulate fill going back
2368 to 2007, but now you're regulating fill. It says no hazardous waste as defined by
2369 the Virginia Hazardous Waste Management regs nor any biodegradable material
2370 other than woody waste for construction, demolition, and land-clearing operations
2371 shall be deposited in the landfill or used as fill or cover material. So now they're
2372 saying no hazardous waste as cover material and no biodegradable material
2373 other than woody waste for cover material. So for the first time, starting in 2013,
2374 we are told that the product that we use to cover during our operations, to
2375 spread, cannot be hazardous so—and it can also not be biodegradable unless
2376 it's woody waste from the land-clearing operations. All right. It does not prohibit
2377 industrial waste.

2378
2379 So the Notice of Violation that Mr. Tokarz pointed out and the County has relied
2380 upon, they say the spent bauxite mud is industrial waste. Industrial waste is not
2381 prohibited as cover. Then, the pre-sell industrial paper mill sludge from the
2382 Sunoco products. This, too, is industrial waste. Again, it's not prohibited as cover.
2383 There is no prohibition of industrial waste for the purpose of cover. C&D material
2384 only for deposits. Okay?

2385
2386 So if you know the industry, the landfill industry, there is a process of operating
2387 the landfill and then what you take in from trucks, what trucks are bringing to you.
2388 You're regulating what the trucks can bring in. That's C&D. Okay? Later you said,
2389 "We didn't like the idea that you used fly ash, so we're going to regulate now
2390 what you use as cover." So that came later in 2013, and that says no hazardous.
2391 Well, the industrial waste is not hazardous waste. This bauxite mud and the
2392 woody sludge, that's not hazardous. But it's industrial. And you look.

2393
2394 This is a quote from a Notice of Violation from the DEQ. It says the facility
2395 accepted and disposed of industrial waste. Its records show that spent bauxite
2396 from aluminum sulfite production originating from Chemtrade was accepted,
2397 mixed with soil, and used as progressive cover. It's talking about using that item
2398 as cover. The same thing with the sludge.

2399
2400 But here's my point about the Notice of Violation being used for the purpose of
2401 sustaining this action against us, which started last August when they said,
2402 "We're only here to cancel your extension. But oh now we realize it's the whole
2403 permit we're trying to attack." They want to use a Notice of Violation. But if you
2404 look at the Virginia Code 2.2-4001, it says a Notice of Violation should not state
2405 that a responsible party has violated or is in violation of an environmental
2406 requirement, because that might imply incorrectly that DEQ has made a case
2407 decision. The responsible party is entitled to notice and a process to dispute
2408 alleged violations before a case decision is made or corrected action imposed.

2409
2410 So you can't use this as a finding. And why? Because we didn't have our informal
2411 fact-finding proceeding with the DEQ. Why is that? Because the DEQ has told us
2412 that they're taking no further action on this. You see this as an email from Frank
2413 Lupini, compliance manager of the DEQ. I've spoken to land protection, and the
2414 issue mentioned in #4, which is the bauxite mud and the woody sludge, there's
2415 nothing further remaining to be completed. And why is that? Because the DEQ
2416 says we'll let you use it. You can use it. You requested to use as alternate
2417 progressive cover, and we hereby authorize you to do it. Same thing with the
2418 wood. It's right there. They fully authorized this use for cover. Condition 20
2419 doesn't prohibit it as cover.

2420
2421 So we should not be here on a violation of 20. It is for the purpose of cover. And
2422 the County has not presented one witness. Nothing. It has just submitted with
2423 DEQ—but DEQ has its own expertise, its own understanding of its regs, the way
2424 it regulates waste. They hold us to hard rules that we must comply with, and
2425 we're dealing with them. They have the expertise to regulate the landfill.

2426
2427 So industrial waste is not prohibited under condition 20 for cover. The DEQ is
2428 taking no action for its use in the past, and the DEQ is allowing us to use it as
2429 cover.

2430
2431 Now, I want to finish this section 20 by talking about woody waste, because
2432 woody waste is specifically allowed under the condition. First of all, debris waste
2433 means waste. And we've talked about C&D for a minute, debris waste. It's the
2434 defined in the code to mean stumps and wood, brush, leaves, etcetera. Land-
2435 clearing activities means the removal of flora—like trees—from a parcel of land.
2436 Woody sludge is wood, and the wood came from trees which were cultivated on
2437 a parcel of land. It's entirely consistent with the regs of the state and entirely
2438 consistent with condition 20. No biodegradable waste other than woody waste
2439 from construction, demolition, and land-clearing operations used as fill or as
2440 cover material. So you can even deposit this.

2441
2442 So how does Sunoco get its wood? It tells you in its sustainability policy dealing
2443 with forests. And here's their sustainability policy. They're getting their wood by
2444 land clearing.

2445
2446 So our conclusions, we have met conditions 1 and 4 that the County claims we
2447 violated because we timely obtained our DEQ permit and we maintain it today.
2448 Condition 20, bauxite mud and woody waste are not solid waste to begin with. If
2449 they're deemed industrial waste, your condition 20 doesn't prohibit industrial
2450 waste as cover. And the Sunoco woody waste originated from land clearing and
2451 therefore would be defined also as C&D and allowed specifically under your
2452 condition. There are many ways that we've fully complied with condition 20 that
2453 I've gone through.

2455 It is the County's burden to prove non-compliance with our conditional use
2456 permit. But it has submitted no testimony and no evidence. And let's look at the
2457 inspections of the County. Here the County is in March of 2017, which DEQ says
2458 was the first month of acceptance of the cover. What does the County inspection
2459 say? The County inspector certified that only C&D waste was accepted. The
2460 inspector understands that there's waste deposited and then there's cover. This
2461 happened for every month that we were able to obtain inspection reports. There
2462 were two or three months there that the County didn't have inspection reports.

2463
2464 Mr. Mackey - What was the last slide?

2465
2466 Mr. Plumlee - The last slide is actually my request from our office for
2467 the months April, May, and June of 2017, and the County says we could not find
2468 those inspection reports. So I wanted to point out for the months of April, May,
2469 and June 2017, we did not receive inspection reports from the County through
2470 our FOIA request.

2471
2472 My point is for every month we were able to obtain inspection reports, they've all
2473 indicated we have complied with C&D-only waste accepted in our facility. So
2474 there is no assertion that we're allowing trucks in to dump in this landfill, waste
2475 other than C&D. This whole discussion is about the material we're using for
2476 cover. That's all this is about.

2477
2478 That's in essence my presentation. I'm more than happy to address any
2479 questions. My colleague Mr. Schmidt was going to briefly address the issue of
2480 the CCBs, the fly ash, that was an old issue that Mr. Tokarz recently brought up
2481 in his most recent submission this week. I think it was on the 19th of March. Just
2482 simply to address the fact that that went to court. The two sides resolved it,
2483 settled it with a voluntary dismissal. Okay? It was, frankly, after that point that we
2484 came before you in 2013, and in 2013 you said specifically not to use fly ash.
2485 That's not the accusation today. Today it is that this bauxite mud and woody
2486 sludge should not be used for cover—or shouldn't have been used for cover. I
2487 hope I've pointed out why it did not violate condition 20 in using it and pointing
2488 out that the DEQ is permitting us to use it. So we hold our permit, and the DEQ's
2489 allowing us to use it.

2490
2491 Mr. Mackey - Mr. Plumlee, I have one question about the woody
2492 sludge. The picture that they showed, they said it was paper pulp or pulp
2493 something. That's what you're calling the woody sludge?

2494
2495 Mr. Plumlee - I can't testify what is in the photograph, Mr. Tokarz
2496 indicated that. I have not verified what's in that photo with what is the woody
2497 sludge being used as cover.

2498
2499 Mr. Mackey - Did it look like wood to you?
2500

2501 Mr. Plumlee - It looked like paper products, I think. So the woody
2502 sludge or the paper sludge, ultimately it comes from land clearing. It for the
2503 purpose of cover only. That's what the DEQ notation was about.

2504
2505 Mr. Mackey - Does the DEQ say there's a difference in woody
2506 sludge and paper pulp?

2507
2508 Mr. Plumlee - They call it—they always refer to it I think as pre-sell
2509 industrial waste. I think that's exactly the term that they use in their observation
2510 #4. Okay? So if the inspector—okay. Let's say an inspector from DEQ went
2511 there, and he took a picture of something. And he takes it back to his office, and
2512 somebody writes up a report. Well, it may be on a later day that somebody from
2513 our operation corrects them on that's not what that is; this is this. Okay? So that's
2514 not evidence. No one has come here and testified that's what was used. So you
2515 don't have that evidence in front of you. You just have a photograph of
2516 something. That's all that is.

2517
2518 What I'm telling you is DEQ specifically said it's the Sunoco pre-sell industrial
2519 waste, which is the woody sludge.

2520
2521 Mr. Mackey - Can you accept pulp?

2522
2523 Mr. Plumlee - Can I accept pulp? I can use it for cover. Now cover—

2524
2525 Mr. Mackey - But you just said that you don't know that it was used
2526 for cover. If you didn't use it for cover, then were they just accepting it as trash?

2527
2528 Mr. Plumlee - Well, I'm not presenting evidence; I'm an attorney.
2529 Okay? So I'm not testifying as to what's in that photograph and what that was
2530 used for.

2531
2532 Mr. Mackey - Okay.

2533
2534 Mr. Plumlee - That's the burden of the County. The County says
2535 they violated it. Well they needed to bring a witness out here to say this is what it
2536 is. They didn't do any of that. They simply said DEQ says they used this pre-sell
2537 industrial waste. That's not C&D, and so they violated. That's the case that's
2538 been put before you.

2539
2540 I'm sorry. Does anyone else have any—

2541
2542 Mr. Mackey - Yes. Does anyone have any questions?

2543
2544 Ms. Harris - You mentioned coal ash, but I would just ask you a
2545 couple of questions about that. Was the coal ash considered cover?

2546

2547 Mr. Plumlee - You're talking about prior to 2013?
 2548
 2549 Ms. Harris - Yes.
 2550
 2551 Mr. Plumlee - I do not know.
 2552
 2553 Ms. Harris - Okay.
 2554
 2555 Mr. Plumlee - Mr. Schmidt may be able to answer that one.
 2556
 2557 Ms. Harris - Okay. And you said the issue was voluntarily
 2558 resolved?
 2559
 2560 Mr. Plumlee - There was a voluntary dismissal order entered by
 2561 both sides.
 2562
 2563 Ms. Harris - Do you know why?
 2564
 2565 Mr. Plumlee - I'm sure Mr. Tokarz can address it, but Mr. Schmidt
 2566 specifically is here to talk about that issue.
 2567
 2568 Ms. Harris - Okay, thank you.
 2569
 2570 Mr. Bell - When it comes with the CUP, whether before or after
 2571 as part of a conditional use permit with one through whatever number, you read
 2572 them at the time and signed them. But you're denying the accuracy now. Why is
 2573 that?
 2574
 2575 Mr. Plumlee - I'm not denying their accuracy. I'm asserting—
 2576
 2577 Mr. Bell - Well you signed it one year or two years or six months
 2578 or whatever it was.
 2579
 2580 Mr. Plumlee - I'm not sure I 100 percent understand the question.
 2581
 2582 Mr. Bell - Well I'll make it simple then. When you were
 2583 presenting any conditional use permit, they would have had to have been signed
 2584 and approved by someone with TEEL. Is that correct?
 2585
 2586 Mr. Plumlee - I believe it was actually signed by the County when it
 2587 awards the conditional use permit. I'm not suggesting that TEEL didn't accept the
 2588 terms. Okay? I agree that TEEL accepted those terms, thirty-two of them, in
 2589 2013. I don't disagree with that.
 2590
 2591 Mr. Bell - I was referring as we go back because there are a
 2592 number of CUP cases where conditional uses were added as well.

2593
2594 Mr. Plumlee - Sure.
2595
2596 Mr. Bell - And they're all approved and signed by TEEL. So I
2597 would assume that—and I've heard some dispute about the accuracy of what
2598 was there.
2599
2600 Mr. Plumlee - Well it's not—I guess I'm not suggesting what's on the
2601 paper is not on the paper. What I'm saying is when you carefully read what's on
2602 the paper, the actions that we're accused of doing conform with what's on the
2603 paper. We meet the conditions. I'm not suggesting the words say something
2604 other than what they say. I'm just saying when it says we have to hold all
2605 applicable permits, I'm saying we do hold all applicable permits. And I've shown
2606 how we hold 524. That is our permit. When it says we have to operate within two
2607 years, I show you inspection reports showing we've operated within two years.
2608 When I talk about condition 20, I say when you started regulating the cover
2609 material that we're using, you limited us to no hazardous—we can't use
2610 hazardous—and you limited us to biodegradable except for woody waste. And I
2611 wanted to point out that we—the industrial waste that the DEQ says that we use,
2612 that does not violate condition 20. It doesn't limit it from industrial waste.
2613
2614 Those are the only points I'm trying to assert.
2615
2616 Ms. Harris - Mr. Plumlee, you made so many statements about
2617 cover and fill. At what point does cover become fill or does it ever become fill?
2618
2619 Mr. Plumlee - That's a metaphysical question. I think what you—my
2620 working understanding of cover is that that is your daily working material. It can
2621 be spread in and thinned over to create that layer that needs to be there to hold
2622 that trash down so it doesn't blow. Gusts of wind come during working periods.
2623 You're not ready to put the big cap on your landfill. You're working it. You have
2624 exposed areas. You cover those exposed areas with cover. Then you bring
2625 another load of waste. You cover it. That's the proper operation of a landfill.
2626
2627 Ms. Harris - So then you're saying that the cover does become fill,
2628 because when they bring the next load in . . .
2629
2630 Mr. Plumlee - Right. I think that becomes the metaphysical question,
2631 right? Because now it's inside the landfill, no doubt. However, that is the product
2632 that we're working with, the landfill owner. Right? It's planning its construction of
2633 its landfill. How do I do that? I have items coming in on a truck. I'm not sure it's a
2634 thousand percent. They've got to be C&D. Right? They could be big blocks of
2635 concrete, they could be boards, they could be all these different things. Those
2636 are the deposited items in my landfill coming off trucks weighed and charged for.
2637 Okay. Then there's my product. I'm either having to buy it, or people bring it to
2638 me to use as cover? So that's the planning. It does become the interior of the

landfill, but cover has a separate operating mechanism to it and understanding to it—all right—in the process of operating a landfill. Because you can't always just use dirt, number one.

And number two, businesses need to be able to sell or get rid of certain items that the DEQ says that's perfectly permissible for cover. It's perfectly permissible. But it has to be the DEQ that regulates that. Okay. But if the County comes along and says, "We don't care what the DEQ says. We're not going to let you use hazardous waste as cover. We're not going to let you use biodegradable other than woody waste." Okay. My point is both of these items came out of an industrial process. And DEQ said that they're industrial waste. So the County's wanting to use the fact that they were industrial waste as a violation of twenty when they were being used as cover. The County said they're being used as cover. They're citing the DEQ. So they all agree that industrial waste is simply not in violation of condition 20 when it's cover. That is the point we are trying to make.

It's not as though we said to Sunoco, just dump as much of that as you want over here. Bring it in, we fill it, we mix it with soil, and we use it as cover in our operations. And no one has suggested anything is wrong with that, and the DEQ says yeah, use it. So that's my point. Thank you very much.

Mr. Schmidt - Good morning. May it please the Board, my name is Paul Schmidt. I'm also an attorney with Poole Brooke Plumlee. I'd like to speak a little bit more about what's going on at The East End Landfill.

Mr. Mackey - Excuse me, sir. Can you spell your last name?

Mr. Schmidt - Oh, I'm sorry. S-c-h-m-i-d-t.

Mr. Mackey - Thank you. Schmidt?

Mr. Schmidt - Paul.

Mr. Mackey - No, what's your last name?

Mr. Schmidt - Schmidt. S-c-h-m-i-d-t.

Mr. Mackey - Thank you.

Mr. Schmidt - Madam board member, specifically the solid waste management regulation requires the use of progressive daily cover of at least six inches to be placed down daily to prevent escape of dirt and decrease—. So it's one of the operational requirements of the landfill that is required by the DEQ to operate within their regulations.

2685 Ms. Harris - Mr. Schmidt, before you go any further, because I
2686 won't come back to this. You just described what cover was. But when the case
2687 came up before us and we had pictures of coal ash blowing off of the covered
2688 area . . . that's why I asked my question. When does cover actually become fill?

2689
2690 Mr. Schmidt - Let me address my understanding of those laws just a
2691 bit more. In those cases, that was talking about, I believe, the use of coal
2692 combustion byproducts that were also being used as quote/unquote structural fill.
2693 That was part of the definition of what is a beneficial use of a coal combustion
2694 residual or CCR. It's called a couple of different things. The feds call it CCBs; the
2695 state calls it CCR. And beneficial use of a CCR is a specifically defined term.
2696 There was a dispute about whether the use of the CCR in that particular context
2697 was appropriate. I'm not 100 percent certain if they were also using it as
2698 progressive cover. But I know that that was an issue that was important to this
2699 Board in 2013 because there is a part of condition 20 that didn't get talked about,
2700 surprisingly enough.

2701
2702 These are the last two sentences of condition 20: In no event shall any coal
2703 combustion byproducts or auto-shredder residue be accepted by the facility, and
2704 tires shall not be stockpiled, shredded, or recycled on the property. This, again,
2705 came out of, I believe, the same argument, what is solid waste, what is
2706 construction/demolition debris waste, what is allowed to be inside of a CCD
2707 landfill. In fact, the CCD landfill regulations specifically allow tires. I believe at
2708 some point this Board made the decision they didn't want tires, and that's why
2709 this ended up as a specific condition. The use of the coal combustion residuals
2710 being apparently of issue, that made it in as a specific prohibited issue.

2711
2712 What I wanted to show the Board—and maybe this will help slightly if I might
2713 approach.

2714
2715 Mr. Mackey - Mr. Schmidt, real quickly. They still accept tires? I
2716 thought that condition said the tires couldn't be shredded.

2717
2718 Mr. Schmidt - That's correct.

2719
2720 Mr. Mackey - I imagine they can't be shredded so they wouldn't be
2721 used as cover.

2722
2723 Mr. Schmidt - I know that is used as cover in the industry. So that
2724 may have been an issue back in the day. But again, this is a letter that came
2725 from the County attorney—2013. It's signed by Attorney—. I would note that if
2726 you flip through the pages, you can see that Tokarz—on a couple of these
2727 signature blocks. But the second page—and again, this came from the County
2728 attorney. On the second page is the motion for voluntary dismissal. What
2729 happened is—if you look at Mr. Tokarz's Monday submittal, he brings up this old
2730 battle. What he does is he tells you the story of the battle over beneficial use of

2731 the coal combustion residuals right up to this Board's denial of the use of that
2732 material. And then his narrative stops. But that is not the end of the story, and the
2733 rest of the story is what's in front of you.

2734
2735 A series of lawsuits were filed. TEEL immediately appealed the decision of the
2736 BZA. I believe there was a suit against the director of planning. I believe there
2737 was a countersuit against TEEL from the County. There was a big argument. You
2738 can see from the motion for voluntary dismissal. Since the filing of the petition,
2739 TEEL has applied for and received a new conditional use permit for the site. The
2740 new conditional use permit—and that would be the 2013 conditional use permit
2741 we've been discussing ad infinitum—specifically prohibits the receipt of coal
2742 combustion byproducts for any purpose and precludes the stockpiling, shredding,
2743 recycling of waste tires at the landfill. Accordingly, the issues in the petition have
2744 been mooted.

2745
2746 So the way that the issue was disposed of was that the issue was hotly contested
2747 all the way up to the court. They agreed to voluntarily stop taking additional CCR,
2748 we'll put it directly in the language of the conditional use permit, and that was
2749 enough to cause the parties to say okay, we're all happy, we're dismissing the
2750 case. So there was a little bit more to it. And I think that helps explain or at least
2751 inform the Board of what the motivations might have been for the tail end of the
2752 language on twenty and the fact that twenty was amended from just saying only
2753 take CCD waste to be deposited to this whole discussion of what can you take,
2754 what are you going to do with some of these oddball waste-like auto-shredded
2755 waste, which is called auto slop, coal combustion residuals, and what are you
2756 going to use as progressive daily cover.

2757
2758 That's all I have to say. If anybody has any questions on those particular points,
2759 I'd be happy to answer any questions at this time.

2760
2761 Mr. Mackey - Any questions for Mr. Schmidt? All right. Thank you,
2762 sir.

2763
2764 Mr. Schmidt - And next I'd like to ask Ms. Sherone Cordell, she's an
2765 employee of TEEL. And she's going to get up here and speak briefly about the
2766 operations at the site.

2767
2768 Ms. Cordell Good morning, Mr. Chairperson, members of the
2769 Board. My name is Sherone [sp] Cordell. My last name is spelled C-o-r-d-e-l-l,
2770 and I'm employed at TEEL. I just want to go through briefly for you the
2771 chronology to date of TEEL's permitting process for the expansion.

2772
2773 This started back in September of 2013. The part A permit application was
2774 submitted by Golder Associates to the Virginia Department of Environmental
2775 Quality. Thirty-one months goes by, over 2-1/2 years, and on March 4, 2016, the
2776 technical review #1 comments from DEQ were sent to TEEL. In November of

2777 2016, there was a change of ownership of TEEL. And then immediately in
2778 December, TEEL employs Draper Aden Associates, engineering firm, to begin
2779 providing engineering and environmental services. Eleven months later in
2780 October, Draper Aden submitted the revised part A comments to technical review
2781 part 1 to DEQ.

2782
2783 Now, the projected time frame from completion of the permitting process, we're
2784 projecting completion at December of 2019. It's important to note that these time
2785 frames of course are dependent on DEQ, their scheduling, their review. At this
2786 point, however, TEEL does have an estimated life of three to four years
2787 remaining in the existing landfill site. So that's kind of where we are insofar as the
2788 expansion permitting process.

2789
2790 Mr. Mackey - Does anyone from the Board or staff have questions
2791 for Ms. Cordell?

2792
2793 Mr. Green - You said who you were, what is your role with TEEL?

2794
2795 Ms. Cordell Yes. I'm counsel as well. I'm an attorney as well,
2796 specifically for TEEL and its affiliates.

2797
2798 Mr. Mackey - Ms. Cordell, I have a question. You're saying that they
2799 project three to four years of life in the existing.

2800
2801 Ms. Cordell Existing, yes.

2802
2803 Mr. Mackey - Okay. Because we're not getting away from the whole
2804 conditional use permit here is for the addition. Correct?

2805
2806 Ms. Cordell What we're talking about here today?

2807
2808 Mr. Mackey - Yes. The conditional use permit is for the additional
2809 area.

2810
2811 Mr. Plumlee - Well the conditional use permit was not for the
2812 additional area alone. It was for the entire site.

2813
2814 Mr. Mackey - Okay.

2815
2816 Mr. Plumlee - This may be a matter of semantics, but a very
2817 important one. If you say that the CUP was just for the expansion and therefore
2818 you didn't achieve the permit for the expansion and you failed—

2819
2820 Mr. Mackey - But you had a permit for what was already existing. I
2821 mean, people only come for a conditional use permit if they're changing what
2822 they're using or adding on to it.

2823
 2824 Mr. Plumlee - But we consolidated all those areas within the landfill
 2825 under the '07. It all became part of one.
 2826
 2827 Mr. Mackey - Yes, but this is 2013 after you—
 2828
 2829 Mr. Plumlee - This is 2013.
 2830
 2831 Mr. Mackey - And you still wanted—
 2832
 2833 Mr. Plumlee - And we superseded the old permit, the 2007.
 2834
 2835 Mr. Mackey - Right. With the new—
 2836
 2837 Mr. Plumlee - With the new. Right?
 2838
 2839 Mr. Mackey - And new conditions.
 2840
 2841 Mr. Plumlee - And so—and that's where it's—frankly, and if you look
 2842 specifically at the condition itself, the one-year term comes off.
 2843
 2844 Mr. Mackey - When did it come off?
 2845
 2846 Mr. Plumlee - If you go from the 2007—
 2847
 2848 Mr. Mackey - Was it in there in 2013?
 2849
 2850 Mr. Plumlee - It was removed in 2013, the one-year requirement.
 2851
 2852 Mr. Blankinship - The one-year requirement for the DEQ permit.
 2853
 2854 Mr. Plumlee - That's correct. The one-year requirement for the DEQ
 2855 permit was removed. That's right.
 2856
 2857 Mr. Mackey - All right.
 2858
 2859 Mr. Plumlee - And this Board said we had to act upon the permit
 2860 within that next year.
 2861
 2862 Mr. Mackey - Twelve months.
 2863
 2864 Mr. Plumlee - It was basically a year, yes.
 2865
 2866 Mr. Mackey - Okay. All right.
 2867

2868 Mr. Plumlee - And so we acted upon it. That's the point I'm trying to
 2869 make.
 2870
 2871 Mr. Mackey - All right.
 2872
 2873 Mr. Plumlee - We have one last brief witness.
 2874
 2875 Mr. Mackey - Were there any other questions?
 2876
 2877 Ms. Harris - Not at this time.
 2878
 2879 Mr. Plumlee - I'm sorry.
 2880
 2881 Mr. Mackey - No, it was none.
 2882
 2883 Mr. Plumlee - Okay, thank you.
 2884
 2885 Mr. Mackey - You can go ahead.
 2886
 2887 Ms. Ohree - Just checking to make sure it's still morning. Good
 2888 morning. My name is Yvette Ohree, and I live in the county.
 2889
 2890 Mr. Mackey - Can you spell that last name?
 2891
 2892 Ms. Ohree - Oh. O-h-r-e-e.
 2893
 2894 Mr. Mackey - Thank you.
 2895
 2896 Ms. Ohree - I live in the county at 7016 Bowling Way. I have been
 2897 employed with TEEL since September 2010. My position there is accounts
 2898 payable/office manager. Currently, we have twenty-one employees there at
 2899 TEEL, seven of which live in Henrico County. We at TEEL support the
 2900 community, and I just ask that the Board not grant the petition to revoke our
 2901 permit as it will affect several of us within the company that live in Henrico.
 2902
 2903 Mr. Mackey - Okay. Thank you, Ms. Ohree. Were there any
 2904 questions?
 2905
 2906 Ms. Harris - Ms. Ohree, where is the office located? Are you
 2907 located near Darbytown Road?
 2908
 2909 Ms. Ohree - Yes. The office is located at 1790 Darbytown Road,
 2910 and TEEL is at 1820 Darbytown Road.
 2911
 2912 Ms. Harris - You said 7090?
 2913

2914 Ms. Ohree - 1 7 9 0 Darbytown.
 2915
 2916 Ms. Harris - Okay. I've seen that structure, but I didn't know if that
 2917 was your office.
 2918
 2919 Ms. Ohree - Yes.
 2920
 2921 Ms. Harris - I just wondered if you were breathing the same air
 2922 we're talking about. I guess this is as good a time as any to say it. This is not for
 2923 you, Ms. Ohree. This is probably for the attorney. And I need to ask Mr. Schmidt,
 2924 too. What is your position, Mr. Schmidt?
 2925
 2926 Mr. Schmidt - We're both outside counsel.
 2927
 2928 Ms. Harris - Okay, counsel. Okay, that's fine. I just needed that.
 2929
 2930 Mr. Plumlee - Ms. Cordell works in the company; we're outside
 2931 council for TEEL.
 2932
 2933 Ms. Harris - Okay. Mr. Schmidt, are you aware of—or
 2934 Mr. Plumlee—of the history of this site, this business, that has been a problem for
 2935 years? We were told that the permit had a lifetime and now we're getting all
 2936 these extensions. So are you aware of the site's history? And what is the
 2937 projected date for this facility being closed down in the future? I have to say I've
 2938 noticed an improvement. There was one time when it rained; you couldn't drive
 2939 through that neighborhood. The stench was just unbelievable. So I learned that
 2940 can be corrected, because after we complained about it, it was corrected. But
 2941 you keep expanding this. This huge, you know, Mt. Trashmore in the community.
 2942 I'm just concerned, when is this all going to end. I'll probably retire from the
 2943 Board before it ends. I just wonder.
 2944
 2945 Mr. Plumlee - This eleven acres has a longer projected life than the
 2946 3-1/2 that is current. The operation is largely closed. There is a new cell. I say
 2947 new; it's relatively new. It's cell 3-D. It's not completed and it's not finished. When
 2948 that's finished, then you have the construction of the remaining eleven acres. So
 2949 what you have—and I'm sure you've seen the map many times. It looks like a
 2950 horseshoe. The eleven acres is in the middle and would complete that area. That
 2951 would fill up the area for landfill.
 2952
 2953 There's about a \$6 million bond that has to be honored here with the monitoring,
 2954 the maintenance of that site. I only bring that up because the continued operation
 2955 supports all that. It supports its maintenance. It supports the good work that's
 2956 being done. If you look here, I've just pulled this up to show an inspection for
 2957 March of 2017. The County inspector certified C&D waste, but also wrote up
 2958 there, signs remain in place, site is clean, and silt fence has been repaired and in

2959 place. Working on several projects. All photographed. New owners seem to be
2960 working on keeping the site clean and well maintained.

2961
2962 So the County inspector is not here. He is not observing violations of these thirty-
2963 two conditions. This is a semantics discussion. I'm not at all knocking the County
2964 for wanting to protect its' interests. Okay? It has interests, and it's here to protect
2965 them. But this is an ongoing business that's supporting people. It's bringing in
2966 waste that needs to be disposed of safely. This is a complicated operation. It was
2967 taken over from other owners. And I believe the new owners are making a very
2968 good effort to operate it properly. The Sunoco woody sludge and the bauxite, that
2969 was DEQ saying, "What is that?" And we said this is what it is. They said okay.
2970 That's all that happened. But the County had already started its process here,
2971 and now it's shifting it. All right? Because it realized that that CUP was for the
2972 entire site and its operation.

2973
2974 So, I make those points. I really do appreciate the courtesy that you've all shown
2975 us this morning, and the fairness, and your questioning. But we obviously have
2976 an important operation and we want to protect it. If this ends up in court, I want to
2977 tell you, this is just my job, and this is what we're trying to do. Okay? And nothing
2978 more. And I do appreciate very much your fair consideration.

2979
2980 Mr. Mackey - All right. Thank you, Mr. Plumlee. Oh, we have a
2981 question.

2982
2983 Ms. Harris - Mr. Plumlee, you didn't answer my question. How
2984 long are we going to have the business at this location? Do you know how long?

2985
2986 Mr. Plumlee - I hope it's going to be—well hold on. Do I have an
2987 answer to that question? I don't know, so let me not speculate. But I would
2988 assume it's longer than the period we have left remaining at the landfill because
2989 it's an additional eleven acres for development. And I know that's larger than the
2990 area that we're closing in on. I hope that makes sense.

2991
2992 Mr. Green - All right. I have a question. The acreage that you had
2993 at first was three acres? No.

2994
2995 Mr. Plumlee - No sir. So you mean at first—see these started in the
2996 '80s, these landfills. They've been around for a long time. They now take up
2997 107.8 acres without the Simons' property, which is about 11-1/2 acres. So that
2998 107 loops around like a horseshoe, and this 11 acres sits in the middle of it. It
2999 would fill in the horseshoe. I hope that makes sense the way I've described it. But
3000 I don't have a picture right here, just an overall view of the landfill.

3001
3002 Male - We have one.

3003
3004 Mr. Blankinship - Do you want to put it up?

3005
3006 Mr. Green - How long did it take you to fill that 107 acres?
3007

3008 Mr. Plumlee - That's been going since the '80s. So it was
3009 Darbytown Road Landfill. And I actually think it was a county landfill underneath
3010 it. So even below it there's the county landfill that was purchased, made part of
3011 TEEL or Darbytown one. And then those two landfills were combined.
3012

3013 Mr. Green - So someone could gauge eleven acres—a
3014 mathematical equation could tell you how long.
3015

3016 Mr. Plumlee - I wasn't prepared with that, but it could be
3017 determined. I wasn't prepared to do that today.
3018

3019 Mr. Blankinship - I can give you briefly. This is probably the best
3020 illustration. This is Darbytown Road along here, and this is the railroad track
3021 along here. So that low trestle is here. And Ms. Harris, the office is right there.
3022

3023 This here was originally the Darbytown Road Landfill. This was originally Cox's
3024 landfill. And right here is the small area that was once the City of Richmond. That
3025 was not construction/demolition debris; that was a sanitary landfill. So that was
3026 closed. And then this was opened as a construction/demolition debris landfill.
3027 This was owned separately by a different company. TEEL came in 2007 and
3028 combined those, and this is what he describes as the horseshoe. This area right
3029 here was the Simons Hauling Company. That was what they applied to add in
3030 2013.
3031

3032 The important thing to bear in mind is that you have a 100-foot buffer between
3033 each landfill and its property line. That means you have a slope going down to
3034 that point. By adding a site in the middle, not only do you have the site in the
3035 middle, but you also get rid of those buffers on the existing site. And rather than
3036 sloping down toward that buffer, you can now slope up toward the middle. So the
3037 amount of air space that's added is considerably more than it looks like just
3038 taking an eleven-acre site.
3039

3040 My memory may be faulty. I want to say that in 2013 when this was heard the
3041 speculation was that there was as much as thirty years of additional life in that
3042 middle parcel.
3043

3044 Mr. Green - Okay.
3045

3046 Mr. Blankinship - And the three years was the life expectancy without it.
3047

3048 Mr. Green - So in essence, they're purchasing more land to
3049 extend the life of the landfill.
3050

3051 Mr. Blankinship - Yes. That's what was accomplished in 2013.
 3052
 3053 Mr. Green - What about the other areas? Could they purchase
 3054 that to keep . . .
 3055
 3056 Mr. Blankinship - These are older landfills. I'm sorry.
 3057
 3058 Mr. Green - Can they come down even more and purchase more?
 3059
 3060 Mr. Blankinship - I have not heard anyone speculate about purchasing
 3061 this. I believe this is owned by the state. I believe this is a state storage facility
 3062 here. This is owned by Dominion Virginia Power over here. And of course the
 3063 railroad bounds them to the north. So I think they are pretty well locked in to the
 3064 boundaries they have now, unless the state—
 3065
 3066 Mr. Green - A potential for another thirty years.
 3067
 3068 Mr. Blankinship - Yes.
 3069
 3070 Ms. Harris - Mr. Blankinship, do we know the elevation of the old
 3071 area or the area that's creating the horseshoe? Do we know the elevation?
 3072
 3073 Mr. Blankinship - If you need to know that, I can find it.
 3074
 3075 Ms. Harris - Okay.
 3076
 3077 Mr. Blankinship - I don't have it on the top of my head.
 3078
 3079 Ms. Harris - I know it's visible for miles. I don't like to speak for
 3080 other Board members, but the CUP is not to adversely affect the health, safety,
 3081 or welfare of the community. I think we need to keep that in the back of our
 3082 minds. We all have jobs to perform, but we don't want to adversely affect the
 3083 health, safety, or welfare of the citizens.
 3084
 3085 Mr. Plumlee - I just want to add—and this is not just to be a smart
 3086 aleck or argumentative.
 3087
 3088 Ms. Harris - Okay.
 3089
 3090 Mr. Plumlee - I'll say that in advance, because you know lawyers
 3091 are thinking that way constantly. By shutting us down, you're not going to do
 3092 away with the hill. Okay. But you may do away with the things that monitor what's
 3093 going on there. All that monitoring needs to be continued on into the future. So I
 3094 understand exactly what you're saying. So anyway, I hope that answers it. And
 3095 I'm not being a smart aleck. I just want to point out that it's already up there.
 3096

3097 Mr. Mackey - Is there anyone else that is here to speak in support?
 3098 Anyone in opposition?
 3099
 3100 Mr. Green - I have another question.
 3101
 3102 Mr. Mackey - For who?
 3103
 3104 Mr. Green - If you shut it down, what happens? Well, two
 3105 questions.
 3106
 3107 Mr. Mackey - Let me bring Mr. Tokarz back up so he can rebut, and
 3108 then we can ask.
 3109
 3110 Mr. Green - And then the second question I have is in reference to
 3111 the safety and welfare. I definitely understand that because I'm in the healthcare
 3112 arena. Those houses—well that area of development over to the left, was that
 3113 before the landfill or did that come after the landfill?
 3114
 3115 Mr. Blankinship - Most of that was developed in the period where there
 3116 were two separate construction, demolition, and debris landfills that were
 3117 operated at a fairly low level of intensity. They were both local contracting
 3118 companies. Then when TEEL bought the property, most of that area had been
 3119 developed by 2007. When TEEL bought the property and combined the landfills,
 3120 they were an out-of-town and then later an out-of-state group that operated the
 3121 landfill at a much, much higher intensity. The landfill was there before most of
 3122 those homes were built, but the landfill changed dramatically in character in
 3123 2007.
 3124
 3125 Mr. Green - What has been the reaction of the neighbors?
 3126
 3127 Mr. Blankinship - In the 2009-2010 time frame when the coal ash was
 3128 the hot topic, there was a great deal of objection. We had a lot of phone calls. We
 3129 had people coming here, and we had show cause hearings. That's why we had
 3130 the lawsuits.
 3131
 3132 Mr. Green - But that was resolved.
 3133
 3134 Mr. Blankinship - Yes. The coal ash issue has been resolved.
 3135
 3136 Mr. Green - But since then what's been their concern?
 3137
 3138 Mr. Blankinship - I would characterize them as—well, I probably
 3139 shouldn't speculate. They're not here today, and I'm not authorized to speak for
 3140 them.
 3141

3142 Mr. Tokarz - I can, members of the Board, speak to the County's
3143 position with respect to the landfill.

3144
3145 Mr. Blankinship - Let me get one more statement of fact in before you
3146 do. Ms. Harris, the highest point of the landfill is 314 feet. The middle of the
3147 horseshoe, the S. B. Cox construction yard was 136 feet. So it's about 170 feet
3148 of additional elevation.

3149
3150 Ms. Harris - Okay, thank you.

3151
3152 Mr. Mackey - Thank you, Mr. Blankinship. Okay, Mr. Tokarz.

3153
3154 Mr. Tokarz - I can speak to the question that you just raised about
3155 the position of the folks around the landfill. Number one, the County came and
3156 opposed the granting of the use permit in 2013. In 2015 when they went to apply
3157 for a permit from the state from the Central Virginia Waste Management
3158 Authority, the Board of Supervisors unanimously adopted a resolution opposing
3159 the granting of the CVWMA permit. Sent County staff to appear at the CVWMA
3160 permit hearing to oppose the granting of a CVWMA permit, and the CVWMA
3161 board unanimously agreed not to grant a permit for the additional landfill area
3162 that was being requested.

3163
3164 So the County's position is very clear. You have in your materials letters from
3165 Don McEachin, who's now Congressman McEachin, a state senator at the time,
3166 and two delegates who were opposed to the expansion of the landfill. That was
3167 submitted to the CVWMA.

3168
3169 Mr. Plumlee said right at the end of his remarks you have to keep this landfill in
3170 operation to monitor what's going on. Mr. Plumlee knows, I'm sure, that if that
3171 landfill is closed, it's going to be subject to strict DEQ requirements for closing
3172 the landfill and capping it enough to make sure there are no adverse effects from
3173 the closure of that landfill. That is state law. There's no doubt about it. You do not
3174 need to keep the landfill open just to keep the bad things that are in there from
3175 seeping out. That's going to be controlled during the closure whenever that
3176 occurs. And that's a matter of state law.

3177
3178 Now, here's what I'm going to add, the piece of information you haven't been told
3179 yet about the coal ash. You heard about the voluntary dismissal, but what you
3180 didn't hear about is why. I was involved in that lawsuit. Ms. Harris knows. They
3181 came in and they took every bit of coal ash out of that landfill. They took all of the
3182 tires out of there. That's why we agreed to the dismissal of the case. They
3183 removed all the stuff that was in violation of the use permit. The reason I brought
3184 this up in my materials is the BZA agreed in 2011 these are not materials that
3185 should be in the landfill. These are not materials that are in accordance with the
3186 use permit. It's the same situation we have here today.

3187

3188 In 2009/2010/2011, TEEL came in and said, "Well it's permitted by DEQ as a
3189 beneficial use," and that part's true. Mr. Schmidt as well. It was permitted by
3190 DEQ. But it wasn't in accordance with the County use permit. It was not a
3191 permitted use. The BZA said it wasn't a permitted use. They removed all the
3192 stuff.

3193
3194 And we're in the same situation here. It doesn't matter what the state says is
3195 okay to do. That may be okay under state regulations, but the petition before you
3196 is for revocation of the County's use permit. The County's use permit is very clear
3197 in terms of saying . . . the debris [sic] shall only accept construction, demolition,
3198 and debris waste. There is no exception for industrial waste coming in as cover.
3199 There's nothing that authorizes that. In fact, if you look at the next sentence it
3200 says biodegradable material shall not—no or shall any biodegradable material
3201 other than woody waste from construction, demolition, or land-clearing
3202 operations be deposited or used as fill or cover material. The BZA said in 2013
3203 you can't use biodegradable stuff as cover. So when they come in and tell you
3204 that it's permitted under condition 20, exactly not the case.

3205
3206 Mr. Plumlee says Mr. Tokarz is not an expert on industrial waste, and I agree I'm
3207 not an expert. But number one, the old country song says your eyes aren't going
3208 to lie to you. That's not demolition debris. That's not construction debris. And if
3209 you don't believe me, and you don't believe the DEQ when they said it's
3210 industrial waste, take a look at the Generator's Waste Profile form, the one that
3211 was submitted by Chemtree. Number 11, is this waste a result of an industrial
3212 process? Their answer is filter cake.

3213
3214 If you take a look at the Sunoco generator waste form, they say, "Is this waste a
3215 result of an industrial process?" Yes. Paper mill sludge. So it's not me telling you
3216 it's industrial waste; it's the generators themselves telling you it's industrial waste.
3217 Mr. Plumlee, TEEL, cannot tell you anything in this use permit that allows the
3218 deposit or the use of industrial waste at this landfill. In fact, the reason the
3219 conditional use permit was written the way it was in 2013 was to prevent anything
3220 except for CCD waste, construction and demolition waste to be used or woody
3221 waste to be used for fill material. So the use permit is pretty straightforward.

3222
3223 Now, they complain you didn't say you couldn't do it. But they turn it on its head.
3224 So the use permit says you can only accept construction and demolition waste.
3225 That's what it says. It doesn't allow you to accept it for any other purpose. The
3226 fact that DEQ says it's okay doesn't make it okay under the County's use permit.

3227
3228 It's true the County has changed its position since August. I told you that. We
3229 changed our position because we found out about this stuff that DEQ found when
3230 they went out there. We didn't change our position, though, as to their
3231 noncompliance with conditions 1 and 4. That's the same position we had in
3232 August. We just added the additional one because now we had the pictures, now
3233 we had the forms that show they weren't in compliance with the use permit.

3234

3235 I won't go over that part. I'll also mention this to you. No matter what the state
3236 has said, no matter what the BZA approval letter said, none of that changed. The
3237 vision in 24-116(c) of the County Code, which required the beginning of the—the
3238 work being done within a year. It's true that it changed from one year to two
3239 years, but they didn't even comply with the two-year requirement. So whether it's
3240 the one in effect in 2013, which was subsection C, or whether it's the one in
3241 effect now, which is subsection D, they haven't complied with either one of those.

3242

3243 So at the end of the day—one other point. We're not asking the BZA to revoke
3244 the use permit because of the NOV. We're not asking you to accept that the state
3245 has done anything to find them in violation of anything. What we're saying is
3246 simply this: The Notice of Violation provided information which clearly establishes
3247 the violation of the use permit on the County's side. We're not depending on any
3248 case decision. We're not depending on any enforcement action from DEQ.

3249

3250 We're simply saying—and you haven't heard anybody deny it—you can't put
3251 paper mill sludge from an industrial process into the landfill under condition 20.
3252 You can't put spent bauxite mud from an industrial process under condition 20.
3253 And if the County inspector missed it, thank goodness for the DEQ inspector who
3254 took the pictures, and obtained the forms, and submitted it to you. That
3255 information is uncontroverted. The evidence is right there in front of you. You
3256 don't need me to tell you; you've got it right in front of you. That's the evidence
3257 that we ask you to rely on.

3258

3259 I'll be glad to answer any further questions.

3260

3261 Mr. Mackey - Any further questions for Mr. Tokarz? All right. Thank
3262 you, sir.

3263

3264 Mr. Tokarz - Thank you.

3265

3266 Mr. Mackey - Just briefly.

3267

3268 Mr. Plumlee - I do want to point out since we've been coming here
3269 in August there have been no audience members here opposing the landfill. I
3270 think that speaks volumes.

3271

3272 Mr. Bell - May I answer that question? In the last several years,
3273 —the one CUP that you put up thirty-some different—

3274

3275 Mr. Plumlee - Had a big attendance.

3276

3277 Mr. Bells - Had a big attendance. What you see there is what we
3278 got from that hearing—the stop signs, the trucks, watering the highway, the
3279 trucks overloaded bringing material in and you didn't know what material it was,

3280 and on and on. What Ms. Harris said was that recently it looks like it has
3281 improved quite a bit.

3282
3283 Mr. Plumlee - And that brings up a great point. The thirty-two
3284 conditions—much more than the early ones—all those conditions went in effect
3285 on the entire site right away. That's why I keep going back to it's about the whole
3286 site, operating the whole site. That's why we complied with one and four.

3287
3288 Litigating the coal ash issue is not what this whole thing's about. And I do object
3289 to that because that was resolved. And as an officer of the court, Mr. Tokarz
3290 signed that settlement. Okay. That's not what this is. I wish I had some good
3291 song lyrics. I absolutely am without them.

3292
3293 Obviously, the language of condition 20 expanded to regulate the cover. I really
3294 want to emphasize that. Condition 20 was there before in the old CUP. But
3295 because of all the fuss about what had been used by the prior owners of that
3296 landfill, now all of a sudden the County says we're going to regulate cover too.
3297 Not just what you accept, but the cover. That's the distinction and the limitations
3298 that no hazardous and no biodegradable except woody. Okay? So that's why I'm
3299 saying industrial doesn't violate it. It's that plain. It's a very straightforward
3300 argument.

3301
3302 What Ms. Cordell pointed out, her testimony, when you added the conditions, the
3303 thirty-two conditions—Ms. Harris—you all said—and Mr. Blankinship wrote his
3304 letter. The rules provide it must be acted upon within a year. All right? So we
3305 acted upon it. We put in those conditions about how the trucks drive, all those
3306 conditions. And it says you may comply with this requirement by obtaining and
3307 diligently pursuing all necessary permits and approvals. That's part of why
3308 Ms. Cordell said we submitted this in September of 2013. It took DEQ thirty-one
3309 months to get back to us and say here is your technical review requirements
3310 response. It took us seventeen months or so to respond back to them. That is an
3311 unknown process with unknown times with engineers working on unknown things
3312 behind unknown desks that are difficult. Okay? They are not things that can be
3313 equated down to a formula. That's why it says all applicable permits have to be
3314 held. You know? The things you need to operate this place. And we've been
3315 operating it.

3316
3317 So I won't bore you with anymore. Thank you very much.

3318
3319 Mr. Mackey - You haven't bored us. Thank you, Mr. Plumlee.

3320
3321 Ms. Harris - Mr. Plumlee, why can't you just agree with #20 and
3322 don't accept the construction and demolition debris whether it's cover or for fill
3323 land purposes? What is the problem with this condition that you cannot? I mean I
3324 know we're dealing with semantics and all of that, but why can't you go by this?
3325 What is so difficult about it?

3326
 3327 Mr. Plumlee - I think I've spent all my time, Ms. Harris, doing my
 3328 very best, and probably failing to convince you, that we have been complying
 3329 with it all along. That's my point.
 3330
 3331 Ms. Harris - Okay, that's fine.
 3332
 3333 Mr. Plumlee - The bauxite mud and the woody sludge, as the DEQ
 3334 says, has been used for cover. I'm saying that is permitted under twenty because
 3335 it's not prohibited. When you address cover in it, you say don't use these things.
 3336 Well that implies we can use other things. I think that's a fair interpretation of that
 3337 20.
 3338
 3339 Ms. Harris - Thank you.
 3340
 3341 Mr. Plumlee - So thank you very much.
 3342
 3343 Mr. Green - In essence, you're following DEQ, and the County is
 3344 coming in and saying we want some other things done.
 3345
 3346 Mr. Plumlee - That's right.
 3347
 3348 Mr. Green - And you're arguing that you're following DEQ.
 3349
 3350 Mr. Plumlee - And—
 3351
 3352 Mr. Green - And so the real question is who has the real
 3353 jurisdiction.
 3354
 3355 Mr. Plumlee - No, I'm not throwing it back at you saying that you're
 3356 asking for something that DEQ is not and therefore your condition is wrong. I'm
 3357 saying the way you wrote your condition allows for industrial waste to be used as
 3358 cover. If you read it, it says that cover can't be these two things. That means it
 3359 can be the other things that are not listed. Woody sludge isn't in there. The pre-
 3360 sell industrial waste isn't in there. It doesn't say no hazardous waste, no industrial
 3361 waste. It doesn't say that. So to use it as cover is permissible under your
 3362 condition 20. That's why we're not violating the County's condition. It's that
 3363 straightforward. It's nothing more complicated. Thank you very much.
 3364
 3365 Mr. Mackey - Thank you, sir. I don't believe we have anybody here
 3366 to speak in favor or against, so we'll go on to the motion portion of this case.
 3367
 3368 CUP2013-00014, The East End Landfill. The director of planning requests
 3369 revocation of the conditional use permit at 1820 Darbytown Road (parcels 808-
 3370 706-6679, 808-707-7024 and 809-707-1585) zoned Business District (B-3) and
 3371 General Industrial District in Varina. The planning director states that TEEL is in

3372 violation of conditions 1, 4, and 20 of the permit. What is the pleasure of the
3373 Board?

3374

3375 Being the Varina magistrate, I'll make a motion. I move that we accept the
3376 planning director's request for revocation of the conditional use permit. I agree
3377 with conditions 1, 4, and 20. For these reasons, I make a motion for revocation of
3378 the conditional use permit at 1820 Darbytown Road. Is there a second?

3379

3380 Ms. Harris - Second.

3381

3382 Mr. Mackey - It's been moved and seconded. Is there any
3383 discussion?

3384

3385 Ms. Harris - I think we've had enough discussion.

3386

3387 Mr. Mackey - I didn't know if anyone here wanted to say something
3388 for the record.

3389

3390 Mr. Green - What's the real fiscal impact of this if we shut it down?

3391

3392 Mr. Mackey - They have other options if it does go forward to court.

3393

3394 Female - I'm sorry; I can't quite hear.

3395

3396 Mr. Mackey - He asked what was the—ask your question again.

3397

3398 Female - I heard the question. I just couldn't hear what you
3399 said.

3400

3401 Mr. Mackey - Oh. I was saying that they have some other options
3402 going forward.

3403

3404 Mr. Green - So this will probably end up in litigation.

3405

3406 Mr. Mackey - I would think. All right. All in favor of the motion say
3407 aye. Any opposed? Do we have anyone opposed? Then the ayes have it 5 to 0.
3408 The motion is carried.

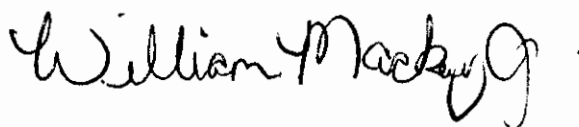
3409

3410 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
3411 Ms. Harris, the Board **accepts** the planning director's request for revocation of
3412 **CUP2013-00014, THE EAST END LANDFILL's** conditional use permit for an
3413 existing landfill at 1820 Darbytown Road (Parcels 808-706-6679, 808-707-7024
3414 and 809-707-1585) zoned Business District (B-3) and General Industrial District
3415 (M-2) (Varina).

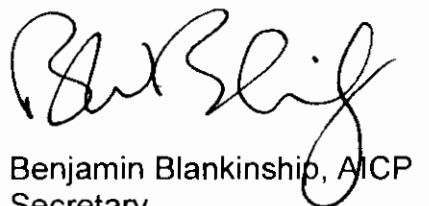
3416

3417

3418 Affirmative: Bell, Green, Harris, Mackey, Reid 5
 3419 Negative: 0
 3420 Absent: 0
 3421
 3422
 3423 Ms. Harris - Mr. Chairman, I move that the minutes be approved
 3424 as presented.
 3425
 3426 Mr. Mackey - Is there a second?
 3427
 3428 Mr. Bell - Second.
 3429
 3430 Mr. Mackey - It's been moved and seconded that the minutes be
 3431 approved as presented. All in favor say aye. Those opposed say no. The ayes
 3432 have it 5 to 0.
 3433
 3434 On a motion by Ms. Harris, seconded by Mr. Bell, the Board **approved as**
 3435 **presented** the **Minutes of the February 22, 2018**, Henrico County Board of
 3436 Zoning Appeals meeting.
 3437
 3438
 3439 Affirmative: Bell, Green, Harris, Mackey, Reid 5
 3440 Negative: 0
 3441 Absent: 0
 3442
 3443
 3444 Mr. Mackey - There's no further business; the meeting is adjourned.
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 3463



William M. Mackey
Chairman



Benjamin Blankinship, AICP
Secretary