

1 MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING
2 APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION
3 BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY
4 SPRING ROADS, ON THURSDAY, SEPTEMBER 23, 2010, AT 9:00 A.M.,
5 NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH
6 SEPTEMBER 2, 2010 AND SEPTEMBER 9, 2010.

7
Members Present: Helen E. Harris, Chairman
Robert Witte, Vice Chairman
Lindsay U. Bruce
James W. Nunnally
R. A. Wright

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

8
9
10 Ms. Harris - Welcome to the September 23, 2010 meeting of the
11 Board of Zoning Appeals. Please stand and recite the **Pledge of Allegiance**.

12
13 Mr. Blankinship, would you read the rules that will govern this meeting?

14
15 Mr. Blankinship - Good morning Madam Chairman, members of the
16 Board, ladies and gentlemen, the rules for this meeting are as follows. Acting as
17 secretary, I will call each case and then we will ask the applicant—who appears
18 to be Mr. Condlin—to stand and be sworn in. We will then ask everyone who
19 intends to speak to that case to stand and be sworn in. Then the applicant will
20 be allowed to speak. It doesn't look like we're going to have any rebuttal this
21 morning or any opposition

22
23 This meeting is being recorded, so we'll ask everyone who speaks to speak
24 directly into the microphone on the podium, state your name, and please spell
25 your last name so we get it correctly in the minutes.

26
27 Out in the foyer there is a binder that contains the staff report for each case,
28 including the conditions that have been recommended by the staff.

29
30 Ms. Harris - Are there withdrawals or deferrals this morning?

31
32 Mr. Blankinship - No ma'am. But let me point out on the first case there
33 is a memorandum. The staff report mentions some questions on which we have
34 asked for further information.
35

36 Ms. Harris - Thank you. Please call the first case.

37

38 **UP-020-10** **JAMES RIVER AIR CONDITIONING** requests a
39 conditional use permit pursuant to Section 24-95(i)(4) to allow an accessory
40 structure in the side yard at 9214 Hungary Spring Road (Parcel 767-758-4844),
41 zoned R-2A, One-family Residence District (Brookland).

42

43 Ms. Harris - All persons who wish to speak to this case, please
44 stand and raise your right hand.

45

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

48

49 Ms. Harris - Please come forward, state your name and spell it for
50 us, and state your case.

51

52 Mr. Joyce - Good morning everybody. I'm Hugh Joyce and I'm
53 the owner of the property at 9214 Hungary Spring Road. I appreciate the chance
54 to come up and tell you a little about the project, what we're doing, and why
55 we're asking what we're asking for. If you have a moment, I'd like to give you a
56 little presentation on the project. We'll walk you through a tour of our solar
57 house.

58

59 The property I purchased last winter; saw it on the side of the road in somewhat
60 ill repair. I'd always had a vision in the back of my mind of trying to create a
61 super efficient home in a place people could come and see a lot of different
62 tactics deployed. This house struck me because it was right on the road, very
63 visible, in ill repair. It just was calling my name, so I bought it. When I bought it,
64 they had just moved out the pit bulls and I think several drug users. We were
65 trying to save the siding inside, but the dogs had eaten all the siding, all the trim
66 off the inside windows and we were unable to save it.

67

68 As I started working on this, I thought to myself I really want to make a statement
69 with this project and I really wanted to do something different. So I said let's
70 develop the most efficient house ever built in Richmond. I started with the
71 basics, sort of the envelope, the insulation. By the way, the house was almost
72 falling down. You know, the heat pump, LED lighting, the crawl space—basic
73 things you do to make a house efficient. As we got into the project, I became a
74 little more excited about it. I'm a heating and cooling guy and do some electrical
75 and plumbing, so let's do more. We also provide and sell solar systems, so I
76 said, well, let's go ahead and get solar in here. Maybe we can hook it to Google
77 PowerMeter so we can motor it 24/7 and really start controlling use. Then let's go
78 ahead and collect all the rainwater off the roof, the gray water that would
79 normally go to the septic system, and let's certify it USGDC and see how far we
80 can get with a LEED rating. We also decided to do EarthCraft and put LED

81 lighting in it. So we really deployed every tactic we knew that was practical that a
82 homeowner might want to deploy in a home.

83
84 And we wanted people to be able to see it, the first LEED Platinum home in
85 Richmond. The first Platinum LEED home in Richmond is this little house. From
86 where we started six months ago, that's what it looks like today. We are very
87 excited about the project. Before; after.

88
89 This house is totally powered by solar. At the end of the year, its power bill will be
90 zero. It still blows my mind. Now I know the panel's a little different; we haven't
91 seen that before. But there is a movement in this great nation toward making our
92 houses more efficient, finding renewable power sources, and being able to look
93 across the ocean at the people that want to come here and kill us and tell them
94 we don't want your oil anymore; we'll make our own power in our backyards.
95 This is an opportunity to move this nation forward and we're very excited about
96 the project.

97
98 It's beautifully renovated. We tried to blend everything in to what was a blighted
99 site. This project sits between the County's LEED Gold high school that was just
100 completed half a mile up the road and your beautiful library that is at LEED
101 Silver. So here we are in Henrico County with a LEED Silver library—pretty cool;
102 LEED Gold school—ultra cool; and the first LEED Platinum home ever certified
103 by the USGBC right in there with your two buildings. Very exciting. And right
104 around the corner from your headquarters. That's the backyard after
105 redevelopment.

106
107 What's LEED? Very quickly it's a private/public partnership of a report card of
108 how efficient the building is. The most coveted rating is platinum. The
109 construction process is monitored by a third party to ensure the most sustainable
110 development, and renewal and sustainable operation of the house.

111
112 What am I doing with the home? It's my personal home; it's my second home. I
113 love it so much I'd move down there, but I can't. It's a little small; I have some
114 kids. I know of nowhere else in the nation where a house like this has been
115 created. Nowhere else in the nation that I'm aware of.

116
117 Mr. Wright - How many rooms does it have?

118
119 Mr. Joyce - It has two bedrooms, one bath, a great room, and a
120 kitchen. It's very small. It's a 1,000-square-foot footprint. It has a little entrance
121 area when you come in. I have some pictures of the inside I'll show you in a
122 second.

123
124 I'm pretty excited. Lieutenant Governor Bill Bowling is going to be visiting the
125 home shortly. He's very excited about what we're doing. We were also able to
126 take advantage of the federal tax credits on the solar system and the state tax

credits. We were one of the last to qualify for the state tax credits on the solar system.

A little side view of the house. And that's an inside view. That's the living room when you come in. If any of your would like to come see it, I'd love to give you a tour. It is so amazing. I'm not patting myself on the back, it's just the different technologies that were able to be deployed over here continue to blow my mind.

The solar panel I think is why we're all here. I put it where I put it because it's the only place that will work. Everywhere else on the lot we get shaded, we have problems. I thought it blended well and I want to show some pictures in a minute. I know there are some concerns about it. I think it's appropriate. It would not be appropriate—and I totally understand it would not be appropriate—in every neighborhood. But on this lot on this corner, we thought it made sense. And it was permitted and approved and went through the inspection process. This did not come up until a somewhat later date, so we were somewhat surprised that we're at this point. But we're at this point, so what we want to do is hopefully create a situation where we can progress, and move, and advance, and find a way to say yes.

There the panel sits. We talked about why it's there. We don't think it adversely affects anything. The other locations don't work because as soon as you move it back, we get into a wall of trees; I'll show you some pictures in a moment. And we think it's a great learning opportunity for everybody. There's the panel. You can see where it's sitting and you can also see a telephone pole, a fire hydrant, and a little water utility main. And there's another telephone pole behind that other pole. I took the liberty just for argument's sake, if you moved it into the backyard, which is just sixteen feet, that's what it would look like. I just kind of Photoshopped it back there.

The issue is what do we accomplish, what are we trying to do, what's our statement, where are we going to go. Is it appropriate, does it fit? Not everywhere, but it surely fits here based on what's going on, the proximity of the road to the building, etcetera, and due to the unique location of the lot because it doesn't sit square, it sits cattycorner. There it is back where it is currently. That's the wall of trees that gets into the way if you move it into the backyard. And there's a photo looking into the backyard with the shade and that's at about 1:00 p.m. We'd lose a lot of capacity with that. That's looking up the road and there's the developed project.

Let's promote clean energy and REGREEN strategies. This will put Henrico County on the map. Please approve this request. Thank you.

Ms. Harris -
the Board?

Thank you. Are there any questions from members of

173 Mr. Wright - What is the size of this panel?
 174
 175 Mr. Joyce - Approximately 12 feet by 14 feet.
 176
 177 Mr. Wright - I understand it revolves. Is that correct?
 178
 179 Mr. Joyce - That's correct. I didn't put that point in there. It does.
 180 It's a solar tracking panel, so it has a little eye on it and it kind of wakes up in the
 181 morning and tracks the sun all day. It goes all the way around. And it follows the
 182 sun, so winter or summer, it moves to where the sun is. What that does is it adds
 183 about 30 to 40 percent to the power-generating capacity of the panel. And what's
 184 really neat about how this panel works is we're tied in with Virginia Power. When
 185 I'm off at work—technically speaking—the meter runs backwards. We actually
 186 sell power back. My neighbor and the stoplight suck it up. Then when I come
 187 back home in the evening and the sun goes down, the meter will start running
 188 forward. So we run backwards during the day and forward at night. Typically
 189 we're running backward as much as we're running forward, and that's in the hot
 190 summer. In the spring and fall, we'll actually be net over and above. I'll also be
 191 charging my electric car here. I'll be getting the first Nissan LEAF all-electric car
 192 delivered to Richmond. And we're going to pair it up with the house to really take
 193 it to the nth degree in terms of efficiency and renewable power.
 194
 195 I'll just make a point that my seventh grade project was a solar panel. So I've
 196 been doing this for a while. We've always tried to focus on conservation,
 197 practical green approaches, doing everything we can to be as efficient and best
 198 stewards of our resources as possible.
 199
 200 Mr. Wright - Could this type of technology be used to generate
 201 extra additional power?
 202
 203 Mr. Joyce - Absolutely. As a matter of fact—
 204
 205 Mr. Wright - Could you have a farm of these things out in a field
 206 somewhere?
 207
 208 Mr. Joyce - Absolutely. We could go to some of your sites in
 209 Henrico County today and put some one-megawatt solar farms in place and
 210 generate power, sell that back, or use it to run our schools or whatever. It is
 211 actually becoming quite affordable. If we can make the numbers work for
 212 businesses and owners—typically if they have a little bit of money and little bit of
 213 resources where they can float a bond or they have money saved in a CD. They
 214 are allowing these things right now—tax free are allowed, I might add,
 215 somewhere in the 8 to 11 percent range. You go find me a CD that's going to
 216 give you a guaranteed 8% tax free return. And it's going to save your planet.
 217
 218 Mr. Wright - What maintenance costs are involved in it?

219
220 Mr. Joyce - None. This is a 25-year life on this system. Once a
221 year you probably should wash them. They need to be kept clean and that's it.
222 The panels have a 25-year warranty. Many of the ones that were first built are
223 still going past that lifespan. I still marvel. I go into this house and I sit here and I
224 turn the TV on and I've got a big graph of the power meter. I sit there and look at
225 it and I can't believe it. The air conditioner's running, my lights are on, and I'm on
226 the computer, and I'm selling back about one kW to the utility every hour. It's
227 truly amazing. You all have a real opportunity because you have space, you
228 have the capability to float some bonds and do some things. Your head of
229 energy has been over and looked at this project and is pretty excited about it. But
230 there are some neat things that the County could do with solar on a lot of
231 different facilities.

232
233 Mr. Wright - What does it cost to install one of these?
234

235 Mr. Joyce - This system was approximately—at a retail price--
236 \$22,000. This is the tracker pole, which is a little bit more expensive, a little bit
237 more difficult to install. But on a bigger commercial job, these are now running
238 four to six thousand dollars per kW. The typical house needs about ten kW, so
239 forty to sixty grand, you plug this in, you're done with power for the house, a
240 typical house.

241
242 Mr. Witte - This doesn't have storage for the bank of batteries.
243

244 Mr. Joyce - No. You can do that, but that's a redundant purchase.
245 You have to buy another ten thousand, fifteen thousand dollars worth of
246 batteries. What we're doing here is during the day, we're running the meter
247 backwards. We're not storing any of the power. It's betting used by either me—if
248 I have stuff running, I have first dibs on the power that we make. A little line
249 comes back in the house and there's a breaker in a box that dumps the power
250 back into the house. If I'm making 2,000 watts and I'm using 2,000 watts, nothing
251 happens. If I'm using a thousand and there's a thousand leftover, the closest
252 load to the house uses it. So that's either my neighbor, Chris, or the stoplights.
253 Or the first apartment in the first apartment complex might get it. But whoever's
254 using something the closest gets the power.

255
256 Mr. Wright - They get it free.
257

258 Mr. Joyce - No, no. It goes through their meter and they pay for it.
259

260 Mr. Wright - Oh, okay.
261

262 Mr. Joyce - Because Virginia Power's giving me dollar for dollar. If
263 I make a dollar of power, they give me a dollar of power. So they're going to sell
264 it back to that guy for a dollar.

265
 266 Mr. Wright - Virginia Power charges these people for what you're
 267 generating.
 268
 269 Mr. Joyce - Correct, correct. I become a little mini power plant for
 270 them, ultimately.
 271
 272 Ms. Harris - Is this system just as efficient in the winter months?
 273
 274 Mr. Joyce - It's actually more efficient in the winter than it is the
 275 summer. Heat makes the solar panels a little less efficient. So it actually works
 276 better in the winter than it does in the summer.
 277
 278 Mr. Blankinship - Probably per hour, but you don't get as many hours of
 279 sun.
 280
 281 Mr. Joyce - Don't get as many hours, but your power-generating
 282 is actually more efficient when you have sun. Yes.
 283
 284 Mr. Wright - Suppose you have rain for a week?
 285
 286 Mr. Joyce - That's not good. And that's in the calculations when
 287 you look at it. We assume x-number of days of rain in Richmond. And believe it
 288 or not, it just cuts the power. They still make power in the rain and when it's
 289 cloudy, but it's not anywhere near the power it is when you have sun.
 290
 291 Mr. Wright - The sun is up there, it's just not getting through as
 292 effectively.
 293
 294 Mr. Joyce - Right. It's a different level. Oh yes, I'm always
 295 powered. I'm on the grid. This is not an off-the-grid solution. I'm always
 296 connected. I have power all the time, so I'm never without power. It's amazing
 297 and it's been a wonderful learning experience.
 298
 299 Mr. Wright - Will they attract lightening?
 300
 301 Mr. Joyce - No more than anything else. It's typically going to go
 302 to the tallest object. It's grounded to beat the band. Lightening isn't going to hurt
 303 it because it's double and triple grounded. There are grounding rods all over the
 304 place. But if lightening came, it's going to go to the big power pole or that other
 305 pole, which is a more attractive target to the lightening.
 306
 307 Ms. Harris - Are there plans to construct a more compact model?
 308
 309 Mr. Joyce - That's an excellent question. They're working on that.
 310 I understand there's a little bit of size to this. They are working on that diligently.

I would have loved to have seen the ultimate challenge. Big entities have said get on this and get on it quick and make it better and smaller. And I think that's coming, but it's going to be a while. Physics are physics. It's going to be a while before they get smaller. You always have the battle of the trees. You would look and say that tree isn't going to shade it. We have a special gun that we set up and a little graph. And I have a similar home that we're working on around the corner. There are trees across the street and we didn't think there would be an issue and they're an issue. It is interesting how tricky it is to make it work.

Ms. Harris - I'm concerned about setting a precedent. If we approve this case and the concept takes off, how many more cases will we see where persons expect to place this 14 by 16-foot device in their side or front yard?

Mr. Joyce - We would hope that it would be zero. This is a very unique and different situation. I always go back to what's appropriate and what's not. In this particular case, we think it is appropriate. We also think—I think, and this is just Hugh talking. I think that in the grander scheme of things, we ultimately need to maybe—again, I think we definitely need to approve this wonderful opportunity. But for the future, I think we really need to revisit—and I'm just thinking blue sky thought process here—what we will or won't do in how we analyze this. I think we as a country have to be able to decide what's appropriate. Sometimes they're going to be appropriate in a side yard and other times they're not. I think we probably need to set a precedent that we're going to look at the appropriateness of each application and judge on those merits. But most of the time, I don't think we'd be in this unique situation with this lot that looks like a commercial lot but is a residential lot. There used to be a little country lane in front of it and it sits eighteen feet off the road. Actually, I had no idea it would be this much of an issue. I didn't know what was happening and no one pointed it out to me. We know it now. None of my clients will ever do it, unless we came down here and already had a conversation.

Mr. Wright - I think the answer to that, Ms. Harris, is that each case stands on its own. We have to take a look at the surrounding houses. I see one house. Is that your neighbor, Chris?

Mr. Joyce - That's Chris, yes.

Mr. Wright - Does he have any objection to this?

Mr. Joyce - To my knowledge, he has none. We get along wonderfully.

Mr. Blankinship - We have not received any correspondence or phone calls.

357 Mr. Joyce - We talk every day, so it's not been an issue. Chris is
358 9222 and then I'm obviously highlighted there. We coexist quite nicely together.

359
360 Mr. Wright - With his house turned the way it is, this is almost to
361 the rear of his house.

362
363 Mr. Joyce - It's such an odd configuration.

364
365 Mr. Bruce - Had you taken the front door and put it on the
366 driveway side, it would have been in the rear yard.

367
368 Mr. Joyce - Exactly. When you look at it, it's such a unique and
369 different opportunity. I just appreciate the consideration on this. I promise you, I'll
370 do whatever I can do to help you in the future to help address this. Hopefully this
371 case, we'll get a nice yes on it and we can really go promote the technology.

372
373 Ms. Harris - Are there any other questions from Board members?

374
375 Mr. Joyce - If anybody would like a personal tour, I would be
376 happy to oblige.

377
378 Ms. Harris - Do we have anyone else who wishes to speak to the
379 case?

380
381 Mr. Condlin - Just very quickly. Andy Condlin—C-o-n-d-l-i-n—from
382 Williams Mullen. Just to approach the technical nature of the request. Pursuant
383 to the Code, really just two points. One is that in considering a Special
384 Exception, the Board is allowed to take into consideration not only the effect and
385 impact on the surrounding property, but also to look at the design and the
386 method of operation for the use requested. Clearly we're talking about the
387 method of operation. As you saw on the aerial picture the design and topography
388 and the unique characteristics of this lot, and the adjacent lot. We're literally at
389 the corner, the intersection of Staples Mill and Hungary Spring Road. Given what
390 he's trying to accomplish, that is something you can take into consideration that
391 will also set forth the issues with respect to the precedent. We had talked about
392 where this may be appropriate, but certainly at this location for this property,
393 given the topography, how the neighbor sits, and the proximity to the road, these
394 are considerations you can take into account.

395
396 Also, I'd just like to point out, and Mr. Joyce mentioned it quickly, and while it's
397 not a technical aspect, it is important to note that he applied for all the necessary
398 permits, went through the process as he was supposed to. It's not; I'll be back
399 again someday to ask forgiveness. In this case, he did ask for permission and
400 was given permission and the permits were granted. It never actually went
401 through the Planning Office, unfortunately.

403 Mr. Wright - So this was actually approved.
 404
 405 Mr. Condlin - This was actually approved, permitted, and then—
 406
 407 Mr. Wright - I was going to ask that question, how it got put up
 408 without approval.
 409
 410 Mr. Condlin - Now that doesn't mean I can't come back and ask for
 411 forgiveness later on for another client. But in this case, he has clean hands.
 412
 413 Ms. Harris - How long has this been there at that location?
 414
 415 Mr. Condlin - Three months.
 416
 417 Ms. Harris - Are there any questions from Board members?
 418
 419 Mr. Condlin - Thank you.
 420
 421 Ms. Harris - Is there anyone else who wishes to speak to this
 422 case? If not, that concludes this case.
 423
 424 **[After the conclusion of the public hearings, the Board discussed the case**
 425 **and made its decision. This portion of the transcript is included here for**
 426 **convenience of reference.]**
 427
 428 **DECISION**
 429
 430 Ms. Harris - Is there a motion on this case?
 431
 432 Mr. Witte - I'd like to make a motion we approve this. I don't see
 433 where it adversely affects the health, safety, or welfare of persons residing or
 434 working in the area. It doesn't unreasonably affect public safety, even though it is
 435 kind of a tourist attraction at this point. It doesn't impair the district and really is
 436 compatible with the area considering there is a shopping center across the
 437 street.
 438
 439 Mr. Wright - I'll second the motion.
 440
 441 Ms. Harris - Motion by Mr. Witte, second by Mr. Wright that we
 442 approve this case. Are there any questions on this case or any other comments?
 443 If this works as Mr. Joyce says it will work, maybe the neighbors would even like
 444 having some of the power kicked over to them.
 445
 446 Mr. Witte - I think it's wonderful what Mr. Joyce did building this
 447 green facility so close to the center of Henrico County. I would like a tour.
 448

449 Ms. Harris - I would, too.
 450
 451 All in favor say aye. All opposed say no. The ayes have it; the motion passes.
 452
 453 After an advertised public hearing and on a motion by Mr. Witte, seconded by
 454 Mr. Wright, the Board **approved** application **UP-020-10, James River Air**
 455 **Conditioning's** request for a conditional use permit pursuant to Section 24-
 456 95(i)(4) to allow an accessory structure in the side yard at 9214 Hungary Spring
 457 Road (Parcel 767-758-4844), zoned R-2A, One-family Residence District
 458 (Brookland). The Board approved the use permit subject to the following
 459 condition:
 460
 461 1. This approval applies only to the existing solar panel on the property. Any
 462 additional improvements shall comply with the applicable regulations of the
 463 County Code.
 464
 465
 466 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
 467 Negative: 0
 468 Absent: 0
 469
 470
 471 **[At this point, the transcript continues with the public hearing on the next**
 472 **case.]**
 473
 474 **UP-021-10 A & F I, LLC** requests a conditional use permit
 475 pursuant to Sections 24-52(d) and 24-103 to extract materials from the earth at
 476 3740 Charles City Road (Parcels 828-701-0583 and 827-702-8810), zoned A-1,
 477 Agricultural District (Varina).
 478
 479 Ms. Harris - Anyone who wishes to speak to this case, please
 480 raise your right hand.
 481
 482 Mr. Blankinship - Do you swear the testimony you're about to give is
 483 the truth and nothing but the truth so help you God?
 484
 485 Ms. Harris - Please come forward. State your name and your
 486 case.
 487
 488 Mr. Condlin - Andrew Condlin—C-o-n-d-l-i-n—from Williams Mullen
 489 here on behalf of the applicant. This case, hopefully, will be familiar to you. We
 490 provided a quick memo with respect to the issue and this is very easily
 491 explained. Unfortunately, I'm kind of in between clean hands and unclean hands
 492 in this case, but I think pretty close. If you remember the conditions that were
 493 required for this borrow pit, Condition #3 talked about an erosion and control
 494 bond for the DPW that had to be satisfied within 180 days and a number of other

applications that needed to be satisfied within 180 days. Those were all accomplished. Condition #2 required a \$49,500 financial guarantee with the Planning Office, also to be satisfied within 180 days to guarantee restoration of the land as required.

This was a technical requirement that was not met. It wasn't a matter of bad intent; it wasn't a failure to intend to and try to comply within the 180 days. The difference is the client, typically dealing with DPW, they provide various options to provide that financial guarantee, including a bond issued by a surety, as well as an assignment of a CD. The Planning Office only allows for the bond with a surety, but did not allow it in the form of an assignment of a CD. So the client took the form from the Planning Office that allowed only for the bond and marked it up with the bank and tried to submit it within 180 days, assigning a CD, which is certainly an acceptable form by the County, but not a form for this situation by the Planning Office.

Within the 180 days it was submitted and then it was sent to the County Attorney for review as to form. A hundred and eighty days passed. The County Attorney came back and said wrong form with this type of financial guarantee. So our 180 days expired. The County Attorney—I know I'm of record and Mr. Tokarz will say he's technically correct despite my many arguments to say otherwise—but technically, he's probably correct that this was the wrong form. It still did provide a financial guarantee, but maybe not enforceable. So really it wasn't an effective financial guarantee.

As the County Attorney came back, we met. Literally we took the form, marked it up, and now the Planning Office has two forms, which I think has accomplished something through this whole process anyway. Now they can accept a CD, just like Public Works does. They actually have it in hand now. It's in escrow. We satisfied Condition #2 prior to approval. Actually satisfied Condition #3 prior to approval as well. Otherwise, it's the exact same case that was approved back in January with a couple of dates changed. We went back from 180 to 90 days since we're going to be able to satisfy everything. Our intent was to get the 180 days in order to get the contracts and take care of the other considerations in the contracts. We're ready to go. Everything else is in compliance with the County Planning Office and Public Works. So if we can get this approved, we can start moving forward as we had originally intended.

So that's the technical and very limited story of how this all occurred. We'd be happy to answer any questions that you may have at this time.

Ms. Harris - Are there any questions by Board members? I was happy to see that you cleaned things up pretty well. At the January meeting, we had discussion about contamination.

Mr. Condlin - I forgot all about it.

541
542 Ms. Harris - I remembered when I read the minutes.
543
544 Mr. Condlin - I didn't fight with Mr. Wright at all on that hearing.
545 That was a unique hearing; I should have remembered that.
546
547 Ms. Harris - And I think having no Sunday hours and the late
548 morning Saturday hours, I think those will be very attractive to the neighbors. I do
549 have one question. How long has this site been a borrow pit?
550
551 Mr. Blankinship - They haven't broken ground yet. They had a use
552 permit approved for two years and it expired. So it's been two and a half years
553 that it's been intended, but they haven't actually broken ground.
554
555 Ms. Harris - What did they use this acreage for before, do you
556 know?
557
558 Mr. Condlin - It's almost always been vacant, although there is a
559 home on it.
560
561 Mr. Blankinship - There's a home on the front and the rest is trees.
562
563 Ms. Harris - I noticed in the information that a historical marker
564 might be placed. Do you know who funds that? Will the applicant fund that or?
565
566 Mr. Condlin - My understanding is pursuant to the condition that the
567 application will allow the Department of Recreation and Parks, if they so choose,
568 to obtain a historical marker. I don't think that's being required of us. That's
569 certainly not related to what we're trying to do, but certainly we're going to protect
570 the home, which was always intended. That's the one new condition that's been
571 added on.
572
573 Ms. Harris - Are there any more questions from Board members?
574
575 Mr. Condlin - Thank you.
576
577 Ms. Harris - Is there anyone else who wishes to speak to this
578 case? If not, that concludes the case.
579
580 **[After the conclusion of the public hearings, the Board discussed the case**
581 **and made its decision. This portion of the transcript is included here for**
582 **convenience of reference.]**
583
584 **DECISION**
585
586 Ms. Harris - Do I hear a motion on this case?

587
588 Mr. Wright - I move we approve it. Do we need to include all the
589 testimony that was taken at the January hearing referenced and have it brought
590 into this case? Is it like a new application here?
591
592 Mr. Blankinship - It is in a way. We do have in the record all of the
593 minutes Mr. Condlin provided as part of his application.
594
595 Mr. Wright - That's true, he did.
596
597 Mr. Condlin - I was going to say we could make it a condition, but
598 you're right, it's actually part of the application. I'm being told that's why we did it.
599
600 Ms. Harris - Can we include that in your motion, that all of the
601 previous documentation be included?
602
603 Mr. Wright - Yes. I just wanted to make sure we had the
604 background and whatever we need.
605
606 Mr. Blankinship - I can't imagine having a problem with that, but courts
607 do a lot of things I can't imagine.
608
609 Ms. Harris - It would justify why you're making the motion, Mr.
610 Wright.
611
612 Mr. Wright - That's the motion.
613
614 Mr. Nunnally - I second.
615
616 Ms. Harris - Oh, I thought you were going to say something else
617 about why. You normally—
618
619 Mr. Wright - Oh, okay. I don't think it will adversely affect the
620 health, safety, or welfare of persons working or residing in the neighborhood or
621 unreasonably impair an adequate supply of light, nor increase congestion in the
622 streets. And I think it is consistent with the County's zoning requirements and the
623 ordinance, and is substantially in accordance with the general principles of this
624 chapter of the Code.
625
626 Mr. Nunnally - Second.
627
628 Ms. Harris - Motion by Mr. Wright, seconded by Mr. Nunnally that
629 we approve this case. Is there any discussion on this motion? All in favor say
630 aye. All opposed say no. The ayes have it; the motion passes.
631

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board **approved** application **UP-021-10, A & F I, LLC's** request for a conditional use permit pursuant to Sections 24-52(d) and 24-103 to extract materials from the earth at 3740 Charles City Road (Parcels 828-701-0583 and 827-702-8810), zoned A-1, Agricultural District (Varina). The Board approved the use permit subject to the following conditions:

1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of the County Code. The operation shall be conducted in accordance with the plans and narrative submitted with the application, except as noted below.

2. The applicant shall maintain the existing financial guaranty in the amount of \$3,000 per acre for each acre of land to be disturbed, for a total of \$49,500, guaranteeing that the land will be restored to a reasonably level and drainable condition, consistent with the elevation before the beginning of excavation. The financial guaranty may provide for termination after 90 days notice in writing to the County. In the event of termination, this permit shall be void, and work incident thereto shall cease. Within the next 90 days the applicant shall restore the land as provided for under the conditions of this use permit. Termination of such financial guaranty shall not relieve the applicant from its obligation to indemnify the County of Henrico for any breach of the conditions of this use permit.

3. Before beginning any work, the applicant shall apply for and obtain approval of erosion and sedimentation control plans from the Department of Public Works (DPW). The erosion control bond necessary for approval of the plan shall remain active throughout the life of the project until release by DPW. Throughout the life of the operation, the applicant shall continuously satisfy DPW that erosion and sedimentation control is performed and maintained in accordance with the approved plan. The applicant shall provide certification from a licensed professional engineer that dams, embankments and sediment control structures meet the approved design criteria as set forth by the State. If this condition is not satisfied within 90 days of approval, the use permit shall be void.

4. Before beginning any work, the areas approved for mining under this permit shall be delineated on the ground by five-foot-high metal posts at least five inches in diameter and painted in alternate one foot stripes of red and white. These posts shall be so located as to clearly define the area in which the mining is permitted. They shall be located, and their location certified, by a certified land surveyor. If this condition is not satisfied within 90 days of approval, the use permit shall be void.

5. In the event that the approval of this use permit is appealed, all conditions requiring action within 90 days will be deemed satisfied if the required actions are taken within 90 days of final action on the appeal.

6. The applicant shall comply with the Chesapeake Bay Preservation Act and all state and local regulations administered under such act applicable to the property, and shall furnish to the Planning Department copies of all reports required by such act or regulations.

7. Hours of operation shall be limited to Monday through Friday, 6:00 a.m. to 6:00 p.m. when Daylight Savings Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times, and Saturday, 10:00 a.m. to 4:00 p.m.

8. No operations of any kind are to be conducted at the site on Sundays or national holidays.

9. All means of access to the property shall be from the proposed entrance onto Beulah Road as shown on the plans submitted with this application.

10. The applicant shall erect and maintain gates at all entrances to the property. These gates shall be locked at all times, except when authorized representatives of the applicant are on the property.

11. The applicant shall post and maintain a sign at the entrance to the mining site stating the name of the operator, the use permit number, the mine license number, and the telephone number of the operator. The sign shall be 12 square feet in area and the letters shall be three inches high.

12. The applicant shall post and maintain "No Trespassing" signs every 250 feet along the perimeter of the property. The letters shall be three inches high. The applicant shall furnish the Chief of Police a letter authorizing the Division of Police to enforce the "No Trespassing" regulations, and agreeing to send a representative to testify in court as required or requested by the Division of Police.

13. Standard "Truck Entering Highway" signs shall be erected on Beulah Road on each side of the entrances to the property. These signs will be placed by the County, at the applicant's expense.

14. The applicant shall post and maintain a standard stop sign at the entrance to Beulah Road.

15. The applicant shall provide a flagman to control traffic from the site onto the public road, with the flagman yielding the right of way to the public road traffic at all times. This flagman will be required whenever the Division of Police deems necessary.

16. The entrance road shall be paved from its intersection with Beulah Road for its entire length, at a width of 24 feet. All roads used in connection with this use

permit shall be effectively treated with calcium chloride or other wetting agents to eliminate any dust nuisance.

17. The operation shall be so scheduled that trucks will travel at regular intervals and not in groups of three or more.

18. Trucks shall be loaded in a way to prevent overloading or spilling of materials of any kind on any public road.

19. The applicant shall maintain the property, fences, and roads in a safe and secure condition indefinitely, or convert the property to some other safe use.

20. If, in the course of its preliminary investigation or operations, the applicant discovers evidence of cultural or historical resources, or an endangered species, or a significant habitat, it shall notify appropriate authorities and provide them with an opportunity to investigate the site. The applicant shall report the results of any such investigation to the Planning Department.

21. If water wells located on surrounding properties are adversely affected, and the extraction operations on this site are suspected as the cause, the effected property owners may present to the Board evidence that the extraction operation is a contributing factor. After a hearing by the Board, this use permit may be revoked or suspended, and the operator may be required to correct the problem.

22. Open and vertical excavations having a depth of 10 feet or more, for a period of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect the public safety.

23. Topsoil shall not be removed from any part of the property outside of the area in which mining is authorized. Sufficient topsoil shall be stockpiled on the property for respreading in a layer with five inches of minimum depth. All topsoil shall be stockpiled within the authorized mining area and provided with adequate erosion control protection. If the site does not yield sufficient topsoil, additional topsoil shall be brought to the site to provide the required five-inch layer of cover. All topsoil shall be treated with a mixture of seed, fertilizer, and lime as recommended by the County after soil tests have been provided to the County.

24. No offsite-generated materials shall be deposited on the mining site without prior written approval of the Director of Planning. To obtain such approval, the operator shall submit a request stating the origin, nature and quantity of material to be deposited, and certifying that no hazardous material will be included. The material to be deposited on the site shall be limited to imperishable materials such as stone, bricks, tile, sand, gravel, soil, asphalt, concrete and like materials, and shall not include any hazardous materials as defined by the Virginia Hazardous Waste Management Regulations.

769 25. A superintendent, who shall be personally familiar with all the terms and
770 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the
771 terms and conditions of this use permit, shall be present at the beginning and
772 conclusion of operations each work day to see that all the conditions of the Code
773 and this use permit are observed.

774
775 26. A progress report shall be submitted to the Board on October 1, 2011. This
776 progress report must contain information concerning how much property has
777 been mined to date of the report, the amount of land left to be mined, how much
778 rehabilitation has been performed, when and how the remaining amount of land
779 will be rehabilitated, and any other pertinent information about the operation that
780 would be helpful to the Board.

781
782 27. Excavation shall be discontinued by October 1, 2012, and restoration
783 accomplished by not later than October 1, 2013, unless a new permit is granted
784 by the Board of Zoning Appeals.

785
786 28. The rehabilitation of the property shall take place simultaneously with the
787 mining process. Rehabilitation shall not be considered completed until the
788 mined area is covered completely with permanent vegetation.

789
790 29. All drainage and erosion and sediment control measures shall conform to
791 the standards and specifications of the Mineral Mining Manual Drainage
792 Handbook.

793
794 30. The applicant shall provide clarification in regards to the expected timeline
795 for the extraction of the materials from the earth and the restoration of the site.

796
797 31. The backfill shall be compacted to 95 % density in lifts of 6 inches with
798 suitable material. The compaction of the backfill shall be verified through a
799 geotechnical service and the report provided to the Planning and Public Works
800 Departments. This condition shall be added to the notes regarding the
801 Restoration Sequence on Sheet C2.1.

802
803 32. Adequate sight distance and 50-foot turning radius shall be provided for the
804 proposed construction entrance onto existing Beulah Road, as required by
805 Department of Public Works standards.

806
807 33. The site shall be filled only to the elevation existing prior to excavation.

808
809 34. The applicant shall preserve the existing dwelling on the property as shown
810 on the plans approved in February 2010. In addition, the applicant shall allow
811 the Department of Recreation and Parks to erect and maintain a standard
812 historical marker on the property acknowledging the area's history.

814 35. Failure to comply with any of the foregoing conditions shall automatically
815 void this permit.

816
817

818 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5

819 Negative: 0

820 Absent: 0

821

822

823 Ms. Harris - Let's look now at the minutes. There are some
824 corrections. On page 13, line 579, Ms. Harris, "All right, we're," That's apostrophe
825 re instead of apostrophe ll. Okay. Mr. Witte, you had some corrections?

826

827 Mr. Witte - I do, Madam Chairman. On page 34, line 1516. It
828 says, "Excuse e-m," and it should be "Excuse me." And on page 39, line 1728. "I
829 have a question in reference," not "referent." I think that's it.

830

831 Ms. Harris - Are there any more corrections?

832

833 Mr. Wright - On page 47, line 2103. I've talked with Mr.
834 Blankinship about this prior to the meeting. When I made the motion, my
835 understanding was that this application be limited to five years. In other words,
836 after five years it would expire. If you'll look on line 2103, it appears that
837 somehow or another this is different than what I thought it was supposed to have
838 been and also what I believe the applicant understood. Number six there says
839 the helistop shall be removed or replaced with a permanent installation on the
840 roof of a building by August 31 and so forth, at which time this permit shall
841 expire. I don't think that was the intent of what I was proposing. I think that is not
842 what the applicant understood we were going to do. Normally, without discussing
843 it with the applicant [blank section] that. My recommendation is that number six
844 be changed with the usual language that, what do you say, expires—

845

846 Mr. Blankinship - In five years they have to either remove it or have it
847 re-authorized.

848

849 Mr. Wright - Come back in. It may be that they decide that it's
850 working so well where it is and there's no objection that they don't need to put it
851 on the top of a building. They could come back and we go through a hearing to
852 find out whether that's the case.

853

854 Ms. Harris - How would you change the wording?

855

856 Mr. Wright - How would you want to word that?

857

858 Mr. Blankinship - I would just suggest that by that date they either have
859 to have it re-authorized by a new use permit or they have it removed.

860

861 Mr. Wright - What is the language used in the—let's see what our
862 mining language does. We have one here. It expires on August 31, 2011.
863
864 Mr. Witte - I think it's just approved until that date.
865
866 Mr. Wright - Yes. In other words—
867
868 Mr. Blankinship - The way it's usually stated, "Excavation shall be
869 discontinued by October 1, 2012, and restoration accomplished by not later than
870 October 1, 2013, unless a new permit is granted by the Board of Zoning
871 Appeals."
872
873 Mr. Wright - That language should be changed to say that this
874 permit will expire on August 31, 2015, unless a new permit is authorized by the
875 Board of Zoning Appeals, the same language you have there. They'd have to
876 come back in for another hearing. That was my idea. I think that's what we talked
877 about.
878
879 Ms. Harris - Do we need to get the applicant to approve our
880 correction?
881
882 Mr. Blankinship - I think it's just a correction to the record. I agree with
883 Mr. Wright, I'm not sure why I put that extra language in there. I know we
884 discussed that. And I must have been making notes as we went along and then
885 just got confused on what the final motion was.
886
887 Mr. Wright - That's what he understood it to be, I think the
888 applicant understood it to be. It will just expire at the end of five years.
889
890 Ms. Harris - Okay. So this permit will expire on August 31, 2005, is
891 what we should have?
892
893 Mr. Witte - 2015.
894
895 Ms. Harris - 2015. Sorry. That's what we should have, right? Do
896 we need another statement about resubmitting?
897
898 Mr. Wright - I don't think so, because that's automatic, isn't it?
899
900 Ms. Harris - It's their choice.
901
902 Mr. Wright - Do you need some language to ensure that they
903 could come back?
904
905 Mr. Blankinship - We don't need to.
906

907 Mr. Wright - I think it just expires and then they either come back
908 in and ask for a renewal or let it go.

909
910 Ms. Harris - Okay. So we will have, "this permit will expire on
911 August 31, 2015." Period.

912
913 Mr. Wright - That was my understanding, yes.

914
915 Ms. Harris - Are there any more corrections to the minutes? Do I
916 have a motion that the minutes be approved as corrected?

917
918 Mr. Wright - I so move.

919
920 Mr. Nunnally - Second.

921
922 Ms. Harris - Moved by Mr. Wright, seconded by Mr. Nunnally that
923 the minutes be approved as corrected. Are there any questions on this motion?
924 All in favor say aye. All opposed say no. The ayes have it; the motion passes.

925
926 On a motion by Mr. Wright, seconded by Mr. Nunnally, the Board **approved as**
927 **corrected** the **Minutes of the August 26, 2010**, Henrico County Board of
928 Zoning Appeals meeting.

929
930 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
931 Negative: 0
932 Absent: 0

933
934 Ms. Harris - Is there any more business before this Board this
935 morning? If not, the meeting is adjourned.

936
937 There being no further business, the Board adjourned until the October 21, 2010
938 meeting at 9 a.m.

939

940

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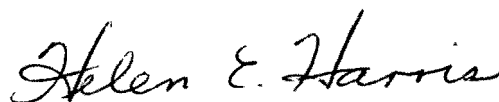
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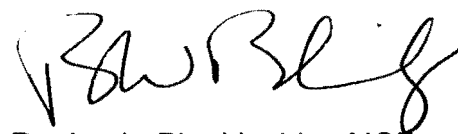
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952



Helen E. Harris
Chairman



Benjamin Blankinship, AICP
Secretary