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2 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**  
3 **HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**  
4 **GOVERNMENT CENTER AT PARHAM AND HUNGARY SPRING ROADS, ON**  
5 **THURSDAY, SEPTEMBER 27, 2018 AT 9:00 A.M., NOTICE HAVING BEEN**  
6 **PUBLISHED IN THE *RICHMOND TIMES-DISPATCH* September 10, 2018 AND**  
7 **September 17, 2018.**

8  
9 Members Present: Helen E. Harris, Chairman  
10 Gentry Bell, Vice Chairman  
11 Terone B. Green  
12 Walter L. Johnson, Jr.  
13 James W. Reid  
14

15 Also Present: Jean M. Moore, Assistant Director of Planning  
16 Benjamin Blankinship, Secretary  
17 Paul M. Gidley, County Planner  
18 R. Miguel Madrigal, County Planner  
19 Kuronda Powell, Account Clerk  
20  
21

22 Ms. Harris - Meeting of the Board of Zoning Appeal. All those who are  
23 able please stand as we pledge allegiance to the flag.  
24

25 ... PLEDGE OF ALLIGIANCE IS RECITED ...  
26

27 Ms. Harris - Mr. Blankinship, would you please read the rules that govern  
28 our meeting today.  
29

30 Mr. Blankinship - Good morning, Madam Chair, members of the board, ladies  
31 and gentlemen. The rules for this meeting are as follows: Acting as Secretary I'll  
32 announce each case, and then we'll ask everyone who intends to speak to that case to  
33 stand and be sworn in.  
34

35 Then a member of the staff -- well, there is one appeal on the agenda this morning so  
36 that's handled a little differently from the other cases. For the appeal, a representative of  
37 the County Attorney's Office will present the Director of Planning's position, and then the  
38 appellant will have the opportunity to present her opinion -- her position. And then anyone  
39 else who wishes to speak will be given their opportunities.  
40

41 For the conditional use permits and the variances on this morning's agenda, a member  
42 of the staff will give a brief introduction to the case. And then the applicant will state their  
43 case. And then anyone who intends to speak will have the opportunity. And after  
44 everybody has spoken, the applicant and only the applicant will have an opportunity for  
45 rebuttal.  
46

47 This meeting's being recorded so we'll ask everyone who speaks to speak directly into  
48 the microphone on the podium. State your name and please spell your last name so we  
49 get it correctly in the record. Oh, I'm sorry. I skipped over a paragraph.

50  
51 After the public hearing on each case is completed, after all of the comments from the  
52 audience are in the record, the board will proceed to the hearing on the next item. At the  
53 end of the meeting they'll go back through their agenda and render all of their decisions.

54  
55  
56 So if you wish to hear their decision on a specific case, you can either stay until the end  
57 of the meeting or you can check the Planning Department website. We usually get it  
58 updated within about an hour of when the meeting ends. Or you can call the Planning  
59 Department this afternoon.

60  
61 We do have all five members present. And I'm not aware -- I was out of the office  
62 yesterday. I'm not aware of any requests for deferral or withdrawal? No. There are none  
63 that have been presented.

64  
65 Ms. Harris - Okay. Please call the first case.

66  
67  
68 **APL2018-00004** **GARETHA ATKINSON** appeals a decision of the Director of  
69 Planning pursuant to Section 24-116(a) of the County Code regarding the property at  
70 4012 Elmswell Drive (FAIRFIELD WOODS) (Parcel 808-725-1412) zoned One-Family  
71 Residence District (R-3AC) (Varina).

72  
73 Mr. Blankinship: Would everyone who intends to speak to this case please  
74 stand and be sworn in. Would you raise your right hands, please? Do you swear the  
75 testimony you're about to give is the truth, the whole truth and nothing but the truth so  
76 help you God? Thank you. Mr. Newby?

77  
78 Mr. Newby - Madam Chair, members of the board, my name is Andrew  
79 Newby. My last name is spelled N-E-W-B-Y, and I'm here today on behalf of the Director  
80 of Planning to present his position on this appeal.

81  
82 I'm going to exit out of this screen and pull up a brief outline that I've prepared to keep me  
83 on track and to put some key language in front of the board for easy reference. Here we  
84 are. So this is an appeal of a determination of the Director of Planning who rendered his  
85 opinion in writing to the applicant about the proper use of the property based on questions  
86 received from the applicant/owner/appellant.

87  
88 The key facts of the case as I see them are this: The property's zoned R-3AC. That C,  
89 of course, I believe, stands for conditions. There are no conditions in this case that I  
90 believe are relevant to the decision that's before the board. Therefore, the key is that it's  
91 R-3A.

93 The property has a detached one-family dwelling, which of course means it has a house  
94 on it. And a four-bedroom addition was added in 2013 that is, I believe, a relevant fact  
95 that is central to the appeal in this case. The owner operates an assisted living facility  
96 business on the property, and I believe the fact is that it's been operated at the property  
97 since 2009.

98  
99 After the completion of the addition in 2013, the applicant/owner asked for zoning  
100 approval to house 16 patients in the assisted living facility or in the alternative to use the  
101 extra space from the addition to rent rooms to others who are unaffiliated with the assisted  
102 living business.

103  
104 So what did the Director of Planning have to say about that request? First the Director of  
105 Planning concluded that the zoning ordinance only allows eight patients in an assisted  
106 living facility in a residential neighborhood. And 16 patients were not allowed pursuant to  
107 the zoning ordinance.

108  
109 The director also determined that the property -- that if the property's used as an assisted  
110 living facility as it currently is, that rooms may not be rented to other individuals who are  
111 not affiliated with the business, either as patients or staff of the business. So those were  
112 the two points that the director determined, and they set up the two questions that are  
113 before the BZA for determination this morning.

114  
115 Was the director correct on each of those points? First, was the director correct that no  
116 more than eight patients may be housed in an assisted living facility? And second, was  
117 the director correct that rooms in the facility may not be rented to individuals who are not  
118 patients or staff of the facility?

119  
120 And of course, the director's position this morning is that, yes, he was correct on both  
121 points, and I expect that the appellant will contend otherwise. So what's the guiding  
122 principle for the Board of Zoning Appeals in an appeal like this? Well, as with every  
123 appeal, we start with the presumption that the director was correct. A director who is  
124 tasked with the interpretation of the zoning ordinance will be best suited to determine  
125 what it says and how it would apply to a particular case and that it's the owner's burden  
126 to prove that the determination was incorrect.

127  
128 The key law that guides all cases such as these is 24-6 of the Code of Henrico County  
129 which says that no property shall be used except in conformity with the regulations. In  
130 other words, if the zoning ordinance says you can do it, then you can. If it's silent on it or  
131 says you can't do it, then you can't do it.

132  
133 So looking at the two issues, what does the zoning ordinance say? We're fortunate in  
134 that the limit on the number of patients in an assisted living facility is expressly set forth  
135 in the zoning ordinance. It's not ambiguous at all. It's very clear-cut.

136  
137 First, Henrico Code Section 24-11(a) says the principal permitted uses in the R-3A  
138 District, the district the property is in. And it says that one-family dwellings, to include



139 assisted living facilities and group homes, when located and operated in one-family  
140 dwellings are principal permitted uses in that district.

141  
142 So there's no question in this case that assisted an living facility may be operated in a  
143 dwelling in this district. But if you look at Henrico Code Section 24-3, assisted living facility  
144 has a very particular definition. And it says it means a residential facility in which -- and  
145 I've bolded this -- no more than eight aged, infirm or disabled persons reside with one or  
146 more resident counselors or other staff persons and which is licensed by the Virginia  
147 Department of Social Services or other licensing authority.

148  
149 So there you have it right in the definition of assisted living facility. There's the limit on  
150 the number of patients, and the limit is eight.

151  
152 Therefore, the director was correct that no more than eight patients are allowed in the  
153 assisted living facility in the R-3A district. The limit on renters is equally clear but  
154 somewhat less straightforward. The analysis goes like this: We're back with Henrico  
155 Code Section 24-11(a), and when we look at the principal permitted uses in that district,  
156 we see once again that assisted living facility is a principal permitted use, but that's the  
157 choice.

158  
159 Once you start using it as an assisted living facility, you don't have the option to do it as  
160 a different principal permitted use, such as the rental to others or the use of it as a  
161 traditional one-family dwelling as we would know it. And then when you look at the  
162 accessory uses in the R-3A you see that there can be living quarters for persons  
163 employed on the premises. So certainly staff of the business can live on the premises.  
164 And of course, there's an allowance for nonpaying guests to come to the property and  
165 stay.

166  
167 And there's also this language about the keeping of not more than two roomers or borders  
168 in an otherwise private dwelling. Here, I don't think it could be argued that this is a private  
169 dwelling. It's being used as an assisted living facility. Therefore, the conclusion is  
170 inescapable that no other paying renters may occupy the facility other than the patients  
171 and the staff of the facility. The choice having been made to use it as an assisted living  
172 facility, that's how it's going to be used. And for no other purposes. You can't mix those  
173 purposes.

174  
175 Therefore, when you look at the zoning ordinance, the Director of Planning was correct  
176 in his interpretation. And I want to be clear with these last two points, that the director did  
177 not make two determinations. The director did not say that the assisted living facility has  
178 to end or be closed down or that it's illegal. It is perfectly legal. It's only that it's limited to  
179 eight patients and the staff.

180  
181 Also, the director did not determine that the addition is unlawful, that the addition must be  
182 torn down. The addition absolutely may remain on the property. It's only a matter of how  
183 that addition may be used. And I've -- I raise that point because I think if you've read the  
184 papers associated with this case, that's the appellant's focus, is that she came in -- or the

185 contractor more precisely came in and got a building permit to build this addition. And  
186 therefore, she had a business expectancy that she was going to be able to use that  
187 addition to enlarge her business, to double the number of the patients she could keep in  
188 that business.

189  
190 Unfortunately, that expectancy was misplaced. The zoning ordinance does not allow the  
191 doubling of the business, even though the zoning ordinance does allow the doubling of  
192 the size of the structure. It is not unusual at all for the permit center to receive an  
193 application for a building permit to do a residential addition. There can be any number of  
194 reasons why you would want to do an addition. There was no indication -- and I don't  
195 think it's important even if there were, that this was to be used to double the size of the  
196 business. All that to say the addition is perfectly lawful but it doesn't allow the expanded  
197 use that's being requested here. And I thank you very much for your time. I'll be happy  
198 to answer any questions at this point.

199  
200 Ms. Harris - Are there any questions from the board members? Mr.  
201 Newby, I have a couple of questions. If her application had been for a group home would  
202 the eight-patient rule still apply?

203  
204 Mr. Newby: You know, I hadn't looked at the definition of group home in the zoning  
205 ordinance and so I must demur. I have a copy of my zoning ordinance here, and I don't  
206 know what the limitation on the number of patients in a group home is. But it is distinct  
207 from assisted living facility in the ordinance. If I may, I could pull that definition.

208  
209 Ms. Harris - We can get that later.

210  
211 Mr. Newby - Yes, ma'am.

212  
213 Ms. Harris - In the letter that we received from you, just before the  
214 conclusion on page 3, paragraph 4, I think it's the third sentence. You see, I have  
215 underlined "an unknown business at the location." I need you to explain that sentence,  
216 please.

217  
218 Mr. Newby - Yes. The purpose of including that last paragraph, which is  
219 something I debated quite a bit in preparing that letter, was to try to address the argument  
220 that the County should have investigated the property when it approved the building  
221 permit and determine how it was used as a business and then decided whether or not to  
222 grant the building permit based on its use.

223  
224 In other words, I think the appellant is making the argument that the County should have  
225 known this was an assisted living facility, and it should have known that by approving the  
226 addition that the business was going to double in size and that therefore approving the  
227 build permit was tacit approval of the doubling of the business.

228  
229 And using the phrase "unknown business" underscores that, to my knowledge, no one  
230 knew at the time that this was an assisted living facility and there was no constructive



231 knowledge; in other words, there was no obligation on the part of the County to investigate  
232 how this addition might be used.

233  
234 As I mentioned in my presentation a moment ago, it is not at all unusual to get an  
235 application for a building permit to add an addition to a home.

236  
237 And I don't think it's the rule, nor do I think it should be the rule that staff should then go  
238 and investigate how this addition is to be used, is it a business, what uses may be allowed,  
239 and to give an opinion at the time it was requested.

240  
241 I attached to my letter, as I'm sure you saw, a copy of the building permit application. And  
242 there is simply no indication on there that there is a business use at the property and that  
243 the intent is to use the bedrooms described in the building permit to house additional  
244 patients at the facility.

245  
246 And so it's my opinion from reviewing those records that staff was not on alert and had  
247 no obligation to inquire as to how the property and the addition would be used.

248  
249 Ms. Harris - All right. But the County's records would support that -- had  
250 to approve of the use of this family home as an assisted living business. Does that require  
251 a license or a County approval?

252  
253 Mr. Newby - My understanding is that the State ultimately licenses it  
254 through the Department of Social Services as referenced in our addition. But I'm straying  
255 a little bit from my actual knowledge of how assisted living facilities are licensed. But I  
256 believe the answer is no, that there's no local licensing. Now, I mean, you have to meet  
257 the zoning ordinance, and I think the Department of Social Services wants to hear that  
258 the facility is in compliance with the zoning ordinance. In fact, I think that's probably how  
259 this issue came about. And I'm going on an assumption here -- maybe the appellant can  
260 tell us -- that it was the Department of Social Services who ultimately said, Is this in  
261 conformance with the zoning ordinance? before she was allowed to add additional  
262 patients to the facility.

263  
264 Ms. Harris - All right. Are there other questions?

265  
266 Mr. Johnson - Yes. In addition to that, where on the application -- was there  
267 any premise there that the applicant's supposed to or should have indicated what the  
268 facility was being used for?

269  
270 Mr. Newby - No, sir. I don't believe there is on the building permit  
271 application. From my review of it, it describes what the addition will be as far as the  
272 structure. You know, what the size of it will be and details like that. But it doesn't  
273 specifically state the use or ask for how it will be used, I don't believe. And it should be  
274 pointed out, too, and I may have already said this, that the actual applicant for the building  
275 permit wasn't the appellant in this case. It was the contractor. I believe it's Prince  
276 Construction or a name similar to that.

277  
278 Mr. Johnson - Okay. And also, as the counselors that's at the facility -- aren't  
279 they supposed to be certified with the -- with the board in there?  
280

281 Mr. Newby - I would imagine so but frankly I don't know what the  
282 certification is to be a counselor in an assisted living facility. I do know that they're allowed  
283 under our zoning ordinance to live at the property.  
284

285 Mr. Johnson - Okay. Thank you.  
286

287 Ms. Harris - Okay. Are there other questions from board members?  
288

289 Mr. Newby: Thank you, Mr. Gidley. Madam Chair, Mr. Gidley was kind  
290 enough to pull the zoning ordinance definition for group home. And yes, indeed, it has  
291 the same limit of eight individuals.  
292

293 Ms. Harris - The eight-person. How did this come to our attention?  
294

295 Mr. Newby - Well, best I can tell it came to our attention after the fact, after  
296 the addition was built. At some point there was an inquiry made with either Mr.  
297 Blankinship or someone on staff at the Planning Department as to whether it was lawful  
298 to keep additional patients in the facility. "Keep" is a wrong word; to house the additional  
299 patients at the facility.  
300

301 And if not, whether other people could live at the property. I believe the back story is  
302 lengthy, that this inquiry began years ago, but I'm not 100 percent sure. I know that the  
303 determination made by the Director of Planning was only this summer and the appeal  
304 was brought timely, within 30 days.  
305

306 Ms. Harris - Right. Thank you.  
307

308 Mr. Green - Having served on the board, somewhat understanding those  
309 rules -- is anyone here from Social Services that -- or do you have any supporting  
310 documentation from Social Services that would support out that position? Because  
311 there are strict standards that everyone has to follow in reference to these homes. And  
312 regardless of what the zoning says, you still have another body that you have to be guided  
313 by. Not only Social Services, but you also got some State. Do you have any supporting  
314 documentation from the Social Services?  
315

316 Mr. Newby - No, sir, I do not. I prepared my presentation today with the  
317 focus solely on the zoning ordinance.  
318

319 Mr. Green - Zoning.  
320

321 Mr. Newby - As that's where I'm competent to address. And beyond that  
322 I'm much less competent as far as Social Services. But I should remind the board, too,

323 of course our conclusion today has to be based solely on the zoning ordinance and not  
324 what DSS may require.

325  
326 Ms. Harris - Okay.

327  
328 Mr. Green - Yeah, but the -- we have to take into account that if the law from  
329 Social Services particularly states and gives X number, we have to take -- I think we have  
330 to take that into account, too. We can't, you know -- we just -- we have to follow those  
331 rules, everybody's rules.

332  
333 Mr. Newby - Yes. And I can certainly agree with that because if you look  
334 at our definition of assisted living facility in the zoning ordinance, it specifically says that  
335 they have to be subject to license or by the Department of Social Services. So, of course  
336 if they didn't have that license, that would be a nonstarter in the zoning ordinance, as well.  
337 You're very much correct there.

338  
339 Mr. Green - So you can't address whether or not they have exception or in  
340 granite anything from Social Services that they are -- that they understand and are fine  
341 with this?

342  
343 Mr. Newby - No. No. I haven't gotten any direct word of that. My  
344 understanding from the appellant is that she needs our approval to get that kind of  
345 approval from Department of Social Services. But I expect she would be better able to  
346 address that.

347  
348 Mr. Green - Okay.

349  
350 Mr. Newby - Whether -- how she stands with Social Services.

351  
352 Mr. Green - Thank you.

353  
354 Ms. Harris - Thank you. Any more questions from board members?  
355 Thank you, Mr. Newby.

356  
357 Mr. Newby - You're welcome.

358  
359 Ms. Harris: Now we'll hear from the appellant. You've been sworn in.  
360 Would you come forward, please, and give us your name and spell the -- your last name.

361  
362 Ms. Atkinson - Good morning.

363  
364 Ms. Harris - Good morning.

365  
366 Ms. Atkinson - Thank you for the chance to speak. My name is Garretha  
367 Atkinson. It's spelled A-T-K-I-N-S-O-N.

368



369 Ms. Harris - Okay.

370  
371 Ms. Atkinson - And I just wanted to say we followed all the rules. We weren't  
372 trying to build anything, you know, with -- we didn't build anything, matter of fact. We got  
373 the Homeowner's Association -- I went, took my blueprints to them first and they just said,  
374 "Okay. Well, we shouldn't have a problem with it, professionally." So that was a verbal  
375 agreement. And then after I got my builder involved, he took my plans to Social Services.  
376 And Social Services looked at the plans because my rooms have to be a certain size. I  
377 have to have a certain amount of bathrooms per people. So Social Services took a couple  
378 of weeks and they approved it.

379  
380 And then the builders say, "We have to have approval, also." Plus I have to have a license  
381 to build from the County. So, he took the blueprints to the County, and Mr. Blankinship  
382 stamped his signature on it and he also approved it. And then he (builder) began to build  
383 it.

384  
385 Well, after he finished building it, I had to go back to the health department, the fire  
386 department to get them, you know, to see if everything was done correctly. They  
387 approved it. And then I had to go back to Social Services. So Social Services came in  
388 to measure the rooms and saw that everything was done correctly. So they approved it.

389  
390 But the license inspector said, "Oh, I forgot one more thing. We still have to go to the  
391 County and the County has to increase your capacity, because if they don't increase your  
392 capacity, we can't give a license. So we approve it. We're just waiting on the County to  
393 give the capacity so we can go ahead and issue you the license and the people can move  
394 in."

395  
396 So that was the protocol that I followed distinctly. And everybody was on board.  
397 Everybody approved everything. But when I called Mr. Blankinship and asked him -- and  
398 he was very respectful every time. He approved it and I said, "Well, I forgot I need to call  
399 you for you to come out and increase my capacity." And he said, "What's your address?"  
400 I gave him my address and he said, "No, I can't approve it."

401  
402 I'm like, "What happened?" And I said, "But you approved for the addition to be added to  
403 my home, and you know, I am a business." If you just take your cell phone and Google  
404 my address, it'll come up as a four-and-a-half-star assisted living facility. So he say, "Well,  
405 I just thought you was a lady with a bunch of kids and I just felt sorry for you." I said, "But,  
406 sir, I'm not a lady with a bunch of children. I'm taking care of God's creation. I'm taking  
407 care of people with a disability, physical and mental." So I say, "I bring a lot of, you  
408 know, money to the government, to Henrico County. I take pride in what I do and I know  
409 this is what I'm supposed to do. And if you wasn't going to approve me -- you know, for  
410 me, my capacity to be increased, then why would you approve for the addition to be built?"  
411 And he repeated it. So I just held the phone, choked up in shock.

412  
413 I say, "Well, this project cost me \$100,000. I have to pay this guy or else I'll end up in jail.  
414 Is there anything you can do?" He said, "Well, you can put people back there, but if I find

out you are running it as an assisted living, I'll come take your license off the wall." And I was like, "Wow." You know, and I'm just shocked, hurt, and upset.

I called Social Services. Social Services said, "Well, I'm sorry, Miss Atkinson, we will give you a license but we have to do what the County says do and I'm so sorry to hear this. You know, you're just going to have to fight it and fight it and fight it." And I've been fighting it.

I've talked to his boss, Mr. Joe Emerson. He say, "I'll agree with whatever Mr. Blankinship say," so they're on the same page. And there's nothing else I could do but to re-appeal because it has been built and I can't use it. One minute they say I can put people back there if I'm not taking care of them. I found people. They didn't do a good job so, you know, I couldn't keep the Social Services and no, they have to go.

And then I found a live-in care aide. He's been living there for three years. But when Mr. Blankinship found out he was living there, they say, "Well, it's unlawful for a care aide to live in the same occupancy that the residents live." So he had to move, too. And I thought that was legal because he said even I could live back there.

And assisted livings all over Richmond, Henrico, and Hanover have live-in care aides so I feel like rules have been made just for me to make my life complicated. This is the way I feel. I'm not saying that's so, but I just feel discriminated against when the only thing I'm trying to do is take care of people that literally can't take care of themselves, because I house vulnerable people that just needs somewhere to go. They need food.

I like cleaning up the earth because that's what I was supposed to do, through taking care of people. And I didn't do anything unlawful. I followed all the rules and I feel like the system just let me down because of something that I didn't know or something that Mr. Blankinship maybe didn't know or just speculated.

Ms. Harris - Miss Atkinson, how many residents do you have now in the home?

Ms. Atkinson - I have eight.

Ms. Harris - You have eight?

Ms. Atkinson - Yes, ma'am.

Ms. Harris - And the people who take care of them, how many caregivers?

Ms. Atkinson - I have four caregivers, and they're all licensed through the Board of Nursing and myself, as well.

Ms. Harris - Okay. So there are 12 in the home?

Ms. Atkinson - Well, there's eight that live there. But the employees don't -- none of the employees live there. I live next door. My husband and I live next door. But all of my employees have their own homes.

Ms. Harris - All right. Okay.

Mr. Bell - How did you settle at eight people in your home?

Ms. Atkinson - I'm sorry, sir. What did you say?

Mr. Bell - How did you find -- how did you determine you were going to have eight people when you first set it up?

Ms. Atkinson - When I first started the business I asked -- I went to the government's office which is, like, a few blocks down the street and asked them could I run a business. And I told them the type of business and they said, "Yes, you can run the business," and they gave me a business license right away.

Mr. Bell - So at that time you knew that eight was required. When you -- when you built the addition on the back of the house, did the Social Services and the contractors, all the other people, they -- they all went in thinking that you'd be having -- enough for another group of people --

Ms. Atkinson: No, sir. I lived in the house for about --

Mr. Bell - Did they know, though? Did they know what they were building it for, the contractors who was building the addition?

Ms. Atkinson - I think he did because he knew. I met the guy, I saw him at a stoplight and he had his business on his truck. And I called the number and told him that I want an addition added to my home. So he said, "I'll come back and look at it."

And he came by like a week later and looked at the house. And I was living there at the time that I started my business, because I lived there for, like -- I moved there in 2001, I believe, and I lived there for almost 10 years before I changed it into a business. And then I changed it into a business and I had one resident. Then I changed it to two. And each time that I changed my capacity, I knew that I had to get the County's approval to increase my addition.

But nobody ever told me that there was a limit. And -- and I didn't know to ask because I felt like if I let everybody know what I want to do before I do it, at some point if there's anything that could go wrong, the people of authority over me would let me know at what point I would have to stop.

Mr. Bell - So you were depending on the County to tell you, right?



507 Ms. Atkinson - If anything was wrong, yes, sir. That's the reason why I  
508 always get the approval first. So if it's something I overlook or just didn't know, then they  
509 would say, Okay. You can do this; you can do that. I didn't know that there was a set  
510 amount of people that I could even have. I didn't know that.

511  
512 Mr. Johnson - Also when you were talking, you mentioned that -- did you tell  
513 the County what you had planned on using that addition for?

514  
515 Ms. Atkinson - I told the --

516  
517 Mr. Johnson - When you made the application out, did you know you had to  
518 come to the County?

519  
520 Ms. Atkinson - I didn't know. Social Services told me because I wanted to  
521 expand my business because people would always call me and I said, "Well, I don't have  
522 any room. My beds stay filled." So my license inspector say, "You need to grow. You're  
523 really doing a great job. So, you know, you don't even advertise your business. Your  
524 beds stayed filled." People always call me for a job. People always call me for  
525 somewhere to stay. And she said, "Well, your business needs to grow. This is definitely  
526 a gift." So I said, "Okay." So I kept increasing my capacity.

527  
528 And first I had, like I say, one resident. Then two. And at some point I said, "I need to  
529 change my whole house, and I'm going to just have my bedroom." So I changed my  
530 whole house so I could run a business. And then the business kept getting bigger and  
531 bigger. So I'm like, "Okay. The house for sale went up next door so let me just move out  
532 and put two more people in my house."

533  
534 And I just kept growing because I felt like if people keep calling, I'm doing a great job.  
535 Then I need to take care as many people as I can legally. So that's why I kept growing.  
536 And I -- when I met the guy, I told him I needed to add some more rooms on to my house  
537 to put some people in. And I didn't think to just tell him, this is a licensed facility, and go  
538 over the details because I didn't know the guy. I -- it was a business deal. All I need to  
539 do is add four more rooms on to my house, because I was still living there at that moment  
540 in pursue to just expand, expand, expand.

541  
542 Mr. Johnson - So you're not living in that facility now, right?

543  
544 Ms. Atkinson - No, sir. I bought the house next door.

545  
546 Mr. Reid - Do you have someone there who's watching over the  
547 residents at night, caregivers or --

548  
549 Ms. Atkinson - Yes, sir. Once you get a license through Social Services,  
550 someone have to be there 24/7. So I have round-the-clock care, and someone's always  
551 there licensed to give medicine, a medical technician or an RN.

552

553 Mr. Johnson - And also your Social Services, they did not mention when you  
554 was talking about the addition, about another facility, about being in a residential area,  
555 that there are limitations?  
556

557 Ms. Atkinson - They didn't mention anything about limitations. I've been  
558 trying to get a loan from the bank to purchase a building but they said my business was  
559 too new. Even though I have great personal credit, I didn't have any business credit  
560 because I never had a business before.  
561

562 I've always managed fast-food restaurants. So I didn't know anything. This was all new  
563 to me. But they never said that there was a limit. But I wanted to grow so I know that  
564 there are rules that I have to follow. So before I do anything I do know that I have to get  
565 approval and permission. So I always go to Social Services first because they always  
566 have the right answers. And if Social Services approve it, then I know that it has to be  
567 okay. I got to do whatever they tell me to do.  
568

569 Mr. Green: When your builder built, did he build knowing that because it  
570 was a group home, that the standards were different? Because you've got to have  
571 handicapped accessible bathrooms, the widths of the doors have to be different, the  
572 kitchen has to be retro-fitted so it's more of an industrial type of a kitchen. Did -- did he  
573 not know that? I mean, because those are the new standards that Social Services, you  
574 know, have put out and are monitoring.  
575

576 Ms. Atkinson - Right.  
577

578 Mr. Green - I mean, were you aware of that?  
579

580 Ms. Atkinson - Well, I'm a residential 11. When you're Residential 11, all of  
581 your residents have to be ambulatory. Which means if they're in a wheelchair during a  
582 fire drill they have to be able to get in and out of the wheelchair alone. So I'm a Residential  
583 11. Now, if I was a nursing home, level 12, then they could be wheelchair-bound.  
584

585 But because I have -- there are different licenses through Social Services, and I applied  
586 for the Residential 11 license which means I don't have to have a generator. I don't have  
587 to have a wheelchair ramp and bathrooms accessories.  
588

589 Mr. Green - Okay.  
590

591 Ms. Atkinson - But I just thought it would be helpful because when someone  
592 comes to me and they need help, I don't want to reject them because of something I could  
593 do and I didn't do. So the veteran hospital put on a ramp for me. Even though I don't  
594 need it I still have it. When the builder built, because I was on residential property -- I  
595 don't know what his knowledge is but he showed me his license. He said, "I'm not a  
596 commercial builder, but because you are in a residence, I can build a home for residence."  
597

598 And when he built it he had his license nailed in the ground on a board so everybody

could see that he was building. But even though I don't need a generator, I still went and got a generator because if my lights go off and somebody in there on oxygen, the ambulance can't get to them, we need power.

So the things that I thought of that my license inspector also agreed on, she said, "You don't have to have these things but it would just be a good idea." And because she said it was a good idea, I went and got a generator to light up the whole house if the lights go out. When the builder built the half a bathroom downstairs -- Licensing say every 10 people, we have to have one bathroom and one staff. But it was going to be 16 people so I changed the half a bath downstairs to a walk-in shower where they could roll the wheelchair in the shower and sit down. So even though the things I didn't have to do, I still did it for the safety of the people. In case I'm awarded an 11/12 license and I'm able to house those types of people, it won't be nothing on my behalf why they can't come.

Mr. Green - Right.

Ms. Atkinson - It'll be something else that I don't know about.

Mr. Green - So in essence, you're trying to go from eight to 16?

Ms. Atkinson - Yes, sir.

Mr. Green - And your neighbors don't have a problem with that?

Ms. Atkinson - No, sir. I have three neighbors here. Mr. Tony and Mr. Arthur, and the other gentleman right here, he stays a block over. Oh, I'm sorry. I missed them. I see you.

Ms. Harris - So we can't -- I'm sorry, Miss Atkinson, we can't hear you if you turn around.

Ms. Atkinson - Oh, I'm sorry.

Ms. Harris - Okay.

Ms. Atkinson - Four of the neighbors here. I didn't know four was here -- I thought three was here. But the neighbors are here. Miss Linda right here lives directly beside my group home to my right -- to my left. And Mr. Tony stays directly across the street in front of the group home.

And Mr. Arthur stays directly beside the house that my husband and I stay in. And the other gentleman right here stays on the other street one block over on Shillingford Drive. But my neighbors that stays right beside me and around me, they're the ones that's here. And they support me a hundred percent.

When they see my residents walking up and down the street for whatever reason, they'll



645 give them a ride. You know, I said, "No, that's not necessary. You don't have to." But  
646 they still do it. They have games and stuff at their house. They invite them over to their  
647 house, you know, for games. They'll come over and watch the game with them and they'll  
648 talk back and forth.

649  
650 And all the -- Miss Linda, a lot of times, would -- you know, she used to work in a nursing  
651 home before she retired, and she would donate stuff to my company. Arthur donate right  
652 much stuff that people give him something, he don't need it. And Tony's always -- they  
653 come over. They will cut the grass, you know, when I was cutting the grass before I met  
654 my husband. I was doing all my maintenance outside. And everything I didn't know how  
655 to do, I would either call Tony or Arthur to do it and pay them to do it and they have  
656 supported me from day one. And they came to court today because they wanted you all  
657 to see that they didn't have a problem. I take pride in the type of people that I house. I  
658 can't house certain types of people.

659  
660 The people that I do house are very vulnerable and they have been let down and pushed  
661 aside by society. And I obviously don't have a problem with it because I live right beside  
662 my home. And I have cameras everywhere, talking cameras so I can view my property  
663 at all times.

664  
665 And they have my numbers in their phone if they had a problem. They have never called  
666 for a problem but they have always called, you know, to say, "Hey, I got something," or  
667 this or that. But it's never been nothing negative. I keep my property looking good. No  
668 mold on my house. I keep it power-washed. When the gentleman came by a couple  
669 weeks ago to take pictures, everything was in order. The grass was cut. The flower bed  
670 was looking good. It doesn't look like a business, and I want my residents to feel like just  
671 what it is: This is your home. This is a house. This is personal. I'm not embarrassed of  
672 you or the neighborhood. That's why I live here. I can afford to move but I won't because  
673 I have such great neighbors that support me. And the way that my employees, as well  
674 as my residents, respond to me.

675  
676 Mr. Green - One other question. So if we grant this, you then -- you will  
677 then go back to Social Services to see if, in fact, they will allow you to expand?

678  
679 Ms. Atkinson - Well, there's no question. I asked the Social Services  
680 administrator who just got the position a few months ago and my license inspector could  
681 they come with me to court and they said legally they couldn't because, you know, they  
682 wasn't allowed to.

683  
684 But they told me, they said, "Whatever the County says, we will do, because we were  
685 giving you the license. The only reason you couldn't get it was because your capacity  
686 had not been increased. And had we known that they wasn't going to increase your  
687 capacity, then we would have told you you couldn't build. So it was to our understanding  
688 that you could build. That's why we approved it. And even to this day, once you go to  
689 court, if they approve it for the 16, the 16 capacity, you come straight back to us and we're  
690 going to license it." And this is what they told us -- told me. Because I asked them to

691 come to court with me.

692  
693 Mr. Johnson - Yes. There are, again, two different entities. Social Services  
694 and -- and the County has something different. Also, is there another facility on that street  
695 that you live on?

696  
697 Ms. Atkinson - Yes, sir. I have a --

698  
699 Mr. Johnson - That's assisting living?

700  
701 Ms. Atkinson - Yes, sir. I have a house on the corner at 4001. That's an  
702 assisted living, also, and I have eight people in that house. That's directly across the  
703 street on the same block.

704  
705 Mr. Johnson - Eight people in there?

706  
707 Ms. Atkinson - Yes, sir. And I just opened up that facility, I think, March the  
708 27<sup>th</sup>.

709  
710 Mr. Green - So is it -- speculative, so it -- . No, go ahead. Sorry.

711  
712 Ms. Harris - Mr. Johnson, had you completed your questioning?

713  
714 Mr. Johnson - In the zoning ordinance, there are limitations that can't be  
715 changed, you know, because -- and you have another facility and then this one you're  
716 expanding on. That is -- and evidently you didn't know what avenues you were supposed  
717 to take in order to get those things taken care of before you got this far. But again, I just  
718 want to mention, you know, there are some limitations in the zoning ordinance.

719  
720 Ms. Atkinson - Right. I opened up -- my main purpose of opening up that  
721 assisted living, because I still -- I'm still struggling to pay the guy for the addition in the  
722 back. It looks like everything I do, nobody will license it. So I open up that facility to add  
723 money because I promised him a certain amount every month, which I haven't been able  
724 to do to this day. But that facility brings its own challenges.

725  
726 And I know I can't put no more than eight people in that particular house so I maxed it out  
727 with eight, what I could do. I'm able to pay the guy and double his payments but still not  
728 able to pay him what I told him I would pay him. And he's generous enough to say, "Well,  
729 you're paying something. You're trying. I know your struggle, so that's fine." And he  
730 haven't taken me to court or said much of anything. But I still wanted to put my capacity  
731 to 16 on the house even though -- and that's the only house that I'm requesting that it be  
732 zoned for. Not to renters. Not to a single family. Not to a live-in care aide or nobody.

733  
734 Just zone it for what, you know, I had asked for. I don't know who can make the decision,  
735 but I know someone can make a decision to, you know -- and this may sound crazy. But  
736 this is just my thought. Zone it for 16 and as long as I run the business in that facility,

allow it to be, you know, commercial property or whatever it needs to be.

And once the business moves on or closes down or whatever, then nobody else can get it. But just grant -- if you could, just grant me favor because the mistake was made with me and allow me to do something, you know, to justify what was left unknown or undone, just for that property. And of course in all other properties the answer will be no. Let it be a learning lesson. Mr. Blankinship knew that I was in a residential community the whole time. And, you know, he know that they're residential because he came out each time and increased my capacity. But he never said, "You can't have no more than five or you can't have no more than seven." When he increased my capacity to eight, he never say, "Okay. I don't know if you're aware or not but this is as far as you can go." Because whatever he would have said I would have done.

Ms. Harris - Miss Atkinson?

Ms. Atkinson - Yes.

Ms. Harris - You said you have another facility on the same street, right?

Ms. Atkinson - Yes, ma'am.

Ms. Harris - And you say you have eight in that?

Ms. Atkinson - Yes, ma'am.

Ms. Harris - How did you know that you had eight? I mean, how do you know that the capacity was going to be eight, no more?

Ms. Atkinson - Because of what I'm going through across the street.

Ms. Harris - Okay.

Ms. Atkinson - Right.

Ms. Harris - All right.

Mr. Green - I have a question.

Ms. Atkinson - Yes, sir.

Mr. Green - This is -- if you have three houses --

Ms. Atkinson - Yes, sir.

Mr. Green - -- so if this is granted, then there's a possibility that you could take the house that you have eight people in and do the same thing, add an addition.



783 Because then your argument would be, I've gotten this permit to do it. And then the house  
784 that you're in, you could put eight folks in and build an addition. You know, using the  
785 argument that, you all allowed me to do it for this house so you should allow me to do it  
786 for that other house and my house. And –

787  
788 Ms. Atkinson - No, sir. That's not what I'm asking. But I don't -- I don't want  
789 that.

790  
791 Mr. Green - But that could happen easily.

792  
793 Ms. Atkinson - But this is how I wanted to prevent it from happening. The 16  
794 that I'm asking for in 4012 only because of the mistake with Mr. Blankinship. And I do  
795 believe he's an honest man. I do believe he told me the truth, and it was an honest  
796 mistake. Only for that position.

797  
798 Laws are made through trial and error and what we don't know. Allow me to have 16 in  
799 that house because of his mistake. Other than that, no other house in the community  
800 would be allowed more than eight. Fix the law so for that house only while I'm the owner.  
801 It can only go to 16 people.

802  
803 If I sell my business to someone else, no. They cannot have 16 people. You can have  
804 eight. Only for me. Just change the law for me. It may sound hideous but it's just a  
805 question. You never know unless somebody asks. Change it for me because of the  
806 mistake that the County or representative Mr. Blankinship made. I can only have 16 in  
807 that particular house. No other house on the block, including my house next door, my  
808 house across the street, any other properties that I may purchase or anybody else. Only  
809 that property because of the mistake.

810  
811 This mistake would not be made again. This is the only house that can have 16. No  
812 other house. I don't care how many houses I build. The answer will be no. And we'll  
813 only license it for 16 because of the mistake we made. We will not make that mistake  
814 again. I can promise.

815  
816 Mr. Green - But with all due respect, Mr. Blankinship does not determine  
817 your licensure. That's determined by another entity.

818  
819 Ms. Atkinson - Right. He just did –

820  
821 Mr. Green - You know, with all due respect to him, I think you're unfairly  
822 blaming him for something he doesn't -- he does not determine licensure for homes.

823  
824 Ms. Atkinson - Right. I meant a capacity increase, yeah. Because that's  
825 what he does.

826  
827 Mr. Green - But I'm just saying, that's done through another entity. So you  
828 have to make that argument with another entity. So I'm having a hard time with this now

because you're assuming that he makes that when Social Services makes that and -- and there's specific rules that you've got to follow with Social Services.

Ms. Atkinson - Right.

Mr. Green - And -- and I'm wondering if you really fully understand the Social Services system of process.

Ms. Atkinson - Yes. The Social Services license it. The zoning administrator have to sign and approve for the license inspector to license it. So Social Services license it. But the County increase the capacity. And I think it's Mr. Blankinship's job title to come out and say, Okay. It can be increased or it can't be increased. But I also know he have rules to follow.

So I don't know who I would have to talk to but I know somebody can do it. I just don't know who can do it. But whoever can be responsible for increasing my capacity to 16 so Social Services would give me a license for 16, that would be the person that I would address it to.

Ms. Johnson - My final question.

Ms. Atkinson - Yes, sir.

Mr. Johnson - Since you know that you wanted to increase your capacity and also increase your business, no one told you about going to an area that you can have as many residents as you wanted or, you know, not in a residential area?

Ms. Atkinson - That's what Mr. Blankinship told me. You have to have a minimum amount --

Mr. Johnson - Than thinking about another area rather than a residential area?

Ms. Atkinson - That's what I was told after the fact. Because my question was, Okay. If I have limitations, what's the limits?

Mr. Johnson - Okay.

Ms. Atkinson - And then that's -- I believe it was Lisa, Mr. Blankinship's wife, or somebody told me at Henrico County Planning when I came to the second floor. Mr. - I believe you wasn't there. But somebody told me, "Okay. Here's the deal. Normally if you go over eight people in which you do know -- but you don't know but I'm going to tell you now. You need a minimum of five acres of property." And I said, "Okay. With five acres of property, can I put the --" they say, "Yeah, you can put up to 98 beds. And each acre -- like if it was six acres or every acre over, you can add seven people."

875 I say, "Wow, so that's how it work?" They say, "Yeah." So that's after the fact when I  
876 went to the County Planning to investigate what was going on, what happened or what,  
877 what, that's when they told me, "You need five acres of property." So I said, "Well, since  
878 it was a mistake, is there anything that can be done to clean up the mistake?"  
879

880 Mr. Green - For that capacity. But Mr. Johnson and board, the problem is,  
881 these homes can pop up in any residential area. You know, you can have a million-dollar  
882 neighborhood and someone decides that they want a home, and as long as they meet  
883 the minimum number of residents, they can put these facilities in. So she's talking about  
884 a larger number. But if you're talking about a smaller number, I mean, someone could  
885 actually put one right next door to you or next door to me and it's legal. And they're doing  
886 it.  
887

888 Ms. Harris - Okay. Miss Atkinson. A couple of things. I wanted to just set  
889 the stage. We're here to decide if the County acted properly. If -- we're here to decide or  
890 to affirm or deny, that's our purpose.  
891

892 Mr. Green Right  
893

894 Ms. Atkinson - Yes, ma'am.  
895

896 Ms. Harris - We are either going to say the County was right in saying you  
897 needed eight and no more than eight or if they were not right. And so we're just here to  
898 say -- to see if Mr. Newby's group did the right thing.  
899

900 As I listen, I just wondered, too, about changing your -- how you're designated. For  
901 example, you know, you mentioned nursing homes, for example. And I did drive by your  
902 location. It's a beautiful neighborhood and had no idea that three of those homes were  
903 yours. It's a beautiful neighborhood, well-kept.  
904

905 Ms. Atkinson - Thank you.  
906

907 Ms. Harris - But I wondered if you change your designation. Instead of  
908 calling it assisted living, you know, if you maybe even have to change your location, I  
909 don't know. But you're doing such a good job maybe you do need to expand but not  
910 necessarily in a residential area where you're restricted to eight, eight, eight.  
911

912 Ms. Atkinson - Right.  
913

914 Ms. Harris - So just some things to think about. But we're here to either  
915 deny or to affirm that the County did the right thing. And we're sorry that you got some  
916 misinformation.  
917

918 Ms. Atkinson - That's okay.  
919

920 Ms. Harris - But I think about how people build homes. And oftentimes



921 there is a builder who does not get a building permit. We know then that it's on us as  
922 owners to be sure that a building permit is there. And the builder is not going to say how  
923 the house necessarily is going to be used.

924  
925 Ms. Atkinson - Right.

926  
927 Ms. Harris - So then we as owners have to do our homework to be sure  
928 that what we are requiring is in compliance with whatever code the locality has. But I  
929 think we do empathize with what's going on here.

930  
931 Ms. Atkinson - Yes, ma'am.

932  
933 Ms. Harris - But I do think if you want to expand, just go for it and close all  
934 these eight, eight, eight, and just do it big time.

935  
936 Ms. Harrison - Right. Right.

937  
938 Ms. Harris - Any more questions of the board members?

939  
940 Mr. Bell - Just a statement based on what you said. Basically  
941 remember the last presenter threw up for the board two things, the code and the numbers  
942 in the code. That's what we were looking at. Was that violated? You've got other assisted  
943 living homes all over Henrico County. And many others have been through board  
944 meetings with their specific problem, because they couldn't change for whatever reason.  
945 That's one reason codes are developed, is to try to handle those things.

946  
947 So when we set up this morning, that's basically and majorly what I was looking for is  
948 what information would support it or to go against it. And that's why we're talking to  
949 people, and we'll make our decision later on. However, the code has been there a long  
950 time.

951  
952 Ms. Atkinson - Yes, sir.

953  
954 Ms. Harris - Okay. Any more questions? Miss Atkinson, we thank you for  
955 coming in.

956  
957 Ms. Atkinson - Thank you for letting me speak.

958  
959 Ms. Harris - All right. Going to go to the next case. Oh, first off, is there  
960 anyone else who wishes to speak and you were sworn in to this case?

961  
962 Mr. Green - How about the neighbors?

963  
964 Ms. Harris - The neighbors were not sworn in but if they wanted to speak,  
965 they could after being sworn in. If you decide you want to say something after being  
966 sworn in you can speak in support the applicant. No pressure. No.

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Mr. Green - Thank you.

Ms. Harris - Thank you.

**[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.]**

Ms. Harris - Okay. We're going back to the first case.

Mr. Blankinship - Madam Chair, if I can be permitted just a minute on the record. I am not the subject of this case and I didn't want to speak up during the public hearing, because it was already dragging. But there were several comments made that included my name and because they are now public record, I want the corrections to be public record.

I do not review building permits. I don't see a building permit unless there's a problem with it or a question with it. I did not see this building permit until long after this building was constructed. So I had nothing to do with the review or the approval of the building permit, and every statement about me reviewing the building permit was inaccurate. I don't believe that I said that I feel sorry for her because she has so many children. That just doesn't sound like something I would say. I know I did not say that I would go out there and take her license off the wall. I don't have any inclination or any authority to take anybody's license off the wall. I have never been to this property.

She suggested that I had been out there each time that the number of people had increased from five and then to seven and then to eight. I have never even been to this site, and I was never aware of it before it already had eight people. And as for the question of mistake, there is a case on this morning's agenda where the County made a mistake. And the contractor built the house in good faith reliance on a permit that should not have been approved.

And when that happens, we put that right in the staff report in black and white. In this case I am still convinced that the County has not made a mistake. There may have been some misunderstanding. There may have been a lack of information. Maybe somebody should have gotten information that they did not have. But I don't believe that the County made a mistake in this case.

Ms. Harris - Thank you for that information, Mr. Blankinship. Okay. We need a motion to either affirm or deny the appeal. What is the pleasure of the board? This is APL2018-00004.

Mr. Johnson - Yes.

Ms. Harris - Okay. Is there a motion?

1013 Mr. Green - In Varina.

1014

1015

1016 Ms. Harris - Yes. All we have to do is either to affirm the appeal or deny

1017 the appeal.

1018

1019 Mr. Johnson - Oh. On that facility this is what I have. I recommend that the

1020 zoning of the eight patients in that facility be maintained, that we not -- that she doesn't

1021 have to do anything with the new construction; that that's fine. But, no more than eight

1022 persons be on the facility as patients. And that there be no renters, as well.

1023

1024 Ms. Harris - Okay. So you're affirming the County's request, decision of

1025 the County?

1026

1027 Mr. Johnson - The decision of the County, yes.

1028

1029 Ms. Harris - Yes. Is there a second?

1030

1031 Mr. Green - Second.

1032

1033 Ms. Harris - Okay. It's been moved and properly seconded that we affirm

1034 the County's decision of the Director of Planning. Okay. Is there any discussion on this

1035 particular case? I think we had a lot of discussion when we were listening to it.

1036

1037 Mr. Johnson - Yes.

1038

1039 Ms. Harris - So all that's a part of our record.

1040

1041 Mr. Johnson - Also they need to have been certified in order to be counsels,

1042 as well. And I don't know if she mentioned that or not. But then also I believe that she

1043 got her permit later and it has been -- well, I'm not going to say that.

1044

1045 Mr. Green - Yes. Don't say that.

1046

1047 Mr. Johnson - But at any rate, you should have certification.

1048

1049 Ms. Harris - Yes. And we are -- I'll speak for myself. We are sorry for the

1050 misinformation and misunderstanding. But we do have the code that was followed in this

1051 particular case.

1052

1053 Mr. Johnson - Right.

1054

1055 Ms. Harris - By the Director of Planning.

1056

1057 Mr. Johnson - Yes.

1058



1059 Ms. Harris - Okay. Any more comments or discussion?  
1060  
1061 Mr. Green - And the only other thing is that there's a Social Service --  
1062 another whole process that she needed to follow at the local, state, and federal level, that  
1063 she should be very familiar with and their guidelines. So if she's not then that's not our  
1064 fault. So we're dealing with that -- this one aspect. So I maintain my second.  
1065  
1066 Ms. Harris - Okay.  
1067  
1068 Mr. Johnson - Madam Chair?  
1069  
1070 Ms. Harris - Yes.  
1071  
1072 Mr. Johnson - One more thing. When I was in the facility out there, I noticed  
1073 that other -- the reason I asked, you know, was there were other living facilities out there,  
1074 because I noticed, you know, people out there at that particular facility. Anyway, they say  
1075 they have eight in there now in the other ones?  
1076  
1077 Mr. Green - Yes.  
1078  
1079 Ms. Harris - Yes.  
1080  
1081 Mr. Johnson - Has that been -- well, I know it's not part of this. But it still is  
1082 a concern.  
1083  
1084 Mr. Green - She had 16 in --  
1085  
1086 Mr. Johnson - No. She said they had eight in the other facility.  
1087  
1088 Mr. Green - Eight in one. Yes. She has 16 altogether.  
1089  
1090 Mr. Johnson - Right.  
1091  
1092 Mr. Green - And she could still have another eight in her house.  
1093  
1094 Ms. Harris - Right.  
1095  
1096 Mr. Johnson - Right.  
1097  
1098 Ms. Harris - And there are staff workers, too, so you have to know the  
1099 people that you saw, if they were actually working there or if they were really residents.  
1100  
1101 Mr. Johnson - Right.  
1102  
1103 Ms. Harris - Okay. Any other discussion? Okay. All in favor of the motion  
1104 to affirm the decision of the Director of Planning say aye. Those opposed say no. Okay.

1105 It's been affirmed.

1106  
1107 After an advertised public hearing and on a motion by Mr. Johnson, seconded by Mr.  
1108 Green, the Board **affirmed the decision of the Director of Planning and denied**  
1109 **GARRETHA ATKINSON's** appeal pursuant to Section 24-116(a) of the County Code  
1110 regarding the property at 4012 Elmswell Drive (FAIRFIELD WOODS) (Parcel 808-725-  
1111 1412) zoned One-Family Residence District (R-3AC) (Varina).

1112  
1113  
1114 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
1115 Negative: 0  
1116 Absent: 0

1117  
1118  
1119 Ms. Harris - Okay. Next case, please.

1120  
1121  
1122 **CUP2018-00027** **DONALD BLANKENSHIP** requests a conditional use permit  
1123 pursuant to Section 24-95(i)(4) of the County Code to allow an accessory structure in the  
1124 side yard at 7659 Wilton Road (Parcel 802-691-7131)) zoned One-Family Residence  
1125 District (R-3) (Varina).

1126  
1127 Mr. Blankinship - Raise your right hands, please. I'll wait till everyone has a  
1128 moment to stand. Raise your right hands, please. Do you swear that the evidence you're  
1129 about to give is the truth, the whole truth and nothing but the truth so help you God?  
1130 Thank you. Mr. Gidley?

1131  
1132 Mr. Gidley - Thank you, Mr. Secretary. Good morning, Madam Chair,  
1133 members of the board.

1134  
1135 Ms. Harris - Good morning.

1136  
1137 Mr. Gidley - The subject property is a one-acre parcel located just off of  
1138 Osborne Turnpike. It contains an existing dwelling along with a shed and an 855-square-  
1139 foot detached garage. And you can see the shed is here, and it's actually separate from  
1140 the garage which is over here.

1141  
1142 Earlier this year the applicant began construction of the detached accessory building in  
1143 the front yard that extended across the property line. And this building is right here and  
1144 the property line runs roughly right along through here.

1145  
1146 Following the complaint to building inspections, the applicant has agreed to relocate his  
1147 garage to the side yard. Placing the garage in the side yard obviously requires a  
1148 conditional use permit. If approved, however, the applicant would need to reduce the  
1149 utility building shown here by 199 square feet to avoid going over the maximum floor area  
1150 allowed for accessory structures.

In addition to the utility building, the applicant has been cited by Community Maintenance for storage of tractor-trailers on the property, along with inoperative vehicles and storage of trash and debris. Because the property already contains two accessory structures totaling over 1,000 square feet, there is concern this new building may not be accessory to the dwelling. In evaluating this, the property is zoned R-3, One-Family Residence District. And a one-family dwelling is consistent with this. A detached accessory building is customarily accessory. Storage of tractor-trailers, however, is not allowed in a residential district, whether inside or outside of a building. The use of the property is rather intensive, and this would be the third accessory structure on the property.

The condition of the property, along with the occasional storage of tractor-trailers, is undoubtedly detrimental to nearby property owners, and this is evidenced by the number of complaints the County has received.

So in conclusion, the use of the property is already overly intense and contains numerous violations of County Code. There is a concern that a third accessory structure would not be accessory to the dwelling and instead would only exacerbate the impact on adjacent property owners.

As a result, staff recommends denial of this request and that concludes my presentation. And if you have any questions I'll be more than happy to answer those.

Ms. Harris - Any board questions?

Mr. Johnson - On there -- you said a thousand square feet of extra accessory space. Is that more buildings than authorized on the property?

Mr. Gidley - Right now the two buildings I showed earlier, those are within code.

Mr. Johnson - Okay

Mr. Gidley - That's more than you would normally have in an R-3 district. He has a larger lot because he's on well and septic.

Mr. Johnson - Okay

Mr. Gidley - If you count the third building, he is over by 199 square feet. That's not common.

Mr. Johnson - Okay

Mr. Gidley - Even if he did get the conditional use permit, he would, nonetheless, need to reduce the size of the building to avoid going over the total coverage area for accessory structures.



1197 Mr. Johnson - Okay

1198

1199

1200 Ms. Harris - Other questions? Thank you, Mr. Gidley.

1201

1202 Mr. Gidley - Thank you, ma'am.

1203

1204 Ms. Harris - I need the applicant to come forth, please. Let's see. Who do

1205 we have?

1206

1207 Mr. Blankinship - Is Mr. Blankenship present?

1208

1209 Ms. Harris - Mr. Donald Blankenship? He's not present. No one's here to

1210 present his case? Okay. Mr. Secretary?

1211

1212 Mr. Blankinship - Madam Chair, you have people who inconvenienced

1213 themselves to be here this morning. I feel like they need to have the opportunity to speak.

1214

1215 Ms. Harris - Okay.

1216

1217 Mr. Blankinship - What you do at the end of the hearing, I don't know. But I

1218 would certainly proceed with accepting the testimony of everyone who came here to

1219 speak.

1220

1221 Ms. Harris - Okay. In that regard we're going to ask anyone who would

1222 like to speak in opposition to this request -- in opposition to having this property allowed

1223 as an accessory structure to come forward. Okay. We need you to -- I think we will have

1224 one person at a time. Have you all been sworn in? Yes? What we're going to ask,

1225 though, that if you make a point, we're asking that your neighbor not make the same point.

1226 We're asking if once we hear the concern, we have it and we don't need repetition. So if

1227 you would do that. Give us your name and spell your last name.

1228

1229 Ms. Gilliam - Brenda Gilliam, G-I-L-L-I-A-M.

1230

1231 Ms. Harris - Okay.

1232

1233 Ms. Gilliam - Part of this shed is on my property.

1234

1235 Mr. Green - Oh.

1236

1237 Ms. Harris - Miss Gilliam, give us your address, please.

1238

1239 Ms. Gilliam - 7640 Osborne Turnpike. And I never received a letter about

1240 the meeting. If I wouldn't have seen some of my neighbors and heard from them, I'd have

1241 never known it was being --

1242

1243 Ms. Harris - Did you see the sign on the road? Because I did drive by and  
1244 there's -  
1245  
1246 Ms. Gilliam - I don't ride by -- I don't go Wilton Road. I use Osborne all the  
1247 time.  
1248  
1249 Ms. Harris - Okay. Because the sign is on the road.  
1250  
1251 Mr. Johnson - It's on -- yes.  
1252  
1253 Ms. Harris - -- telling everybody in that neighborhood about this public  
1254 hearing.  
1255  
1256 Ms. Gilliam - It should have been on both sides, though. But when they  
1257 bought the house, they complained about the road being blocked. My uncle had a tractor  
1258 there which all of us, you know -- we went along with him having stuff there. And he died.  
1259  
1260 Well, the tractor couldn't be moved because it didn't run. He complained about it so much  
1261 that Kenneth Barlow had two people he paid to come to move it. But it would not fit on  
1262 the flat bed. Donny brought a flatbed from his work and moved it. But after he moved it  
1263 he started blocking the road. And I mean, it's a public access road.  
1264  
1265 They had a wreck last year when down Osborne below us, and they had to block the  
1266 roads off because it was a really bad wreck. A helicopter landed in my field because my  
1267 land goes up to Warwick Park Road. The dirt road that Donny and them used goes  
1268 between my two houses. I own 7640 and I own 7666.  
1269  
1270 But I told him, I said, "The police couldn't even get through there because --" and he said  
1271 that the trailer had a flat tire. But I mean, it's one excuse after another. And he doesn't  
1272 want anybody else to run a business but he wants to run one. And since he's got so much  
1273 junk in the yard he finally put the fence around it. But we've never had our yards look like  
1274 this before. But the part of the building that's on my land, I want to be moved.  
1275  
1276 Ms. Harris - Can we have the map, Mr. Gidley?  
1277  
1278 Mr. Gidley - Yes.  
1279  
1280 Ms. Harris - We need to see where Miss Gilliam's property is.  
1281  
1282 Mr. Johnson - And also, Miss Gilliam, is that a private road that runs from -  
1283  
1284 Ms. Gilliam - My grandfather put that road in, but Dominion Power has the  
1285 right-of-way so it is considered as a public access road.  
1286  
1287 Mr. Blankinship - It's not a county street?  
1288

1289 Mr. Johnson - It's not a county road?  
1290  
1291 Ms. Gilliam - No.  
1292  
1293 Ms. Harris - So you have property at 7666?  
1294  
1295 Ms. Gilliam - Yes. That's the house I was born in and that's our family  
1296 home. And when I got married, Mother gave me land and we built the house next door.  
1297  
1298 Ms. Harris - And also 7640?  
1299  
1300 Ms. Gilliam - Yes, ma'am.  
1301  
1302 Ms. Harris - Okay. And the road that you're talking about, that you're  
1303 speaking of, put that on -- this is a private road?  
1304  
1305 Mr. Blankinship - Show the aerials. It might show better on the aerial. You can  
1306 see that there's a tract that runs all the way from -- well, you wouldn't be able -- from  
1307 Wilton Road to Osborne.  
1308  
1309 Mr. Johnson - Right.  
1310  
1311 Mr. Blankinship - That's where we're talking about.  
1312  
1313 Ms. Harris - Right.  
1314  
1315 Mr. Johnson - And that is a narrow facility, too, as well.  
1316  
1317 Mr. Blankinship - Right. And that is your property, right, ma'am?  
1318  
1319 Ms. Gilliam - Yeah.  
1320  
1321 Mr. Blankinship - Yes.  
1322  
1323 Ms. Gilliam - The road between my two properties, yeah.  
1324  
1325 Mr. Blankinship - That's what it's showing. But the building right now is actually  
1326 partly on your property?  
1327  
1328 Ms. Gilliam - Yeah.  
1329  
1330 Ms. Harris - Okay.  
1331  
1332 Mr. Blankinship - And let me just note since I'm cutting in anyway --  
1333  
1334 Ms. Harris - Yes.



1335  
1336 Mr. Blankinship - -- we did mail a notice to 7666 Osborne Turnpike so I'm sorry  
1337 you didn't receive it.  
1338  
1339 Ms. Gilliam - Well, my stepfather -- I gave him lifetime living rights there.  
1340  
1341 Mr. Blankinship - Okay.  
1342  
1343 Ms. Gilliam - He's -- he probably didn't pay any attention to it.  
1344  
1345 Mr. Blankinship - You might ask him about that, then.  
1346  
1347 Ms. Gilliam - All right. Thank you.  
1348  
1349 Ms. Harris - Okay. Have you spoken with anyone about getting that  
1350 property -- that trailer moved off of your property?  
1351  
1352 Ms. Gilliam - No, ma'am, because --  
1353  
1354 Ms. Harris - Can you use the mic? We're recording everything. This is  
1355 why we're saying use the mic.  
1356  
1357 Ms. Gilliam - No, ma'am, I didn't.  
1358  
1359 Ms. Harris - Okay.  
1360  
1361 Ms. Gilliam - I have told him I wanted him to clean it up some because he  
1362 would be parking tractors and the little Bobcat and stuff over on us. And I went over there  
1363 at different times and asked him, you know, to move it because my husband had put a lot  
1364 of money in fertilizer and grading the field and putting grass, feed, and fertilizer in it.  
1365  
1366 And I said, "So you're going to have to move." He would move it but then it would come  
1367 back. And the last time I think he got a little peeved at me but, I mean, he doesn't want  
1368 anybody on his property. And he wants to control the road. But he's got to realize other  
1369 people have the same feelings for their property.  
1370  
1371 Ms. Harris - All right. Thank you so much. Any questions?  
1372  
1373 Mr. Green - One question. At the end of the day, you want that removed  
1374 off of your property?  
1375  
1376 Ms. Gilliam - Yes, I do.  
1377  
1378 Mr. Green - That you own?  
1379  
1380 Ms. Gilliam - Right.

1381  
1382 Mr. Johnson - Right.  
1383  
1384 Ms. Gilliam - Tiffany is my granddaughter.  
1385  
1386 Mr. Green - Well, I don't know who –  
1387  
1388 Ms. Gilliam - She's living with Donald Blankenship.  
1389  
1390 Mr. Blankinship - Oh, okay.  
1391  
1392 Mr. Green - But that doesn't have -- it's still on your property.  
1393  
1394 Ms. Gilliam - That's why I want you to know what I'm saying is true. I  
1395 wouldn't do anything wrong because of her. But he's just pushed it too much.  
1396  
1397 Ms. Harris - Okay. The next speaker in opposition?  
1398  
1399 Ms. Roller - My name is Florence Roller, R-O-L-L-E-R. And my daughter  
1400 and I own the property -- the two lots directly across from Mr. Blankenship. And with all  
1401 of the stuff that's there and this building, we have a concern that it will devalue the property  
1402 in the area. My daughter is working in South Carolina right now so she couldn't be here.  
1403 But she did e-mail a letter to the board if you'd like to have it.  
1404  
1405 Mr. Blankinship - Is that the one that's been presented here from Anya Geer?  
1406  
1407 Ms. Roller - No. This is from Ann Marie Maiden.  
1408  
1409 Mr. Blankinship - Oh, okay.  
1410  
1411 Ms. Roller - Would you like for me to bring it forward to you?  
1412  
1413 Mr. Blankinship - Yes, please.  
1414  
1415 Ms. Roller - Okay. I have two copies. And our concern is that it is going  
1416 to devalue our property around there. And to quote the last paragraph, she said that,  
1417 "The neighborhood has been described by visitors and friends as a hidden gem in the  
1418 Varina area." Being back off of the main roads like that, it's just a quiet little peaceful  
1419 neighborhood. And Mr. Blankenship has just turned it into -- almost like a dumping  
1420 ground. And we would like to see all of this cleaned up, the building removed. It's not  
1421 conducive to the neighborhood area. It's just entirely too large.  
1422  
1423 Now, according to Mr. Blankinship -- and he does have the tractor-trailers -- "You can't  
1424 put one in there." Well, I worked for a trucking company for well over 20 years. And I  
1425 know what a tractor-trailer will fit into, and it would fit into that building. He does have  
1426 tractor-trailers. And from what I have understood, he expresses a desire to use that

1427 building so he'll have a place to work on his tractors. The road is not equipped for this  
1428 type -- now, it's just not equipped for that type of thing. I don't believe that that is -- I'm  
1429 not sure if that's the building that he has up now or not. Because he has several. But it's  
1430 just ruining our neighborhood. You know? Basically.

1431

1432 Ms. Harris - What is your address, please, Miss Roller?

1433

1434 Ms. Roller - I live at 4120 Charles City Place. This property right here, my  
1435 daughter and I own and my granddaughter lives at 7657 Wilton Road. And she's living in  
1436 the house that my daughter and I own.

1437

1438 Ms. Harris - Okay. Thank you. Any questions from board members?  
1439 Okay. Thank you so very much.

1440

1441 Ms. Roller - Thank you.

1442

1443 Ms. Harris - Anyone else who wishes to speak please come forward and  
1444 give us your name, spelling your last name.

1445

1446 Mr. Hampton - My name is Gary Hampton, H-A-M-P-T-O-N. I live at 7651  
1447 Wilton Road. I'm totally opposed to him having the structure built and I think that's the  
1448 main concern of this hearing. And this is a total destruction of property out there next to  
1449 me. I've complained numerous times to the County about this. There's probably 10  
1450 trailers, 10 cars. Just trash. The whole back yard of the property is full. This structure  
1451 going on to the side of the house would be nothing more than an expansion of his  
1452 recycling metal business which he's running from his house which I was told by the  
1453 County that you cannot run a recycling metal from your house. And my opinion is I think  
1454 that building needs to go.

1455

1456 Ms. Harris - Thank you.

1457

1458 Mr. Green - I have a question.

1459

1460 Ms. Harris - A question. Mr. Hampton?

1461

1462 Mr. Green - Not of him. Of staff.

1463

1464 Ms. Harris - Oh, I'm sorry. Staff. Thank you so very much. We have a  
1465 question from the board. Yes?

1466

1467 Mr. Green - Yes.

1468

1469 Mr. Hampton - How you all doing?

1470

1471 Mr. Green - Oh, no, no. I have a question. How did this happen? I mean,  
1472 how did the County allow this to happen? I mean -



1473 Mr. Blankinship - Allow the construction of the property or the –

1474  
1475  
1476 Mr. Green - The construction of the property, all of this mess that the  
1477 neighbors are complaining about. And if they made legitimate complaints, why hasn't  
1478 anything been done?

1479  
1480 Mr. Blankinship - Well, they are acting on it and that's why we're here this  
1481 morning. Because there was a notice of violation, and it has been explained to the  
1482 property owner that this is not lawful and it is -- I believe he was told to remove the  
1483 building. And he asked, "Is there any way that I can move it somewhere else on my  
1484 property that would make it lawful?"

1485  
1486 In terms of the use of the property, I think it just sort of accumulated over time. I don't  
1487 think it started out this bad. I think it started out as a minor problem that we would not  
1488 have noticed, wouldn't have come to our attention unless a neighbor filed a complaint.  
1489 And I believe that once a complaint was filed, the County did get involved in cleaning the  
1490 site up and making sure the use of the site is lawful, as well.

1491  
1492 Mr. Green - Just if, in fact, we act, what will be the next steps? Because  
1493 if the neighbors leave before we make a decision, you know, what happens so they can  
1494 have some comfort? Because I would have the same concerns.

1495  
1496 Mr. Blankinship - Yes, sir.

1497  
1498 Ms. Harris - Well, you know, all of this can be done during the discussion  
1499 period when our motions come up. But we do have to already -- we have to consider the  
1500 fact that Mr. Donald Blankenship is not here. Which might even delay our decision.  
1501 Somebody has to think about -- But the question that you're asking of the board, we can  
1502 save our questions of each other until we get to that process. But right now let's just ask  
1503 questions of the taxpayers.

1504  
1505 Mr. Green - But I'd like to say this. Mr. Blankenship knew that this was  
1506 occurring. And if Mr. Blankenship did not take the time and these neighbors took the time  
1507 to come, I am not for delaying this because he chose not to come. So I'm -- I want the  
1508 neighbors to know I'm strongly opposed to delaying this because he didn't come. You all  
1509 took time out of your day to come and I'm going to be respectful of that.

1510  
1511 Ms. Harris - Okay. Mr. Green, we will honor that when the time comes.  
1512 Yes. Your name, please?

1513  
1514 Mr. Meade - Hi, my name's David Meade, M-E-A-D-E.

1515  
1516 Ms. Harris - Right.

1517  
1518 Mr. Meade - Excuse me. My mother owns 1245 Warwick Park Road. It's

1519 somewhere just -- how does this mouse work? There we go. This piece right here. Which  
1520 backs up to this. This piece over here that I've got the thing on now, I used to have my -  
1521 - I kept my lawnmowers for my business in there. Well, he called you all on me.

1522

1523 Mr. Green - He, excuse me,

1524

1525 Mr. Meade - He called on me because I kept my lawn mowers for my  
1526 business in that shed that was there.

1527

1528 Mr. Green - Okay.

1529

1530 Mr. Meade - Well, now I have two storage units. I'm not allowed to ride  
1531 over there because every time I do he comes out there and threatens me. I'll hand you  
1532 this, the picture of all his -- picture of his tractor-trailers he says that are not there. And if  
1533 he can do anything there, I'm going back in the shed. No ifs, ands, or buts, because it's  
1534 costing me 400 bucks a month that I don't need to spend.

1535

1536 Mr. Blankinship - The application before the board is to allow an accessory  
1537 structure in a side yard rather than the rear.

1538

1539 Mr. Meade - Okay, yeah. All right. Let's go back, give me that picture, the  
1540 crud picture, please. No, not that one. The one -- the overview, over top.

1541

1542 Mr. Blankinship - The other crud picture.

1543

1544 Mr. Meade - Yeah. Okay. Can somebody -- there we go. Okay. Behind  
1545 his garage, behind his house, there's a drain field that runs all the way underneath that  
1546 fence. It goes out into that field because the person who lived there before had a drainage  
1547 issue in their septic system.

1548

1549 Stone Plumbing, which I don't even know if it's in business anymore, came in there and  
1550 ran one or two lines. I'm not sure how many. But one or two lines all the way over to the  
1551 edge because trust me, when I used to walk over there, you'd walk in water this deep  
1552 because it still ran out the ground. So he can't put nothing behind that shed because  
1553 there is a drain field back there. So that's done. If you can't leave it where it is then it has  
1554 no business.

1555

1556 Mr. Johnson - A drainfield.

1557

1558 Mr. Blankinship - So you're in objection to --

1559

1560 Mr. Meade - Oh, I'm past objections.

1561

1562 Mr. Blankinship - -- allowing this building to be in the side yard?

1563

1564 Mr. Meade - Yeah. Right there where you've got that little white line right

there at the property, right there by his driveway, that is actually where the County was deeded a right-of-way back to Wilton Road from there. You can go check. Mr. Karnes even told me himself when I talked to him about this that that was County right-of-way. He parks his truck at the end of that thing.

The whole reason this is up, because of me. He parks his truck right there so I can't get into my shed because he didn't want me in there. Well, Brenda let me come in the other way. As soon as she let me come in the other way, he confronts her about it. She says, "Well, I -- he can go wherever he wants."

He calls y 'all and makes me have everything moved. So everything here today is about him and about how, you know, sneaky and how he wants to go behind people's backs and do things. Like I said, about three months ago, four months ago, he -- one of those pictures of those tractor-trailers, he's over there working with. All right? Well, they got posted signs on that piece -- this piece here where it goes back to the shed.

We had to put posted signs up because he just parks his stuff on that side of the road and don't care. Well, he had the guy in there working on the tractor-trailer. He was parked down there. I rode over there and asked him to move his truck because it was on posted property. Okay? Well, about a month later I ride over there because I had some stuff still in that shed. Regardless if it's a business or not, you can't stop me from going over there, but I went over there.

He comes out there, starts cussing at me, saying I'm the reason he called the County about all this mess. I said, "Dude, you brought this on yourself, not me." I made one phone call about a picture of the tractor sitting there. When you're standing in the back yard of the house you can see the blue tractor-trailer over the fence from the ground. Not from a deck but from the ground.

And that's when I have a right to complain about that. I made one complaint about it. I asked him just to get him to move the stuff out of here. But yet I'm the enemy. And I could care less. I moved everything out. But if you all want to let him do this kind of thing, what's stopping me from being able to use my shed? So I think that's going to about sum up all I've got to say. If you all want to ask me any questions feel free, because I can tell you a lot of things.

Ms. Harris - Any questions of Mr. Meade?

Mr. Meade - And I will --

Ms. Harris - Okay. Thank you so very much.

Mr. Meade - All right. You all have a good day.

Ms. Harris - Thank you. Do we have anyone else who wishes to speak --  
Miss Gilliam, you've already spoken, right?



1611  
1612 Ms. Gilliam - Yes, I just wanted to say --  
1613  
1614 Ms. Harris - We can't hear you if you're not on the mic. So let's get  
1615 someone who we have not heard from.  
1616  
1617 Mr. Green - She was about to come forward.  
1618  
1619 Ms. Harris - Right.  
1620  
1621 Ms. Bugg - Hi. My name is Jean Bugg, and I -- that's spelled B-U-G-G.  
1622 And I live at 1135 Warwick Park Road. I don't speak well like these other people so if it's  
1623 okay with you I'll read what I've prepared to say.  
1624  
1625 Ms. Harris - Okay.  
1626  
1627 Ms. Bugg - Every time I turn on to my street I see the accessory structure  
1628 that's built at 7659 Wilton Road on the side of the residence in violation of the Henrico  
1629 zoning code. That's the case we're talking about, CUP2018-00027. This parcel, 802-  
1630 691-7131, is in a residential section. This parcel is about one acre.  
1631  
1632 And on one acre there's plenty of space for this accessory structure to be built at the rear  
1633 of the residence. And I urge the Zoning Appeals Board today to deny the request in this  
1634 case at 7659 Wilton Road. Our zoning codes allow our communities to develop in uniform  
1635 ways, and allowing an accessory structure in the side yard detracts from a balanced,  
1636 uniform neighborhood. Thank you for your time.  
1637  
1638 Mr. Green - Thank you.  
1639  
1640 Ms. Harris - Thank you, Miss Bugg. Any questions of Miss Bugg? Okay.  
1641 Thank you so very much for coming.  
1642  
1643 Mr. Bugg - Good morning. My name is John Bugg, B-U-G-G. And I  
1644 reside on Warwick Park Road. My wife and I grew up in Henrico County in the Varina  
1645 District, and we left -- or I left in 1959 and worked elsewhere for many years. And we  
1646 returned permanently in 2014 to reside in Varina. We own two properties on Wilton Road.  
1647 7734, which is off of the map here, is where our daughter lives. And we also own an  
1648 undeveloped -- unimproved lot, 7682, which is the small sliver on the lower left side. We  
1649 hope to develop this one day, and we'd like for our property values to remain where they  
1650 are or at least where they were when we made the election to move to this area. And we  
1651 encourage the board to deny Mr. Blankenship's application. And I had some other things  
1652 to say but I think we've -- it's been pretty well covered today. So that'll end my remarks.  
1653  
1654 Ms. Harris - Thank you so very much.  
1655  
1656 Mr. Bugg - Thank you.



1657 Ms. Harris - Any questions of Mr. Bugg? Is there anyone else who has not  
1658 spoken who wishes to speak now? Okay. Miss Gilliam, we'll hear from you again.  
1660

1661 Ms. Gilliam - My name's Brenda Gilliam, and it's G-I-L-L-I-A-M. This road,  
1662 we always called it the Barlow Road. And some of my family have went to -- that lived on  
1663 Wilton Road but worked on School House Road with the fellow on -- when they would  
1664 walk the road, Donny would go out and tell them they were on his property, and he didn't  
1665 even want them walking on the road. And that was their family road. I mean, they were  
1666 Barlows. So that's just showing you how picky he is about wanting to be totally controlling  
1667 of a dirt road that's been there forever. Thank you.  
1668

1669 Mr. Green - Thank you.  
1670

1671 Ms. Harris - Thank you so very much.  
1672

1673 Ms. Harris - Is there anyone else who wishes to speak to this case? Mr.  
1674 Hampton, right?  
1675

1676 Mr. Hampton - Yes, ma'am.  
1677

1678 Ms. Harris - Okay.  
1679

1680 Mr. Hampton - Jerry Hampton. At 7651 and 7659, see where the red line is  
1681 on the map?  
1682

1683 Mr. Green - Yes, sir.  
1684

1685 Mr. Hampton - Right there? To the front of the property where the road is --  
1686 right there -- he parks a truck at that end of that driveway right there and blocks all traffic  
1687 going in and out. Nobody can use the road except him. That I have complained about  
1688 because when I purchased the property 12 years ago, the person that lived at the house,  
1689 7659, Scotty Edwards, told me that I had access to Osborne Turnpike down that road.  
1690 He said in case of an emergency.  
1691

1692 And I had, in time -- there had been a tree fall over or an ambulance blocking the road at  
1693 another house, and this is ongoing constantly. There's a big Ford four-wheel drive parked  
1694 at the end of my driveway all the time. And that issue, he says that that's his road. He's  
1695 had No Trespassing signs, Private Driveway, all these signs. He's taken them down now  
1696 since the County has gotten involved. But that parking issue, I mean, is there somebody  
1697 to contact to get somebody involved in that?  
1698

1699 Mr. Blankinship - That would be the police or the Department of Public Works,  
1700 depending on whether it's the public or private right-of-way.  
1701

1702 Mr. Hampton - Okay. Because all the residents, everybody's here around

1703 this property. And that little -- it's just a path more than a road. Because that building sits  
 1704 right in, you know -- in part of the road. Whatever. But I've got an issue with him parking  
 1705 that truck on it and blocking that road.  
 1706

1707 Ms. Harris - Thank you, sir.  
 1708

1709 Mr. Hampton - I mean, I've talked to the police officers. I've talked to the fire  
 1710 department. The fire department and police have told me on their computers in their cars  
 1711 or trucks, that that road is continued from Wilton to Osborne.  
 1712

1713 Ms. Harris - Okay.  
 1714

1715 Mr. Hampton - And it doesn't show it on a map but --  
 1716

1717 Ms. Harris - Okay. Thank you, Mr. Hampton.  
 1718

1719 Mr. Green - Mr. Hampton, I have a question.  
 1720

1721 Ms. Harris - Oh, question, Mr. Hampton, please.  
 1722

1723 Mr. Green - How long have you think your neighbors have been  
 1724 complaining about this issue?  
 1725

1726 Mr. Hampton - Well, I guess it's been six months or so, I mean, since he  
 1727 started bringing the tractor-trailers up the road. That became a real big issue there.  
 1728

1729 Mr. Reid - Excuse me. How long has he been there?  
 1730

1731 Mr. Blankinship - About four years or so.  
 1732

1733 Mr. Green - Okay.  
 1734

1735 Ms. Gilliam - Yeah. It's probably been eight or nine years.  
 1736

1737 Ms. Harris - Okay.  
 1738

1739 Mr. Hampton - But the issue has steadily gotten worse and worse and worse  
 1740 to the point of just something has to be done.  
 1741

1742 Mr. Green - Yes, sir.  
 1743

1744 Ms. Harris - Any other questions?  
 1745

1746 Mr. Hampton - And at every opportunity he just thumbs his nose at the  
 1747 County, so I didn't expect to see him here this morning.  
 1748

1749 Ms. Harris - Thank you. We do have a letter that we received from Miss  
1750 Geer. And she resides at 7671. Enumerating the different things that are going on, you  
1751 know, with that property, and all board members have copies of that.

1752  
1753 Okay. Any other comments from those who are in opposition who have come before this  
1754 board? Okay. I believe that concludes this case.

1755  
1756 **[After the conclusion of the public hearings, the Board discussed the case and**  
1757 **made its decision. This portion of the transcript is included here for convenience**  
1758 **of reference.]**

1759  
1760 Ms. Harris - Case CUP2018-00027. Now, in this particular case we had  
1761 the applicant who was not here. Of course, a very vivid picture was given of him by his  
1762 neighbors. But do we want to rule on this case?

1763  
1764 Mr. Green - Yes.

1765  
1766 Mr. Johnson - Yes.

1767  
1768 Mr. Reid - Yes.

1769  
1770 Ms. Harris - Okay. So what is the pleasure of the board?

1771  
1772  
1773 Mr. Johnson - I motion that we deny this one.

1774  
1775 Ms. Harris - Okay. Do you want to give a reason?

1776  
1777 Mr. Johnson - Because of the complaints we had, the storage, also the  
1778 debris and it's not consistent with the comprehensive plan and zoning ordinance.

1779  
1780 Ms. Harris - Okay. Need a second.

1781  
1782 Mr. Bell - Second.

1783  
1784 Ms. Harris - Okay. It has been moved and properly seconded that we  
1785 deny this case. Is there any discussion? I'm not so sure that once we denied this case  
1786 that everything's going to change.

1787  
1788 Mr. Blankinship - Well, that's not –

1789  
1790 Ms. Harris - But certainly we'll point things in the right direction because it  
1791 appears that this person doesn't honor our rules and regulations.

1792  
1793 Mr. Green - How do you guarantee that, Mr. Blankinship?  
1794

1795 Mr. Blankinship - I don't know. That's not before us this morning.  
 1796  
 1797 Ms. Harris - We don't know. We just will say no and go on from there as  
 1798 far as the procedures, follow the set procedures. Okay. All in favor of denying this case  
 1799 say aye. Opposed, say no. Okay. The ayes have it.  
 1800  
 1801 After an advertised public hearing and on a motion by Mr. Johnson, seconded by Mr. Bell,  
 1802 the Board **denied** application **CUP2018-00027, DONALD BLANKENSHIP's** request for  
 1803 a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to allow an  
 1804 accessory structure in the side yard at 7659 Wilton Road (Parcel 802-691-7131) zoned  
 1805 One-Family Residence District (R-3) (Varina).  
 1806  
 1807  
 1808 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
 1809 Negative: 0  
 1810 Absent: 0  
 1811  
 1812  
 1813 Mr. Blankinship - All right. Madam Chair, the next two cases are companions  
 1814 so I'll call them together if you don't mind.  
 1815  
 1816  
 1817 **CUP2018-00028 HOME DEPOT** requests a conditional use permit pursuant to  
 1818 Section 24-116(d)(1) of the County Code to allow a tent at 11260 West Broad Street  
 1819 (Parcel 742-762-4307) zoned Light Industrial District (M-1C) and West Broad Street  
 1820 Overlay (WBSO) (Three Chopt).  
 1821  
 1822 **CUP2018-00029 HOME DEPOT** requests a conditional use permit pursuant to  
 1823 Section 24-116(d)(1) of the County Code to allow a tent at 6501 West Broad Street (Parcel  
 1824 768-742-3277) zoned Business District (B-3) (Tuckahoe).  
 1825  
 1826  
 1827 Mr. Blankinship - Would everyone who intends to speak to these two cases  
 1828 please stand and be sworn in. Raise your right hands, please. Do you swear the  
 1829 testimony you're about to give is the truth, the whole truth and nothing but the truth so  
 1830 help you God? Thank you. Mr. Gidley?  
 1831  
 1832 Mr. Gidley - Mr. Secretary, do you want both presented at once?  
 1833  
 1834 Mr. Blankinship - Yes, please.  
 1835  
 1836 Mr. Gidley - Okay. Thank you, sir. As you can see on your map here, use  
 1837 permit number 28 is for the Home Depot Brookhollow shopping center in Short Pump.  
 1838 The proposed sale would occur between November the 2<sup>nd</sup> and December the 26<sup>th</sup>. Plans  
 1839 call for a 40-by-60-foot tent to house the trees.  
 1840



1841 As in past years, the tent would be located in the parking lot across the drive aisle from  
1842 the Garden Center. And the Garden Center's right here and the tent would be up in this  
1843 area right here. In evaluating this request, home improvement stores such as a Home  
1844 Depot are consistent with the site's zoning and comprehensive plan designations.

1845  
1846 In addition, the sale of Christmas trees is customarily incidental, an accessory to a home  
1847 improvement store. As far as any detrimental impact, approximately 14 parking spaces  
1848 will be taken up by the event. The shopping center itself has 153 excess spaces. So as  
1849 a result, there should not be any detrimental impact to parking.

1850  
1851 And in the past, staff has received no complaints regarding the sale of Christmas trees  
1852 on this site. As a result, we do not believe there would be any detrimental impact. In  
1853 conclusion, ideally the sale of Christmas trees would occur within the Garden Center,  
1854 which is consistent with the plan of development.

1855  
1856 However, due to the short-term nature of this event and its limited size, along with no  
1857 anticipated detrimental impacts, staff can recommend approval of this request subject to  
1858 the conditions in your staff report. And that concludes this presentation. If you have any  
1859 questions on this I'll be happy to answer those.

1860  
1861 Ms. Harris - Mr. Gidley, have we had any complaints over the years that  
1862 they've been doing this?

1863  
1864 Mr. Gidley - Not from the Christmas tree sales, no, ma'am.

1865  
1866 Ms. Harris - Nothing. Okay. Are they locating this tent where mulch was  
1867 stored before?

1868  
1869 Mr. Gidley - I want to say mulch was stored along this whole stretch here.

1870  
1871 Ms. Harris - Oh.

1872  
1873 Mr. Gidley - If you go to the aerial perhaps I want to say the mulch was all  
1874 along through here. The tent's going to be more limited right in this general area here.

1875  
1876 Ms. Harris - Okay.

1877  
1878 Mr. Gidley - Taking up 14 spaces.

1879  
1880 Ms. Harris - So the mulch is no longer there, right?

1881  
1882 Mr. Gidley - No, ma'am.

1883  
1884 Ms. Harris - Okay. Any questions from board members?

1885  
1886 Mr. Johnson - So they've been putting the Christmas trees out for several

1887 years now, haven't they?

1888

1889 Mr. Gidley - Yes, sir. That's correct.

1890

1891 Mr. Johnson - In basically the same locations?

1892

1893 Mr. Gidley - Yes, sir.

1894

1895 Ms. Harris - Any other questions? Mr. Green?

1896

1897 Mr. Green - I live in this area and it's never been a problem for me. And  
1898 when I go over to that area it's just never been problematic.

1899

1900 Mr. Gidley - Okay. Thank you.

1901

1902 Ms. Harris - Mr. Gidley, we will hear from the applicant?

1903

1904 Mr. Gidley - Actually I'll present the second case and then the applicant  
1905 will go ahead and address the cases.

1906

1907 Ms. Harris - Okay. That will be great.

1908

1909 Mr. Gidley - Thank you.

1910

1911 The second request is for the Intown Home Depot store which is located near Horsepen  
1912 and West Broad Street. Like the previous sale, this would occur between November the  
1913 2<sup>nd</sup> and December the 26<sup>th</sup>. It would also involve a 40-by-60 foot tent in the parking lot in  
1914 front of the Garden Center. And you can see here the Garden Center is actually over  
1915 here at this store and the tent would go right here, as you can see. Again, the Garden  
1916 Center and the proposed tent location. Again, a home improvement store such as a  
1917 Home Depot is consistent with the site zoning and comprehensive plan. And Christmas  
1918 trees are customarily incidental to a home improvement store.

1919

1920 In this case it would take up approximately 14 parking spaces and the shopping center  
1921 has 32 access parking spaces. So it would still meet parking requirements. Staff also  
1922 has not received any complaints in the past regarding Christmas tree sales here. As a  
1923 result, we do not anticipate any detrimental impacts.

1924

1925 So in conclusion, again, ideally the sale of trees would occur within the Garden Center.  
1926 However, due to the short-term nature of the event, the limited size and no anticipated  
1927 detrimental impacts, again, staff can recommend approval of this request subject to the  
1928 conditions in your staff report. That concludes this presentation. If you have any  
1929 questions –

1930

1931 Ms. Harris - The same question about complaints. Have we had any at  
1932 all?

1933  
1934 Mr. Gidley - No. No, ma'am, not regarding the Christmas tree sales.  
1935  
1936 Ms. Harris - Okay. Any questions from board members? Thank you so  
1937 very much. Now we have an applicant?  
1938  
1939 Mr. Gidley - Thank you, Madam Chair.  
1940  
1941 Mr. Johns - Good morning, members of the board.  
1942  
1943 Ms. Harris - Good morning.  
1944  
1945 Mr. Johns - My name is Paul Johns, J-O-H-N-S. I'm here with Boston  
1946 Enterprises. We've been setting up these tents for the Christmas trees for the past  
1947 several years. We have stayed within the guidelines of ensuring that it was secured  
1948 properly. We have not had any complaints from neighboring business so I don't see why  
1949 there would be any problems in receiving this conditional use permit this year as opposed  
1950 to any other year. So if there's any questions for me I'd be more than glad to answer  
1951 them for you.  
1952  
1953 Mr. Bell - I probably know the answer, but several years you all set up,  
1954 you're setting up the same way this year as you did last year or are there any changes?  
1955  
1956 Mr. Johns - Yes, sir. It will be the same set up as previous years.  
1957  
1958 Mr. Bell - Thank you.  
1959  
1960 Mr. Reid - Same location?  
1961  
1962 Mr. Johns - Same location, same general facility of the parking lot where  
1963 it's been set up before.  
1964  
1965 Mr. Reid - Are you in agreement with the conditions of approval laid out  
1966 by the staff?  
1967  
1968 Mr. Johns - Yes, sir.  
1969  
1970 Mr. Reid - Okay.  
1971  
1972 Ms. Harris - Mr. Johns, when you affix those tents to the ground, do you  
1973 use the same –  
1974  
1975 Mr. Johns - Yes, ma'am, we do use the same four-foot stake which is  
1976 driven into the asphalt and there's approximately 10 of them. And there's 10 straps which  
1977 -- it's about 1,500 pound test pull per strap.  
1978

1979 Ms. Harris - So you're using the same preparations?  
1980  
1981 Mr. Johns - Yes, ma'am.  
1982  
1983 Ms. Harris - Okay. Thank you. Any other questions? Thank you so very  
1984 much for coming in.  
1985  
1986 Mr. Johns - Thank you so much.  
1987  
1988 **[After the conclusion of the public hearings, the Board discussed the case and**  
1989 **made its decision. This portion of the transcript is included here for convenience**  
1990 **of reference.]**  
1991  
1992 Ms. Harris - We move on to CUP2018-00028. Home Depot. And we're  
1993 going to take that along with 29.  
1994  
1995 Mr. Blankinship - Would you mind having two separate votes just so I can have  
1996 it in the record?  
1997  
1998 Ms. Harris - Sure. Let's just do 28 now, Home Depot.  
1999  
2000 Mr. Green - As the Three Chopt Magisterial person I would recommend  
2001 we approve this. It has been standard as part of the community and I've never seen any  
2002 -- or heard of any problems that they've had.  
2003  
2004 Ms. Harris - Okay. Is there a second?  
2005  
2006 Mr. Johnson - I second.  
2007  
2008 Ms. Harris - Okay. It's been moved and properly seconded that we  
2009 approve this conditional use permit. Any discussion on the motion? We know that this is  
2010 a service to the community. And when Christmas trees are sold, it's really a service for  
2011 the community. Okay. All in favor of the motion say aye. Opposed say no. Ayes have  
2012 it.  
2013  
2014 After an advertised public hearing and on a motion by Mr. Green, seconded by Mr.  
2015 Johnson, the Board **approved** application **CUP2018-00028 HOME DEPOT's** request  
2016 for a conditional use permit pursuant to Section 24-116(d)(1) of the County Code to allow  
2017 a tent at 11260 West Broad Street (Parcel 742-762-4307) zoned Light Industrial District  
2018 (M-1C) and West Broad Street Overlay (WBSO) (Three Chopt). The Board approved the  
2019 application subject to the following conditions:  
2020  
2021 1. This conditional use permit applies only to a tent for the sale of Christmas trees from  
2022 November 2 through December 26, 2018. All other applicable regulations of the County  
2023 Code shall remain in force.  
2024



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

3. The applicant shall obtain a building permit for the tent, and shall comply with all requirements and conditions of the Department of Building Inspections.

4. The tent shall not interfere with approved landscaping islands or parking lot lighting. All approved landscaping shall be maintained in a healthy condition.

5. The tent shall be removed from the property no later than January 2, 2019, at which time this permit shall expire.

6. A sign shall be posted on the exterior of the tent providing emergency contact information and stating that trespassing after hours is prohibited.

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

Ms. Harris - We now move on to the next case. This is Home Depot again.  
**CUP2018-00029**. What is your pleasure?

Mr. Reid - I move that we approve conditional use permit 18-29 for Home Depot to have a Christmas tree lot at 6501 W. Broad Street. I know from personal experience I've seen that operation in the past and it's always -- looks like it's been handled in a very satisfactory manner.

Mr. Green - Second.

Ms. Harris - Okay. It's been moved and properly second that we approve this case. Is there any discussion? All in favor say aye. Opposed say no. The ayes have it.

After an advertised public hearing and on a motion by Mr. Reid, seconded by Mr. Green, the Board **approved** application **CUP2018-00029 HOME DEPOT's** request for a conditional use permit pursuant to Section 24-116(d)(1) of the County Code to allow a tent at 6501 West Broad Street (Parcel 768-742-3277) zoned Business District (B-3) (Tuckahoe). The Board approved the application subject to the following conditions:

1. This conditional use permit applies only to a tent for the sale of Christmas trees from November 2 through December 26, 2018. All other applicable regulations of the County Code shall remain in force.

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

3. The applicant shall obtain a building permit for the tent, and shall comply with all requirements and conditions of the Department of Building Inspections.

4. The tent shall not interfere with approved landscaping islands or parking lot lighting. All approved landscaping shall be maintained in a healthy condition.

5. The tent shall be removed from the property no later than January 2, 2019, at which time this permit shall expire.

6. A sign shall be posted on the exterior of the tent providing emergency contact information and stating that trespassing after hours is prohibited.

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

Ms. Harris - Okay. Move to the next case.

**CUP2018-00030** **SHELLY ZIMMERMAN** requests a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to allow a pool in the side yard at 592 Raleigh Manor Road (RALEIGH) (Parcel 751-737-2734) zoned One-Family Residence District (R-1) (Tuckahoe).

Mr. Blankinship - Would everyone who intends to speak to this case please stand and be sworn in. Raise your right hand. 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? Thank you. Mr. Gidley?

Mr. Gidley - Thank you, Mr. Secretary. The subject property is located in the Raleigh subdivision, which, as you can see here, is between Sleepy Hollow and North Parham Road.

The applicant acquired the property in January of this year and is currently having a home built on the property that you see before you. In addition to this home that's under construction, the applicant would like to construct a pool that would be partially in the year yard and partially in the side yard and the location is right here.

2117 The size of the swimming pool would be 16-feet-by-32-feet. It would be an in-ground  
2118 swimming pool, as well. In evaluating this request, a swimming pool is customarily  
2119 accessory to a one-family dwelling.

2120  
2121 And as you can see in this view here, the site behind where the pool is going is wooded,  
2122 and it also begins to slope down pretty steeply once you get to the wooded area here.  
2123 And because of that they have limited area to place the pool in the rear yard.

2124  
2125 As a result, they've scooted it up here which, again, is kind of part rear and part side yard.  
2126 The pool would not be visible from the street. And the closest neighbor, the neighbor to  
2127 the north, they're over a hundred feet distant

2128  
2129 And as you can see, there's a number of trees in between the two homes, as well, to get  
2130 some privacy. So staff does not believe there would be any detrimental impact on  
2131 neighboring property owners. So to conclude, although the pool will be in the side yard,  
2132 due to the large size of the lots, distances between homes, along with proposed grade  
2133 changes, the impact on neighbors and the streets should be limited.

2134  
2135 As a result, staff can recommend approval of this request subject to the conditions in the  
2136 staff report. Thank you. Do you have any questions?

2137  
2138 Ms. Harris - Mr. Gidley, is this pool -- or is this property in a partial flood  
2139 zone? I was looking at the information you've provided for us, the plan.

2140  
2141 Mr. Gidley - Let's see.

2142  
2143 Ms. Harris - Are there any wetlands involved?

2144  
2145 Mr. Gidley - You can see a hundred-year flood plain designated back here.  
2146 And that did take up part of their rear yard.

2147  
2148 Ms. Harris - So they have five-tenths of an acre? The site?

2149  
2150 Mr. Gidley - Let's see if it was --

2151  
2152 Ms. Harris - I think that's what your report had said.

2153  
2154 Mr. Gidley - Basically .58 acres.

2155  
2156 Ms. Harris - .58?

2157  
2158 Mr. Gidley - So just over half an acre, yes, ma'am.

2159  
2160 Ms. Harris - Okay. And are there other neighbors with pools, to your  
2161 knowledge?

2163 Mr. Gidley - Let's just check the aerial. I don't know where the aerial is. I  
 2164 don't see the aerial, ma'am, and I can't really answer it as far as other –  
 2165

2166 Ms. Harris - I'll ask the applicant. Okay. Other questions from board  
 2167 members? Thank you.  
 2168

2169 Mr. Gidley - Thank you, ma'am.  
 2170

2171 Ms. Harris - Would the applicant please come forward and give us your  
 2172 name and please spell your last name.  
 2173

2174 Mr. Smith - Good morning. I appreciate your all's time today. My name  
 2175 is Brian Smith, S-M-I-T-H. I'm speaking on behalf of the Zimmermans. I'm with Creative  
 2176 Home Concepts. I'm the contractor for this project.  
 2177

2178 In reference to your question of the pools, I don't believe there's any currently, but I've  
 2179 been to several homes in the community and I know there's several of them that have it  
 2180 in their strategic plan over the next several years. It's in the scope of work on the design  
 2181 that's been turned in for future projects.  
 2182

2183 Ms. Harris - Okay.  
 2184

2185 Mr. Smith - Do y'all have any questions for me in reference to this or any  
 2186 concerns?  
 2187

2188 Mr. Johnson - The slopes on -- is that on the south side and –  
 2189

2190 Mr. Smith - The area that is currently cleared is really where the pool is  
 2191 going to be.  
 2192

2193 Mr. Johnson - Okay.  
 2194

2195 Mr. Smith - Where the tree line goes, maybe where there might be an  
 2196 extra 10 feet that may be cleared for creating proper buffering. But the actual -- I don't  
 2197 want to call the wrong tree, but that one branchy tree that you see, that one may still go.  
 2198 And we may still do additional clearing to kind of make it -- we're going to create a natural  
 2199 buffer up against the sidewalk. Obviously they're trying to keep privacy, as well.  
 2200

2201 Mr. Johnson - Right.  
 2202

2203 Mr. Reid - Is the lake right behind that home?  
 2204

2205 Mr. Smith - It's not behind it. It's actually -- can you -- it's -- you can kind  
 2206 of see the top portion of that property, there's a sidewalk that carries across that. So right  
 2207 behind it's another residence.  
 2208



2209 Mr. Reid - Oh. Thank you.

2210

2211 Ms. Harris - Do you know, Mr. Smith, or maybe I should ask Mr. Gidley, if

2212 the neighbors to the north have any concern about being able to see that pool?

2213

2214 Mr. Gidley - None have been expressed to me, ma'am.

2215

2216 Ms. Harris - Okay. Thank you.

2217

2218 Mr. Smith - I know I've personally talked to the neighbor to the right of

2219 them, and he's another one of the individuals that's looking to do a pool so he was trying

2220 to see if he could do a -- . I know he's not opposed to it so --

2221

2222 Ms. Harris - All right.

2223

2224 Mr. Green - Isn't it still policy that if you want a pool, you get your neighbors

2225 to sign? Because I know my neighbor put a pool in, and I had to sign and they went

2226 throughout the neighborhood to get signatures. So that should be indicative that --

2227

2228 Mr. Smith - And that will be part of anything we have to turn into the

2229 Homeowner's Association.

2230

2231 Mr. Green - Right.

2232

2233 Mr. Smith - It always has to get approved by that, as well.

2234

2235 Mr. Green - Right.

2236

2237 Ms. Harris - I did drive by. It's a beautiful location, a beautiful home.

2238

2239 Mr. Smith - Thank you.

2240

2241 Ms. Harris - Do you think you overbuilt it for that lot, the fact it's -- that was

2242 my question when I was driving by.

2243

2244 Mr. Smith - Yeah, it should be a beautiful site when it's completed.

2245

2246 Ms. Harris - It is a beautiful site. Are there any questions from board

2247 members?

2248

2249 Mr. Green - The only question, what type of pool. Is it --

2250

2251 Mr. Smith - It will be a gunite.

2252

2253 Mr. Green - Okay. So that's good.

2254

2255 Mr. Smith - Yeah.

2256

2257 Ms. Harris - Okay. There are no more questions. Thank you, Mr. Smith.

2258

2259 Mr. Smith - Thank you. Appreciate you all's time.

2260

2261

2262 **[After the conclusion of the public hearings, the Board discussed the case and**

2263 **made its decision. This portion of the transcript is included here for convenience**

2264 **of reference.]**

2265

2266 Ms. Harris - And we move on to CUP2018, number 30.

2267

2268 Mr. Reid - Excuse me, Miss -- were you talking about number 30?

2269

2270 Ms. Harris - Yes.

2271

2272 Mr. Reid - Excuse me. I'm sorry.

2273

2274 Ms. Harris - That's okay.

2275

2276 Mr. Reid - I move that we approve conditional use permit 2018-30 for

2277 Mrs. Zimmerman to put a swimming pool in her side yard at 592 Raleigh Manor Road

2278 since the back yard of the property is not satisfactory for a pool because of the proximity

2279 to the lake and being, I guess, in a flood zone.

2280

2281 Ms. Harris - Okay. Is there a second?

2282

2283 Mr. Bell - Second it.

2284

2285 Ms. Harris - It's been moved and properly second that we approve this

2286 case. Any discussion on the motion? Okay. All in favor say aye. Opposed say no. The

2287 ayes have it as so ordered.

2288

2289 After an advertised public hearing and on a motion my Mr. Reid, seconded by Mr. Bell,

2290 the Board **approved** application **CUP2018-00030 SHELLY ZIMMERMAN's** request for

2291 a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to allow a

2292 pool in the side yard at 592 Raleigh Manor Road (Parcel 751-737-2734) zoned One-

2293 Family Residence District (R-1) (Tuckahoe). The Board approved the application subject

2294 to the following conditions:

2295

2296 1. This conditional use permit applies only to construction of an in-ground swimming pool

2297 in the side yard. All other applicable regulations of the County Code shall remain in force.

2298

2299 2. Only the improvements shown on the plot plan filed with the application may be

2300 constructed pursuant to this approval. Any additional improvements shall comply with the

applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements shall require a new conditional use permit.

3. Before beginning any clearing, grading, or other land disturbing activity, the applicant shall obtain approval of an environmental compliance plan from the Department of Public Works.

4. All exterior lighting shall be shielded to direct light away from adjacent property, common areas, and streets.

5. The swimming pool shall be secured or enclosed as required by the Building Code.

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

Ms. Harris - All right. Okay. We're ready for the next case, Mr. Blankinship.

**CUP2018-00031**      **BENEDICTINE SISTERS OF VIRGINIA, INC.** requests a conditional use permit pursuant to Sections 24-12(b) and 24-52(a) of the County Code to amend an existing use permit at 490 Scott Road (Parcel 788-761-9774) zoned Agricultural District (A-1) (Fairfield).

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

Mr. Gidley - Thank you, Mr. Secretary. This is a request to amend the existing conditional use permit that allows a satellite athletic field to be operated off Scott Road by Saint Gertrude's High School.

You can see part of the field here. Condition number 13 from the previous use permit prohibits the on-site consumption of alcohol on the property. The applicant would like to amend this condition to prohibit the sale of alcohol on the site but allow the consumption of alcohol at adult-only events that are sponsored by the parent-teacher association or the alumni association. This modification would allow these two school organizations to serve complimentary alcohol at fund-raising events, as well.

This is the aerial of the site here. The use of the site is consistent with the underlying A-1 zoning. Surrounding uses, as you can see, include both agricultural and office uses.

2347 The closest residences are actually roughly 600 feet from the fields to the southwest right  
2348 down here at the bottom left corner of your screen. Staff does not anticipate any negative  
2349 impacts to adjacent or nearby property by the proposed amendment. Staff, however, is  
2350 proposing to require a festival permit under certain conditions. This would include hosting  
2351 public fund-raising events that incorporate entertainment where an admission fee is  
2352 charged. In conclusion, Saint Gertrude's has been operating their athletic facility since  
2353 2015 without incident. This request to allow consumption of complimentary alcohol during  
2354 certain events could be considered an accessory function of the school's use of the site.  
2355

2356 The staff does not anticipate any substantial detrimental impacts on nearby property. As  
2357 a result, we can recommend approval of this request subject to the conditions in the staff  
2358 report. That concludes my presentation and I will be happy to answer any questions you  
2359 may have.  
2360

2361 Ms. Harris - Okay. Mr. Gidley, condition number two where you say this  
2362 approval does not authorize construction of permanent grandstands, field lighting or  
2363 athletic facilities other than an unpaved walking path in the setback areas. My question  
2364 is may permanent grandstands and those other items be constructed in areas other than  
2365 the setback area? Do you know if they have plans to do that?  
2366

2367 Mr. Gidley - This wasn't actually my case, so I'm a little bit at a  
2368 disadvantage. But my understanding is unless it was shown on the original use permit  
2369 as something that they were proposing and approved by this board, they would need to  
2370 come back to the board, because that would be a substantial improvement.  
2371

2372 Ms. Harris - Okay. Any other questions of Mr. Gidley?  
2373

2374 Mr. Johnson - Also it mentioned that the parents and teachers are the ones  
2375 who are having activities. Are there any other organizations that also can do that?  
2376 Because it only mentioned parents-teachers association as the –  
2377

2378 Mr. Gidley - And the alumni association.  
2379

2380 Ms. Harris - And alumni. Parents of the students.  
2381

2382 Mr. Johnson - Those two groups, especially when he was talking about the  
2383 alcohol use, not selling it but consumption, using it out there?  
2384

2385 Mr. Gidley - Complimentary, yes.  
2386

2387 Mr. Johnson - Yes.  
2388

2389 Mr. Gidley - They wouldn't sell it as such. It would be given out.  
2390

2391 Mr. Johnson - Okay.  
2392



2393 Ms. Harris - We can save that question for the applicant, too.  
 2394  
 2395 Mr. Johnson - Okay.  
 2396  
 2397 Ms. Harris - Okay?  
 2398  
 2399 Mr. Bell - Plus they've got to obtain an ABC permit anyway so they'll  
 2400 make the decision.  
 2401  
 2402 Ms. Harris - Okay. Any other questions of Mr. Gidley? Can we hear from  
 2403 the applicant now, please? Please step forward and give us your name and spell your  
 2404 last name.  
 2405  
 2406 Mr. Theobald - Good morning, Madam Chair, members of the board. My  
 2407 name is Jim Theobald, T-H-E-O-B-A-L-D. And I'm here this morning on behalf of the  
 2408 Benedictine Sisters of Virginia, as well as Saint Gertrude's High School, and with me is  
 2409 Miss Renata Rafferty who is the head of school should you have any additional questions.  
 2410  
 2411 This is a request to amend conditions of a previously granted conditional use permit to  
 2412 allow alcohol at adult-only functions sponsored by the parent-teacher organization, as  
 2413 well as the alumni association at the school's outdoor athletic center which is off of Scott  
 2414 Road as you have seen.  
 2415  
 2416 Saint Gertrude's is an independent all-girl's Catholic school. The Athletic Department  
 2417 serves as an extension of the values and philosophies of the school as a whole. And  
 2418 athletics at Saint Gertrude's serve as a way to promote healthy lifestyles and fitness for  
 2419 life. The outdoor athletic center had been developed and has all outdoor sports with the  
 2420 exception of track and field. The complex includes 16 acres with two fields, one grass,  
 2421 one turf, field hockey, soccer, lacrosse, soft ball field, tennis courts and walking path  
 2422 around the perimeters. Also adequate parking and a building for maintenance and  
 2423 concessions.  
 2424  
 2425 The parent-teacher organization and the alumni association have found that utilizing the  
 2426 facility for fund-raising events is greatly beneficial. Fund-raising is crucial to Saint  
 2427 Gertrude's viability and adding the ability to serve alcohol at fund-raising events at the  
 2428 center would enhance the success of such events. Keep in mind that all these events  
 2429 are already permitted on site. We're not allowed to lease out the property to others based  
 2430 on an existing condition. All these conditions were previously imposed on this case.  
 2431 We're only amending number 13.  
 2432  
 2433 And as you heard, the 2026 Comprehensive Plan recommended future land use for the  
 2434 subject property is Urban Mixed Use, and Saint Gertrude's continued use of the subject  
 2435 property is consistent with and could be incorporated into and at any case would not  
 2436 necessarily inhibit the future planned uses as contemplated by the land use plan.  
 2437  
 2438 We believe that the continued use of the subject properties for athletics fields or the

2439 occasional serving of alcoholic beverages at adult-only events will not adversely affect  
2440 the health, safety or welfare of the community. Since the center's inception, there have  
2441 been no complaints of noise, traffic, dust, etc. from the adjacent community.

2442  
2443 We did contact adjacent property owners. Our two closest landowners being Riverstone  
2444 Properties, Mr. Bill Goodwin's entity, as well as Dominion Virginia entity that has a large  
2445 complex up there, and we have received e-mails of support for each that are hopefully in  
2446 your board packet for today.

2447  
2448 So we do agree with the proposed conditions in your staff report, and we respectfully ask  
2449 for your approval of this amendment, and I'd be happy to answer any questions.

2450  
2451 Ms. Harris - Attorney Theobald, you said something about these being  
2452 adult-only events that you want this amendment made, but when you say PTSA, Parent  
2453 Teacher Student Association -- I have no problem with the alumni group.

2454  
2455 Mr. Theobald - Right.

2456  
2457 Ms. Harris - But the mere fact that the PTSA involves students, if you want  
2458 them to be able to consume, you know, alcohol at a -- this group to be able to consume  
2459 alcohol at a private function, how do you regulate that?

2460  
2461 Mr. Theobald - I don't believe we allow students to be there, do we?

2462  
2463 Ms. Rafferty - We --

2464  
2465 Mr. Theobald - You'll have to come up here.

2466  
2467 Ms. Rafferty - Thank you. My name is Renata Rafferty, R-A-F-F-E-R-T-Y.  
2468 And I'm the head of school at Saint Gertrude. Our PTSO organization, Parent Teacher  
2469 Student Organization, has been called that for as long as it's been in existence.

2470  
2471 The only time students are present at a PTSO function is when a student representative  
2472 appears at the PTSO board meeting that happens every few months. We have a strict  
2473 policy at Saint Gertrude. We have -- no students are allowed at any function where  
2474 alcohol is served. And so that would continue to be the case here. These students would  
2475 not be invited, sold a ticket or allowed.

2476  
2477 Ms. Harris - Okay. So you said no students are going to be involved,  
2478 invited to a PTSA affair?

2479  
2480 Ms. Raferty - PTSO, correct.

2481  
2482 Ms. Harris - Okay. Many years ago when I was teaching we called it the  
2483 same thing, Parent Teacher Student Association. But we did have students who would  
2484 show up. And so I do have concerns about the alcohol. What about you, members of

the -- gentlemen of the board?

Mr. Bell - You've got the PTA organization and then you've got the alumni organization as one that can approve it. What's the difference, just out of curiosity, between that and -- because whoever does it has to take their permission and now you're -- at the bottom here we talk about also getting a festival permit. Are they one and the same thing or two separate things?

Mr. Jim Theobald - Those would be two separate things. The festival permit was something suggested by staff merely to clarify that should you ever try to do more than we have requested, you would have to contact the Director of Planning. That really wasn't our request at all. I think it's deemed to be a safeguard. And I think Mr. Blankinship can answer that.

But keep in mind that the other condition that's already there basically says -- other than allowing other schools to compete, we can't sublet this property out. It's ours.

Mr. Bell - Thank you.

Mr. Theobald - You're welcome.

Ms. Harris - Any other questions? Mr. Green?

Mr. Green - I don't have a problem with you all using other facilities for fundraising and whatever. But consumption of alcohol on a school property is just morally reprehensible to me. I'm sorry. But you know, you've got to lead by example.

And once these kids realize that alcohol is permitted at that level, then, you know, kids will try anything. And they may think that, okay, we can now do this. This is the first time I've ever heard of a PTSA or alumni association at a -- and like, my God, at a Catholic school? At least someone -- offering alcohol.

Who else does that? What other schools do that and have come before us with that? Because I thought we -- you know, as adults we try to discourage certain behaviors: alcohol, smoking, drugs. And so I just -- this is morally not -- you know, and I have a lot of respect for -- I have a lot of respect for Saint Gertrude's. I know a lot of young fine individual women who've gone through. But I'm just not feeling alcohol.

Ms. Rafferty - Well, sir, one of the things that we pride ourselves -- it's almost our hundredth anniversary -- is that we teach a strong moral code, a strong character code.

In this particular case, we are talking about adults only who would -- it wouldn't even be that students would be present. It would be adults only, who in a hundred years of events have always had alcohol at other events. Always have drunk responsibly.



2531 We just had our annual alumni event. Two hundred people showed up at our school for  
2532 Vino on the Veranda. We've not had an incident of someone either overdrinking, a  
2533 student sneaking in, a student hoping to be part of it. We have a strong, strong track  
2534 record. And the fact that we are so physically far removed, our athletic center, from other  
2535 residential neighborhoods from where our students live, and even from the school itself,  
2536 it's highly unlikely that our having four to six events a year for adults only is going to  
2537 encourage students to try to break what they know is part of our honor code and our  
2538 student parent handbook.

2539  
2540 Mr. Green - So you're saying you're already using other parts of the school  
2541 and you have alcohol consumption.

2542  
2543 Ms. Rafferty - Correct. Correct.

2544  
2545 Mr. Green - So why do they need this special –

2546  
2547 Ms. Rafferty - Well, we -- I'm here today and -- and we're making this request  
2548 because our alumnae association and our PTSO have specifically requested. The reason  
2549 for this is, for example, they would like to have the athletic banquet each year be able to  
2550 happen in the field house and in front of our field house because that's where the center  
2551 of our athletic life is. And traditionally and typically at those banquets, alcohol is served  
2552 or we may have an alumnae hall of fame event. Again, adults only.

2553  
2554 PTSO is already starting to think about raising money for the upkeep of the turf field in  
2555 four years that will be a major six-figure expense, and they would like to start now by  
2556 actually having people come to the site for an event so they can see it and understand  
2557 what we need.

2558  
2559 Right now the only people who really come to the OAC are our student athletes and their  
2560 parents. And those parents would like to be able to see more of our families who may  
2561 not be involved in athletics come out and understand what happens there, see the  
2562 complex, and participate in those fund-raising events where alcohol would be served.  
2563 Usually would be a dining event with wine or beer.

2564  
2565 Mr. Green - You said athletic banquet. If it's an athletic banquet you have  
2566 athletes there, correct?

2567  
2568 Ms. Rafferty - I'm not talking about the student athletic banquet. I'm talking  
2569 about when we have a banquet where we honor our coaches. And it's just for coaches  
2570 and staff. We have a dinner for them. If we want to have a faculty coach event that brings  
2571 the two groups together, which we rarely have the opportunity to do and to do that socially,  
2572 those are the kinds of things we're talking about. And again, we're talking about four to  
2573 six events maximum a year.

2574  
2575 Ms. Harris - Okay. Other questions? I'm very, very active with an alumni  
2576 association right now. But -- and we do function as a nonprofit organization. We get



permits to do whatever we're going to do. I have no problem with the alumni association adults.

But I do think that even four times a year is too much of a risk to sponsor something by the Parent Teacher Student Organization. If students were not there I would have absolutely no problem with it. But I noticed that in the conclusion, Mr. Gidley, we have a -- Saint Gertrude's has been quietly operating their satellite athletic facilities and they have been. It's a very reserved area. I drive through any other time.

But I think it's too much of a risk to have students who might be involved -- we have offices in the PTSA or PTSO as you say now, who are -- who involve students. I know we did. We always had student planners are part of the strategy. But maybe so but to me, you know, the student part sort of cancels out the alcohol.

Mr. Theobald - Students are not permitted at these events, and you have the ability to add that as a condition. I mean, it's -- you have the ability to tack on to the end of this that no one under the age of 21, you know, or no students of the school --

Ms. Rafferty - No one under 21. We wouldn't allow anyone in.

Mr. Theobald - Right. So I mean, this is within your control to monitor. But to not allow, you know, adults who can attend a function at the school to go to the satellite thing for fundraising for adults only in compliance with all ABC laws, I would think would be appropriate for this use and very beneficial to this school. I think this original condition was, again, one that was sort of a standard condition imposed by staff and nobody thought anything about it at the time. But this has turned into a lovely, lovely complex with absolutely no impacts. I mean, everybody around them can throw a party and have a keg, right? And -- so we're trying do it the right way. Okay?

You know, we haven't had alcohol out there. And so we're just respectfully asking that you consider it and would not have a problem. We are in agreement with all the conditions. We have no problem with you adding that if that would help your consideration.

Ms. Harris - Okay. All right. Any other questions from board members?

Mr. Reid - Madam Chair, I --

Ms. Harris - Yes.

Mr. Reid - Let me just add one thing on a personal note. My wife graduated from Saint Gertrude's in 1955. And we've attended events for all these years, and I've never seen anything but responsible behavior from people who were there. I've never seen -- at any of events that I've attended. I've been there since -- 65 years.

Mr. Green - With alcohol?

2623  
 2624 Mr. Reid - With alcohol.  
 2625  
 2626 Ms. Harris - Right.  
 2627  
 2628 Mr. Theobald - Thank you, sir.  
 2629  
 2630 Mr. Johnson - Yes. That's a beautiful facility. I went out there to look around.  
 2631 And it's motivative for the students, as well. Also, we're -- when you're having those  
 2632 activities, you have also activities that the students come into, without alcohol. Not adult  
 2633 facilities, but they come in and they can have all the activity that you know -- that the  
 2634 adults get to see, that the students get to see in another venue --  
 2635  
 2636 Ms. Rafferty - We have, for example, we have a joint field day with  
 2637 Benedictine College Prep School, our brother school which is now out in Goochland. And  
 2638 so there's an event where all students from both schools come for organized games,  
 2639 lunch, liturgy. Obviously we're in use a lot for athletics and all students are encouraged -  
 2640 - we have a bus that goes from school for students who don't drive who want to get out  
 2641 to an athletic competition. So we get out there with as many people as we can as often  
 2642 as we can. But we're trying to take advantage of this gorgeous facility to plan for the  
 2643 upkeep of that facility by having fundraisers there so people can see why it's important to  
 2644 give for it.  
 2645  
 2646 Ms. Harris - Okay. Other questions? Thank you, Miss Rafferty and  
 2647 attorney.  
 2648  
 2649 Mr. Theobald - Thank you all very much.  
 2650  
 2651 **[After the conclusion of the public hearings, the Board discussed the case and**  
 2652 **made its decision. This portion of the transcript is included here for convenience**  
 2653 **of reference.]**  
 2654  
 2655 Ms. Harris - Okay, CUP2018-00031. Benedictine Sisters of Virginia.  
 2656 Okay. I move that we approve this case, but the condition that I think the attorney agreed  
 2657 to was to add that no students would be allowed in the alcohol-related activities.  
 2658  
 2659 Mr. Blankinship - There were two suggestive wordings. One was no students  
 2660 and the other was no one under 21  
 2661  
 2662 Ms. Harris - Okay. No one under 21. So we have two more conditions.  
 2663  
 2664 Mr. Green - Second.  
 2665  
 2666 Ms. Harris - Okay. It's been moved and properly seconded that we  
 2667 approve this case with the two conditions added. Okay any discussion of this? I did need  
 2668 to say that in school-related activities, I think you have to -- I know public schools. I don't

69 know about private schools, but you have to submit a permit. You have to request --  
2670 submit an application. The application has to be approved. And I know, like, in the City  
2671 of Richmond, they'll say no alcoholic-related events. And so then it falls on the shoulder  
2672 of the school system to regulate that. Don't know about a private school, how that would  
2673 work. But certainly with these two conditions we can clear up our unreadiness.  
2674

2675 Mr. Green - And also, they did say that they have had events at the school  
2676 where they have had alcohol, so it seemed to have been a practice and now they just  
2677 seem to want to formalize it. So based on past experiences and the board --  
2678

2679 Ms. Harris - We don't want to come up 13 years from now or 20 years from  
2680 now saying that this happened. You know what I mean?  
2681

2682 Mr. Green - Yes, I do.  
2683

2684 Ms. Harris - Okay. Any more comments? All in favor of this being  
2685 approved say aye. Okay. Opposed say no. The ayes have it, so ordered.  
2686

2687 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr. Green,  
2688 the Board **approved** application **CUP2018-00031 BENEDICTINE SISTERS OF**  
2689 **VIRGINIA, INC.**'s request for a conditional use permit pursuant to Sections 24-12(b) and  
2690 24-52(a) of the County Code to amend an existing use permit at 490 Scott Road (Parcel  
2691 788-761-9774) zoned Agricultural District (A-1) (Fairfield). The Board approved the  
2692 application subject to the following conditions:  
2693

2694 1. The noncommercial recreational facility shall be for the exclusive use of Saint Gertrude  
2695 High School, not to exclude competition against other schools, or use by affiliated Catholic  
2696 middle schools. The facilities shall not be rented or leased to outside entities unless  
2697 previously approved in writing by the Director of Planning. All athletic activities are to be  
2698 conducted during daylight hours, and not prior to noon on Sundays.  
2699

2700 2. Only the improvements shown on the Concept Plan (dated February 2, 2012), as  
2701 amended by this permit, may be constructed pursuant to this approval. This approval  
2702 does not authorize construction of permanent grandstands, field lighting, or athletic  
2703 facilities (other than an unpaved walking path) in the setback areas. Any substantial  
2704 changes or additions may require a new conditional use permit.  
2705

2706 3. The applicant shall submit construction plans, to include landscape and security  
2707 lighting, for administrative review and approval to the Planning Department.  
2708

2709 4. Prior to any land disturbing activity, the applicant shall obtain an approved Erosion and  
2710 Sedimentation Control Plan in accordance with Henrico County Code, Chapter 10,  
2711 Environment. The applicant shall also submit an Erosion Control Bond, which must  
2712 remain active until released in writing. Throughout all land disturbing phases necessary  
2713 for construction of the proposed improvements, the applicant must satisfy the Department

of Public Works Environmental Section that erosion and sediment control is inspected and maintained in accordance with the approved plan and Environmental Section policy.

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

6. The permanently designated on-site parking area and appurtenant drives and roads shall comply with Sec. 24-98, Parking Lot Regulations, of the Henrico County Code.

7. The applicant shall designate an on-site overflow parking area capable of parking 46 vehicles. At the request of the director of planning, this area shall be minimally improved with gravel drives, parking over grass and wheel stops to designate stall spacing.

8. A stop sign meeting County standards shall be maintained at the entrance onto Scott Road.

9. The site shall be maintained litter free at all times. The applicant shall provide an adequate number of trash receptacles adjacent to the parking lot, athletic fields, concessions building, and pavilion. The applicant shall also install an enclosed and screened trash receptacle (dumpster) for collection of refuse generated at the site. The dumpster shall only be serviced between the hours of 6:00 a.m. and 10:00 pm.

10. The facility shall be secured by a 6-foot-tall chain link fence and gate. The gate shall be locked between dusk and 7:00 am.

11. "No trespassing" and "no loitering" signs shall be posted at the site entrance and coordinated with the Division of Police.

12. On-site security lighting shall be coordinated with the Division of Police.

13. The sale of alcoholic beverages shall be prohibited. Alcohol may be provided at private functions sponsored by the school's Parent-Teacher-Student Organization or the Alumnae Association, provided no one under 21 years of age, and no students, are on the property. Saint Gertrude's shall obtain an ABC license as required by state code. Public fundraising events that consist of outdoor activities with entertainment where an admission fee is charged shall require a festival permit.

14. Permanent food concession facilities shall be reviewed and approved by the Health Department.

15. Public address and sound amplification equipment shall not exceed 65 dB at the limits of the property.



'60	Affirmative:	Bell, Green, Harris, Johnson, Reid	5
2761	Negative:		0
2762	Absent:		0

2763

2764

2765 Ms. Harris - Let me ask the board members. Do you all want to take a

2766 quick break?

2767

2768 Mr. Green - Yes. We need a break.

2769

2770 Mr. Blankinship - Okay.

2771

2772 Ms. Harris - Okay. We hope it doesn't inconvenience the applicants too

2773 much but we need a five-minute break.

2774

2775 \*\*\* THE BOARD TAKES A FIVE-MINUTE BREAK \*\*\*

2776

2777 Ms. Harris - All right. Next case.

2778

2779

2780 **CUP2018-00032 LIESFELD CONTRACTOR, INC.** requests a conditional use

2781 permit pursuant to Section 24-116(d)(3) of the County Code to deposit soil as fill material

2782 at 3801 Darbytown Road (Parcel 826-690-8089) zoned Agricultural District (A-1) (Varina).

2783

2784 Mr. Blankinship - Would everyone who intends to speak to this case please

2785 stand and be sworn in.

2786

2787 Mr. Gidley - This case is similar to the case you had over the summer on

2788 Strath Road that the board approved back in July. It's a former sand and gravel burrow

2789 pit, which was excavated between 1992 and roughly 1998.

2790

2791 When the excavation was completed, they reclaimed the site by spreading topsoil and

2792 establishing ground cover. They did not, however, bring enough fill material to the site to

2793 return it to its natural grade as they commonly do today.

2794

2795 As a result, the existing grade on the site is about 10 to 15 feet below its natural grade.

2796 Liesfield Contractor excavates job sites in Henrico County and across the Richmond

2797 Metropolitan area. This results in a lot of waste material being generated, and they would

2798 like to bring it to the site as fill material. The final grade would be slightly higher than the

2799 natural grades, but it would not be visible from the surrounding properties. So in many

2800 ways it's similar to what was done on Strath Road earlier.

2801

2802 The access to the property is a frontage road that comes off of Darbytown Road. I think

2803 the aerial -- basically this is Darbytown Road right here, and the access road comes in

2804 right through here and on into the site. The frontage road does serve one dwelling, as

2805 well, and the frontage road is maintained by VDOT.  
2806

2807 Staff asked VDOT for comments on this, and they basically said they didn't have any  
2808 problem with it as long as the applicant returned it to its original condition after their work  
2809 was completed. As you can see on the aerial here, the site is bounded by Interstate 295  
2810 to the west; to the south is a Dominion Power transmission line and wooded areas; to the  
2811 east is the Varina Chase subdivision.  
2812

2813 There are some homes here along the western boundary line, and there is, you know,  
2814 some concern that they could hear some of the activity on the site in the event this was  
2815 approved. But overall, we don't believe there would be any substantial detrimental  
2816 impact, nothing rising to that occasion.  
2817

2818 As I mentioned earlier, you come in off Darbytown Road here. And the access road, as  
2819 you can see here, is shared by one dwelling. Trucks entering the site would pass in front  
2820 of this dwelling right here. The other homes in this area are at least 250 feet away from  
2821 where the clearing would occur.  
2822

2823 And the applicant has agreed to preserve this wooded area as a buffer from their activity.  
2824 The residents here, again, may hear the back-up alarms that were discussed during the  
2825 July hearing when they bring trucks into the site. There may be some dust issues. Staff  
2826 has adopted conditions in the staff report designed to address those concerns and so  
2827 hopefully they would limit any impact.  
2828

2829 As far as Darbytown Road is concerned, again, there could be some impact there. If  
2830 you're a truck approaching from the city, you would just turn right into this road here and  
2831 go on. If you're coming from the east, you would have to stop and let ongoing traffic pass.  
2832 And so, you know, in theory, the trucks could back up and again, if the need shows it,  
2833 then the applicant will be required to have traffic control out on the main road there.  
2834

2835 So in conclusion, the proposed use is consistent with the zoning ordinance. And the  
2836 request is reasonable given the site has already been excavated. The detrimental impact  
2837 should be mitigated by the proposed conditions. Staff is concerned, of course, to have  
2838 another one of these projects in the eastern part of the county, especially when it is close  
2839 to some of the surrounding homes. But as we noted in the staff report, this material does  
2840 have to go somewhere. For these reasons, staff recommends approval subject to the  
2841 conditions in your report. And if you have any questions I'll certainly be happy to answer  
2842 them. Thank you.  
2843

2844 Ms. Harris - Okay.

2845  
2846 Mr. Johnson - Yes. Would the applicant be using the entire facility or just  
2847 part of it?  
2848

2849 Mr. Gidley - Basically this area here in the rose color, that's -- they would  
2850 come in through here and then they would deposit the material right here.

2851 Mr. Johnson - Okay

2852

2853 Ms. Harris - Okay, Mr. --

2854

2855 Mr. Johnson - So 75 percent of it is -- okay.

2856

2857 Ms. Harris - Yes. I have several questions. In the background report, Mr.

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Ms. Harris - Okay. In the conditions of approval, condition number five.



2897  
 2898 Mr. Blankinship - Yes.  
 2899  
 2900 Ms. Harris - The material to be deposited on the site shall be limited to soil  
 2901 and similar materials.  
 2902  
 2903 Mr. Blankinship - Yes.  
 2904  
 2905 Ms. Harris - What are we talking about when you say "similar material"?  
 2906 Should I ask the applicant that?  
 2907  
 2908 Mr. Blankinship - That would be a good idea. But I'll tell you as the drafter of  
 2909 that, read that phrase, similar materials excavated from construction sites. So whatever  
 2910 you dig up when you're digging up the soil. There would be rock. There may be concrete.  
 2911 You know, if it's a construction site where they're demolishing or they're digging up, you  
 2912 know, whatever's underground when they dig it up.  
 2913  
 2914 Ms. Harris - So it could be concrete. It could be asphalt?  
 2915  
 2916 Mr. Blankinship - It could be. I'm not sure exactly at what point it becomes  
 2917 construction and demolition debris that has to be taken to a CDD landfill. But, you know,  
 2918 if you go out and excavate a construction site, most of what you get will be soil, but there  
 2919 will be clay and rock and tree roots and things like that mixed in with it. That's what's  
 2920 intended there.  
 2921  
 2922 Ms. Harris - Right. And I'd like to know the origin of some of these  
 2923 materials that will be coming into -- how far away. I know that they said they try to have  
 2924 these landfills close to the construction area, but I'd like to know how far, what are we  
 2925 dealing with in term -- and I'll ask that of the applicant, too.  
 2926  
 2927 Mr. Blankinship - Yes, ma'am.  
 2928  
 2929 Ms. Harris - Do the residents know of the reopening of the site? I know  
 2930 that Varina Chase is not too far from that. They have some very expensive homes there.  
 2931 Were they notified of this meeting?  
 2932  
 2933 Mr. Blankinship - Yes, ma'am. Everyone whose property immediately adjoins  
 2934 this site, yes, the red line there was sent a notice.  
 2935  
 2936 Ms. Harris - Okay  
 2937  
 2938 Mr. Blankinship - We have not received a great deal of interest from the  
 2939 community up to this point, though, I will say. I believe I only got one phone call on the  
 2940 case and that was the owner of the property right at the entrance.  
 2941  
 2942 Ms. Harris - Right. I think that's all I have right now. Are there any other



43 questions from board members? Mr. Johnson?

Mr. Johnson - Yes. On this site, they're only supposed to be depositing soil, not excavating anything?

Mr. Blankinship - That's correct.

Mr. Johnson - And also, the soil that's coming in, is there any way that they would determine that there's not any hazardous material with it?

Mr. Blankinship - They are responsible for that. The condition provides that -- or excludes any hazardous materials. So it's the applicant's responsibility, the operator's responsibility to abide by that condition.

Mr. Johnson - Okay.

Ms. Harris - Any other questions?

Mr. Johnson - But when --

Ms. Harris - Sorry.

Mr. Johnson - But when they are excavating from another site, then there is nothing there to indicate that when that soil that came out, there was -- if you went down deep enough that something else could have been there -- I was just kind of curious about that.

Mr. Blankinship - There is the possibility that they could be excavating elsewhere and find some kind of hazardous material buried. And maybe the applicant can respond to their responsibilities when that happens.

Mr. Johnson - Okay.

Mr. Blankinship - I don't know.

Mr. Johnson - Okay.

Ms. Harris - Other questions from board members? Thank you, Mr. Gidley. We need to have the other persons who are going to be speaking to be sworn in. I don't think we did that.

Mr. Blankinship - Yes, they were.

Ms. Harris - They were sworn in?

Mr. Blankinship - Yes, ma'am.

2989  
 2990 Ms. Harris - Okay, great. Okay. Anyone who wishes to speak in support  
 2991 of this application, please come forth and give us your name.  
 2992  
 2993 Mr. Hooker - Good morning, Madam Chair, members of the board. My  
 2994 name is Randy Hooker, H-O-O-K-E-R. We're Engineering Design Associates here  
 2995 representing Liesfield on this use permit. As has been discussed, this permit's very similar  
 2996 to the case that was presented in June and then brought back before the board in July.  
 2997 This mine is currently owned by Vulcan. The Strath site was also owned by Vulcan.  
 2998 Condition for Liesfield to purchase this is upon approval of obtaining a use permit. So  
 2999 that's why we're here again today, is if Liesfield's going to buy it, they'd want to be able to  
 3000 utilize the land as a fill site.  
 3001  
 3002 Again, as was stated, materials will be brought into this site. This is not a mine facility  
 3003 and will not be exporting material out of the site. All the material comes from their  
 3004 construction projects. It's soil; may contain a little concrete, stone. Your basic, you know,  
 3005 earth materials. I'm here to request your favorable consideration of the permit and if you  
 3006 have any questions I'll be happy to answer them.  
 3007  
 3008 Ms. Harris - Okay. How much traffic are we expecting for this particular  
 3009 site?  
 3010  
 3011 Mr. Hooker - Just like every other use permit. I mean, it's no more than two  
 3012 trucks at a time. So I mean, they're looking to -- if they are granted approval, this mine  
 3013 location will be filled kind of simultaneously as the Strath Road facility. They wouldn't --  
 3014 it wouldn't sit. It would be used.  
 3015  
 3016 Ms. Harris - I think that one, we had, like, what, 120 trucks for one day? I  
 3017 mean, is that going to be the same situation here?  
 3018  
 3019 Mr. Hooker - I'd have to defer to Mr. Morgan with Liesfield. He can answer  
 3020 expected --  
 3021  
 3022 Ms. Harris - Right. I guess I'll go ahead and ask you my questions. In  
 3023 condition -- do you have the conditions before you, Mr. Hooker?  
 3024  
 3025 Mr. Hooker - Yes, ma'am.  
 3026  
 3027 Ms. Harris - Look at condition number 16.  
 3028  
 3029 Mr. Hooker - Yes, this is a carry-over from the Strath Road mine use permit.  
 3030  
 3031 Mr. Harris - If the well water is contaminated, then what will be the  
 3032 recourse toward eliminating the problem? You have "If such tests show contamination,  
 3033 the applicant may request collection and testing of a new sample by an independent third  
 3034 party." But suppose it is contaminated. Then what? I mean, they can get a new test but

35 if the well water is contaminated, then what?

3036 Mr. Blankinship - Well, that would be condition 17, ma'am.

3038 Mr. Johnson - Yes.

3040 Ms. Harris - That would be condition 17?

3042 Mr. Blankinship - Yes. If evidence shows that this activity is causing an adverse  
3044 impact on the well, then 17 would kick in.

3046 Ms. Harris - Okay. I see "cease operation" if they find that.

3048 Mr. Blankinship - And the answer to your question is it depends on what the  
3049 problem is. We couldn't really address in the condition how they would correct the  
3050 problem without knowing what problems may occur.

3052 Ms. Harris - Right.

3054 Mr. Blankinship - The one case that was discussed specifically back in  
3055 June/July was one where the excavation phase -- now, again, back in the late '80s, early  
3056 '90s, the excavation had caused a shallow well to go dry. And the correction to that was  
3057 that West Sand and Gravel drilled in a deep well. So if there are other shallow wells in  
3058 the area that could affect it, probably the simplest, most straightforward solution is to  
3059 replace it with a drilled deep well rather than a shallow bored well.

3061 Ms. Harris - Okay. Was the site that we approved on Strath Road  
3062 adequate to handle the new materials you're talking about?

3064 Mr. Hooker - Can you clarify that question?

3066 Ms. Harris - Okay. We have a similar case today as we had on Strath  
3067 Road.

3069 Mr. Hooker - Yes.

3071 Ms. Harris - Why do you need another facility?

3073 Mr. Hooker - Just the quantity of materials. And I'm not saying they're going  
3074 to need this overnight, but they do forecast they will have material to fully reclaim this  
3075 facility as well as the Strath Road facility.

3077 Ms. Harris - You are opening a site that has been reclaimed -- I mean, your  
3078 request is to open a site that's been reclaimed. And you last time asked for a site that  
3079 had been reclaimed. And do you know how many -- how many reclaimed sites we have  
3080 in Varina that you intend to reopen?

3081  
3082 Mr. Hooker - These two with Vulcan are the facilities that they're looking at.  
3083  
3084 Ms. Harris - Are you aware of the reclaimed sites in Varina?  
3085  
3086 Mr. Hooker - Kingsland, the Cox borrow pit which has been completed.  
3087 That's gone. Hines Road that's not done with. Yeah, Hines Road facility. That -- actually  
3088 that's done. So as far as others that are active, inactive, no, I'm not aware of those.  
3089  
3090 Ms. Harris - I'm just wondering, is this going to be a pattern that you will go  
3091 through the district and open the reclaimed sites and do what we're doing here, which is  
3092 being requested here.  
3093  
3094 Mr. Hooker - No. No. This isn't anything that we have on the schedule for  
3095 future locations today. These two -- Vulcan owns these two.  
3096  
3097 They were looking to sell the two. Liesfield's condition, contract to purchase them, was if  
3098 they could get a use permit then they would purchase the property. Again, as Mr.  
3099 Blankinship has even stated, that these locations were mined. However, they were not  
3100 fully reclaimed. They essentially are depressions in the earth that could be refilled.  
3101  
3102 Ms. Harris - Okay. And the other question I had asked Mr. Blankinship  
3103 that I was saving for you guys: Do we know the origin of these fill materials? How far are  
3104 they coming?  
3105  
3106 Mr. Hooker - They will know the source of, you know, where the material is  
3107 coming from.  
3108  
3109 Ms. Harris - Right. Do we have a radius, so many miles?  
3110  
3111 Mr. Hooker - Ten to 15 miles.  
3112  
3113 Ms. Harris - Okay. Other questions from board members?  
3114  
3115 Mr. Johnson - Yes. In addition to what Miss Chairman mentioned, which is  
3116 one of my concerns, as well, is that -- that we've done one in July and now we're doing  
3117 the same thing again. And also, you haven't -- the one on Strath Road have not been  
3118 opened or you haven't done anything with it yet?  
3119  
3120 Mr. Hooker - We're having to -- and that's on my company.  
3121  
3122 Mr. Johnson - Okay.  
3123  
3124 Mr. Hooker - We're having to revise the erosion sediment control plans.  
3125 Get those in to Public Works and get those approved. And we have not completed that  
3126 yet. So we need to get that done so he can start utilizing that facility.



3127 Mr. Johnson - Yes. And when you -- also this facility, as a Variner, being in  
3128 Varina, I wouldn't like to see -- I would not like both operating at the same time if it's  
3129 granted, you know, because it's only about three miles as the crow flies from that location  
3130 to where this one is at.  
3131

3132  
3133 Mr. Hooker - I understand.  
3134

3135 Mr. Johnson - And that'll bring more sound, more trucks. And I really don't  
3136 want to have Varina, you know, just listening to trucks all the time.  
3137

3138 But the other thing, too, is, you know, because you've got noise and dust and also if that  
3139 happened to happen, then if we could have one operating and then when that one's  
3140 finished then operate the other one, which would be my idea. Of course, also the timeline.  
3141 How long -- and I heard Mr. Blankinship mention that that was one of the things to come  
3142 up last time, as well. And to go on and on and on -- because this one has been finished  
3143 up for about 20 years now. There's no trucks, no noise and things out there now. So it  
3144 will be an abrupt change. I just want to make sure that we don't have all this noise at both  
3145 locations all the time, you know, which is going to conflict with the community.  
3146

3147 Mr. Morgan - Can I answer?  
3148

3149 Mr. Johnson - Yes.  
3150

3151 Mr. Morgan - Kelby Morgan, M-O-R-G-A-N. I am the owner, potentially. So  
3152 to kind of help you understand a little bit about our use for it.  
3153

3154 Mr. Johnson - Okay.  
3155

3156 Ms. Morgan - We understand what the situation is and what's required to  
3157 operate these facilities. We look for facilities all over the place, not just in Varina, that are  
3158 amicable to what we're doing. We know we can't operate in a neighborhood. We try to  
3159 find facilities that are acceptable to you all, work best in the community.  
3160

3161 This site, we had the opportunity to purchase this site from Vulcan. They just happened  
3162 to have two sites they were wanting to sell. So we took advantage of that opportunity to  
3163 find these sites. These sites don't come along very often. They rarely come along, to be  
3164 honest with you.  
3165

3166 You know, we look at this site. It's got 295 as one of our neighbors. We cannot, in what  
3167 we do, ask for a better neighbor than 295. I guess you'd call it the south side, there's  
3168 nothing. It's just a swamp down there and woods. That's a great neighbor for us. On the  
3169 east side, there is a swamp between us and the neighborhood. That's good for us. We're  
3170 trying to stay on the west side of the property so we're doing everything we can to try to  
3171 find sites that are suitable for what we're doing.  
3172

No one wants -- I mean, we know the routine. This site, we do intend to operate simultaneously. While they're not that far away, when you look at different roads, material coming from different directions, it's quicker to get to one than the other. By having both these sites available to us simultaneously, it may allow pressure off of one if, for example, we have a heavy haul.

We might not want to send all those trucks to Strath Road. We might want to divert some of those trucks away from Strath Road to cut down on the traffic noise and that kind of thing. So we think it's a positive to operate both these sites simultaneously. If a job is closer to this site than the other site, you know, we want to go to the closer one.

We don't want to put trucks on the road more than they have to be. The trucks are going on the road. The development's there. It's going somewhere. We want to keep it as close as possible. We want a tractor-trailer -- not a tractor-trailer. Usually a dump truck. We want it to go three miles, not eight miles or 10 miles and who knows where. I mean, it's got to go somewhere. So that's kind of the theory. Both these kind of fell in our lap. They mimic each other. They're somewhat close but they serve different purposes and they could work together to make, I think, a lesser impact on the community, if that at least tells you what our philosophy is on it.

Ms. Harris - Mr. Green?

Mr. Green - I'm going to speak my peace and I don't care what people think. What I'm sensing is that this comes up quite a bit. And what I'd like the County to tell me is where else in the County can all their sites that these kind of facilities can be operated in, because from my perspective is that with Varina having a large African-American population, it seems like that's where everything wants to be taken.

And I could see some concern there among folks, you know, because it diminishes property value. You know, like I said, you have a large African-American population. I live in Short Pump. And that site, that dump -- that facility that we had over there, I understand it's closed now. And it's no longer in use.

But it seems like Varina is the chosen section now in the county of all the magisterial districts. And my concern is the impact that -- or the perception of the impact that it's going to have on the African-American community, as well as the Caucasian and the other groups that have tended to migrate and live in that area. And I think this is beginning to become a problem.

And we need to know how many of these things are coming up, where they're coming up, where are they. You know, why everything is in Varina. Is anything in any place else? Because that will help. I was told that we're going to continue to see more of this because there's no other place other than Varina. And the trash and debris has got to go someplace and Varina seems to be the only area.

And so I look to staff to, you know, do some kind of study for us that we can understand,

3219 what's going on and why. Because, I don't want to keep impacting an area that has a  
3220 large concentration of African-Americans. And I think the trucks -- and like I say, others.  
3221 Caucasians, as well, and others. But we've got to get a kind of handle on this and see  
3222 because this keeps -- every couple of months we see you guys. And is this going to be  
3223 constant? And, you know, what's really going on here? And I don't know. And I would  
3224 like to understand that.

3225  
3226 Mr. Blankinship - To the extent that the question is about sites that have  
3227 previously been extraction sites that have been reclaimed, we do have a study of those  
3228 that I'd be happy to provide the members of the board. It was about 10 years ago, I think,  
3229 that we did a review of all the sites that we could find records on that were extraction sites  
3230 and how and when they were reclaimed. I could certainly produce that for you.

3231  
3232 Other than that, in terms of sites that could be appropriate locations for large quantities  
3233 of fill, we could try to put together a study along those lines. But it -- I'm not sure what the  
3234 parameters of an appropriate site would be, if it would just be a size and the kind of road  
3235 that provides the access. I mean, we could certainly do a survey of all the parcels  
3236 approximately this size that front on roads at least as high classification as Darbytown.  
3237 That might get you the kind of information you're asking for.

3238  
3239 Mr. Green - Madam Chairwoman, I certainly don't want to take any --

3240  
3241 Ms. Harris - That's fine.

3242  
3243 Mr. Green - I would like to know if you would be in favor of that kind of  
3244 thing being authorized and sent to us so we can understand. To me, I think that you're  
3245 very conscious and concerned about -- and you have far more knowledge about this  
3246 whole area than I, and I'd like to really see if you'd take the lead on helping me understand.

3247  
3248 Ms. Harris - Yes. Mr. Blankinship, that would be really great if you could  
3249 provide us that information. I think all of us would like to know what other sites have been  
3250 reclaimed, because the more sites that have reclaimed in Varina District, the more we're  
3251 going to deal with this particular issue. Do we have -- I think I know this answer to this,  
3252 though. Do we have more sites in Varina than any other district?

3253  
3254 Mr. Blankinship - I don't know the answer to that.

3255  
3256 Ms. Jean Moore - We don't have that answer. I would like to chime in. When  
3257 we look at it from the perspective of other functions of the county and say the Planning  
3258 Department, you know, we do our comprehensive plan update, we do take in  
3259 consideration the past existing and future growth.

3260  
3261 And I think overall I could just say in general, because Varina has the biggest land mass  
3262 versus population -- you can imagine when they do searches, property that's large enough  
3263 is probably going to be in Varina as the western portion, Short Pump area, is pretty maxed  
3264 out in population. And certainly as Varina grows in population, similarly, these would

3265 become less and less, and I could see them going outside to more rural counties.

3266  
3267 So it's just a production of how things grow. And in this case I don't know, for instance,  
3268 when those neighborhoods were established after that was extracted, you know, as its  
3269 history, something we could look at, too. But it kind of comes into play as the county  
3270 grows, looking at the appropriate places for housing versus industrial and maintaining  
3271 some industrial land. I guess what's before us today is whether this CUP at this location  
3272 is appropriate?

3273  
3274 Ms. Harris - Okay. Mr. Morgan, you talk about how this property -- how  
3275 the surrounding areas would be impacted. Look at this map, this site map. Do you see  
3276 Varina Chase, all those homes on Varina Chase? Those are the pretty large homes over  
3277 there. Pretty pricey. And then on the other side of 295.

3278  
3279 Mr. Blankinship - Yes, ma'am. That's Castleton subdivision.

3280  
3281 Ms. Morgan - Yes.

3282  
3283 Ms. Harris - So we really are dealing with a populated community. I notice  
3284 that the application just asks for two years, but we do know that for all that we are doing  
3285 with these landfills, that they last far longer than two years. They last for 18 years and 20  
3286 years. And so it might be misleading to some of the new members on the board when  
3287 you just say two years. That's the beginning of it. And it's hard to --

3288  
3289 Mr. Bell - Conditional use permit, two years.

3290  
3291 Ms. Harris - Right. Because if there are no complaints, then of course it  
3292 will continue. And then it will continue. Then it will continue. But as I said, we have some  
3293 that have been around for a mighty long time. And we've had some complaints. They've  
3294 been addressed and all of this. But I think I've expressed, you know, what I have to say  
3295 about just targeting one district and a people who have kind of a quiet community now.  
3296 The property's been reclaimed. I did turn up in that road, too.

3297  
3298 Mr. Green - Okay.

3299  
3300 Ms. Harris - And I decided to come out of it because your report said that  
3301 you had some elevation. I didn't want to end up in a ditch. But we do need to look strongly  
3302 at what is happening to this district.

3303  
3304 Mr. Green - Okay. So at the end can we ask formally for a vote to have a  
3305 study done so we can understand this?

3306  
3307 Ms. Harris - Surely. Surely.

3308  
3309 Mr. Green - Thank you.

3310



3311 Ms. Harris - That can be on the agenda. Any other questions? Mr.  
3312 Johnson?

3313  
3314 Mr. Johnson - Yes. One more question and that's one of the things I'm  
3315 finding out in the time I've been on the board here now, that we're being inundated with  
3316 that. Also, how long are those sites -- before the land is usable again? When I say usable  
3317 I mean that they can do something other than let trees grow on it.

3318  
3319 Mr. Hooker - I don't claim to be an expert. There's all, I guess, what  
3320 material is that goes in there. I've heard 20 years but don't hold me to that, because you  
3321 may be able to put houses on them. I'm not sure that I have that answer. I don't know if  
3322 the county would accept that or not as far as, like, from the building side. I just don't --  
3323 I'm not familiar with that.

3324  
3325 Mr. Johnson - That was just one of my questions, because when we have  
3326 these facilities in our area, especially this area, I'm concerned, because 20 years from  
3327 now they could have a lot of areas that you can't do anything with that sometime are in  
3328 nice locations, but anyway, I just wanted to see how long it takes before we can do  
3329 anything with the land.

3330  
3331 Mr. Hooker - You can do something with it depending on your use  
3332 immediately for the right user. And when I say the right user, I'll use this property as an  
3333 example. I would assume that on the remainder of this site that we're not touching that  
3334 you could put one or two homes on it. And somebody in the future could have the  
3335 opportunity to have a pretty substantial amount of land in the Varina District with ponds  
3336 on it that it doesn't cost them a significant amount of money because this process has  
3337 already been done on top of it. So it has its benefits, as well, on the end user.

3338  
3339 Mr. Green - I'd like to use my Three Chopt/Short Pump area as an  
3340 example. There is a landfill that was there long before the houses were built. And I've  
3341 noticed that when I go to drop stuff off, you know, it's a transfer station, but subsequently  
3342 there have been a lot of houses, townhouses built around that.

3343  
3344 To me people know when they buy what they're buying near. And so, you know, what I  
3345 want to make sure is that if something was there for 15, 20 years and then you  
3346 subsequently are buying across the street from that, then you should know that there  
3347 shouldn't be any complaints. Because you know what you're buying across from.

3348  
3349 Mr. Hooker - Okay.

3350  
3351 Mr. Green - So that's how you defuse the argument, to me, that folks are  
3352 being targeted for areas, because the things are simultaneously going on. You know,  
3353 because while the landfill may have been there for a long time, some of these houses are  
3354 relatively new. And folks know that they -- or should have known that they're building and  
3355 buying across the street from a landfill. So you know, I'm not blaming the folks who own  
3356 the landfill because they're just doing their job. But I also want to make sure that the

3357 residents recognize what they are buying next to.  
 3358  
 3359 Ms. Harris - Right. But they had closed this one for about 20 years, right?  
 3360  
 3361 Mr. Johnson - Yes.  
 3362  
 3363 Ms. Harris - I think this one has been closed for about 20 years.  
 3364  
 3365 Mr. Green - Yes. Right there.  
 3366  
 3367 Ms. Harris - So people who bought their homes 10 years ago, they would  
 3368 not have that information.  
 3369  
 3370 Mr. Green - That's why we need a study so we can see.  
 3371  
 3372 Ms. Harris - Okay. Are there other questions? Thank you, Mr. Hooker,  
 3373 Mr. Morgan.  
 3374  
 3375 Mr. Morgan - Yes, ma'am.  
 3376  
 3377 Ms. Harris - See you next time.  
 3378  
 3379 Mr. Hooker - Two years.  
 3380  
 3381 Ms. Harris - Two years. Okay.  
 3382  
 3383 Mr. Green - We're going to hold you to that.  
 3384  
 3385 **[After the conclusion of the public hearings, the Board discussed the case and**  
 3386 **made its decision. This portion of the transcript is included here for convenience**  
 3387 **of reference.]**  
 3388  
 3389 Ms. Harris - Let's look at CUP2018-00032. Liesfield Contractor. I am  
 3390 going to move that we deny this application. I think that the owners have other landfills  
 3391 that serve the same purpose and in order to keep from adversely affecting the community,  
 3392 the residents there who in many cases will spend many dollars in their homes within the  
 3393 last 10 years, feel that my motion is to deny this application. Is there a second?  
 3394  
 3395 Mr. Johnson - I would second it. In addition, I would mention that if this had  
 3396 passed, I would have liked to have had it separately. Because rather than having two  
 3397 operating at the same time, I think for the area it would be really detrimental for -- and  
 3398 denial right now is the only thing that benefits you.  
 3399  
 3400 Ms. Harris - Okay. Any other discussion?  
 3401  
 3402 Mr. Green - Yes. I will be supportive of the chairperson's motion and --

but I would also like to see the study from County as to other sites that are available, because I don't want this to continue to see -- come up for Fairfield -- I mean, for the Varina District.

Ms. Harris - Okay.

Mr. Green - I'm curious to see what other areas could be impacted. And I'd like to ask that we commission a study or some kind of report that could be presented to us so we'll know.

Ms. Harris - Okay. We will take that in another motion.

Mr. Johnson - And I second the amendment to the motion.

Ms. Harris - It's been moved and properly second that we deny the case 32, requesting the conditional use permit to deposit soil. Any more discussion on the motion? All in favor say aye. Opposed say no. The ayes have it.

After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr. Johnson, the board **denied** application **CUP2018-00032 LIESFELD CONTRACTOR, INC.'s** request for a conditional use permit pursuant to Section 24-116(d)(3) of the County Code to deposit soil as fill material at 3801 Darbytown Road (Parcel 826-690-8089) zoned Agricultural District (A-1) (Varina).

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

Ms. Harris - We can take the motion now about your suggestion, Mr. Green, about that study.

Mr. Green - Given your experience, I don't know if I should frame it or have you frame it, because you have --

Ms. Harris - It was your brainstorm but if you want me to take credit for it, I will.

Mr. Green - Yes.

Ms. Harris - Mr. Blankinship has called to our attention that a study has been done of landfills in the Varina District that reclaim --

Mr. Blankinship - Well, the study was countywide of sites that had been excavated and reclaimed. And I'd be happy to do a presentation on that next month.



3449  
 3450 Ms. Harris - Oh, great. Okay. Do we -- can I get a second?  
 3451  
 3452 Mr. Green - Second.  
 3453  
 3454 Ms. Harris - Okay. So moved and properly second that this will be done.  
 3455 All in favor of the motion any further discussion on --  
 3456  
 3457 Mr. Green - No. I just want to make sure that we understand not only the  
 3458 impact that it's having on but the impact that it will have on other areas.  
 3459  
 3460 Ms. Harris - Countywide. Five districts  
 3461  
 3462 Mr. Green - Yes.  
 3463  
 3464 Ms. Harris - Okay. Any other discussion? All right. All in favor of the  
 3465 motion say aye. (All unanimously affirm). Opposed say no. Okay. Mr. Blankinship, that  
 3466 will be your show next meeting.  
 3467  
 3468 On a motion by Ms. Harris, seconded by Mr. Green, the board **approved a request for**  
 3469 **information regarding potential areas countywide for the deposit of soil as a fill**  
 3470 **material.**  
 3471  
 3472  
 3473 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
 3474 Negative: 0  
 3475 Absent: 0  
 3476  
 3477  
 3478 Ms. Harris - Okay. Mr. Blankinship, would you call the next case, please.  
 3479  
 3480 Mr. Blankinship - Yes, ma'am. That completes all the conditional use permits  
 3481 on this morning's agenda. There are three variances on this morning's agenda.  
 3482  
 3483  
 3484 **VAR2018-00016 SUPERIOR STRUCTURES AND PROPERTIES, INC.**  
 3485 requests a variance from Section 24-94 of the County Code to build a one-family dwelling  
 3486 at 4931 Thornhurst Street (Parcel 812-721-8935) zoned One-Family Residence District  
 3487 (R-3C) (Varina). The front yard setback is not met. The applicant proposes a variance  
 3488 of 37 feet front yard setback, where the Code requires 40 feet front yard setback. The  
 3489 applicant requests a variance of 3 feet front yard setback.  
 3490  
 3491 Mr. Blankinship - Would everyone who intends to speak to this case please  
 3492 stand and be sworn in. Raise your right hand, please. Do you swear the testimony you're  
 3493 about to give is the truth, the whole truth and nothing but the truth so help you God?  
 3494 Thank you. Mr. Gidley?



195  
3496 Mr. Gidley - Thank you, Mr. Secretary and members of the board. The  
3497 subject property as you can see here is located just east of Laburnum Avenue. In January  
3498 of this year the applicant received a building permit to construct a single-family dwelling  
3499 on the property. This is the dwelling here. In August it was discovered a cantilevered  
3500 portion of the front dining room encroached three feet into the required 40-foot front yard  
3501 setback.

3502  
3503 And on this picture you can see it here. This is cantilevered out here and it goes three  
3504 feet into the setback there. A review of the building permit found it had been mistakenly  
3505 approved this way so the builder has subsequently applied for a variance to allow the  
3506 purchaser of the property to obtain a final certificate of occupancy.

3507  
3508 Let's see if I can zoom in -- this is a plot plan approved with the building permit. And  
3509 again, we can see the builders showed the dwelling here coming within 37 feet rather  
3510 than the required 40 feet. In evaluating this request, while the builder should have been  
3511 aware of the setback, he nonetheless built the home in good faith reliance on an approved  
3512 building permit.

3513  
3514 The Board of Zoning Appeals has traditionally approved variances in such instances  
3515 rather than penalizing the builder and the purchaser for the error in the building permit.

3516  
3517 As far as the five sub tests are concerned, I'll focus on the first two. The applicant did  
3518 purchase the property in good faith and again built the home in compliance with the  
3519 approved building permit that he relied on.

3520  
3521 As far as any detrimental impact, the home itself, I believe, is an asset to the  
3522 neighborhood and also the encroachment at three feet is relatively minor, not really  
3523 noticeable because the street does tend to curve in that area. So staff does not believe  
3524 there's any substantial detrimental impact if this were approved.

3525  
3526 And finally, as noted in your staff report, conditions number three, four and five are also  
3527 met. So to conclude, the applicant built the home in good faith reliance on a building  
3528 permit that mistakenly approved the encroachment. The board in the past has  
3529 traditionally granted variances in such cases rather than penalizing the owner. Staff does  
3530 not see any substantial detrimental impact if this were approved and believes all five sub  
3531 tests are met. So we can recommend approval subject to the conditions in your staff  
3532 report. Thank you.

3533  
3534 Ms. Harris - Okay. Thank you. Any questions? Mr. Green?

3535  
3536 Mr. Green - Yeah. And I'd like Mr. Gentry -- we've been through this  
3537 before with another house and we kind of had a little debate. And you were talking about  
3538 the rules are the rules. I would like your opinion on what you think of this situation.

3539  
3540 Ms. Harris - Mr. Green, ask a question of Mr. Gidley.

3541

3542 Mr. Green - No, I don't have any question of Mr. Gidley.

3543

3544 Ms. Harris - But hold that point if you don't mind.

3545

3546 Mr. Green - Okay.

3547

3548 Ms. Harris - Any questions of Mr. Gidley? Thank you.

3549

3550 Mr. Gidley - Thank you, ma'am.

3551

3552 Ms. Harris - Okay. Now, the applicant, please.

3553

3554 Mr. Hall - Good morning. My name's Gary Hall. I represent Superior

3555 Structures and Properties. I'm here today to ask that you approve this variance.

3556

3557 The only thing I really wanted to -- I don't need to go over the whole report but -- and first

3558 of all, let me thank the Planning Department for their thorough work. They really helped

3559 us through this process at the end, which it really came up at the end when we went for

3560 final CO. Anyway, just real quick. Under the evaluation, I just wanted to let you know

3561 how we kind of suspect how things happened. On the second line there, "Although the

3562 builder and their surveyor should have been aware of this." We were. In January we

3563 came to the Permit Center and we sat down with a county employee, and he came up

3564 with this design to make it fit on to the lot. Not that this has anything to do with this, but

3565 this was a Henrico County piece of property that we bought from Henrico to put a house

3566 on that. So in summary, I'm just asking that you approve this variance. The house was

3567 marketed as a four-bedroom house. Contracted, sold. All the way to the very end. So

3568 in summary, this three-foot thing in question came up a week before closing. Any

3569 questions?

3570

3571 Mr. Green - Have folks moved in yet?

3572

3573 Mr. Hall - I'm sorry?

3574

3575 Mr. Green - Have they moved in yet?

3576

3577 Mr. Hall - Yes, sir. And the homeowner is here if you need to talk to

3578 him.

3579

3580 Ms. Harris - They moved in without a certificate of occupancy?

3581

3582 Mr. Hall - No. They have a CO.

3583

3584 Mr. Blankinship - They have a CO.

3585

3586 Ms. Harris - Oh, okay. I understand. Is this design used, Mr. Hall, by other

homes in the subdivision, the cantilever –

Mr. Hall - Yes. That's a standard building procedure.

Mr. Harris - So you have this in the other homes on the block?

Mr. Hall - I can't speak to that. Those are Ryan homes all adjacent to it and I can't say. I know that they're not on the front. I don't know what they really have in the rear.

Mr. Blankinship - Seriously, this lot is not part of the subdivision.

Ms. Harris - Okay.

Mr. Blankinship - This was a county well lot that was adjacent to the subdivision, so it looks like it's part of the subdivision but it's not.

Mr. Green - Is this a Ryan home?

Mr. Blankinship - No, sir.

Ms. Harris - No. Now, why is the cantilever -- why that feature? Why do people like that feature? I mean, what is the advantage of having that area there? I was just wondering. I know it has to be a –

Mr. Hall - Well, in this particular application, it's not a benefit. It was designed that way here with us. We came to the Permit Center to try to make this work out, to make it fit. Cantilever is a standard building practice. It's done all the time to get extra square footage without increasing the cost of the foundation.

Ms. Harris - Okay. I see why.

Mr. Green - The worst that could happen if we don't support this, they would have to -- we would have to tear the house down?

Mr. Hall - The front -- I don't know.

Mr. Blankinship - The front three feet, yes, sir. Which would leave a dining room that's about seven feet wide, I think, if I remember the plan.

Mr. Hall - That's correct. Yes, sir.

Mr. Blankinship - It would leave them with a completely unusable dining room.

Ms. Harris - Other questions?

3633 Mr. Green - No. Thank you.  
 3634  
 3635 Ms. Harris - Thank you so very much.  
 3636  
 3637 Ms. Hall - Thank you.  
 3638  
 3639 Ms. Harris - Is there anyone who wishes to speak in favor of this  
 3640 application or in opposition towards -- thank you.  
 3641  
 3642  
 3643 **[After the conclusion of the public hearings, the Board discussed the case and**  
 3644 **made its decision. This portion of the transcript is included here for convenience**  
 3645 **of reference.]**  
 3646  
 3647 Ms. Harris - Okay. Let's move to the variances now. The first one is  
 3648 variance 2018-00016, Superior Structures and Property, Incorporated. I move that we  
 3649 approve this request. I looked at the sub tests and I believe they have been met.  
 3650  
 3651 Mr. Green - Second.  
 3652  
 3653 Ms. Harris - I had the information before me. Now I can't put my hand on  
 3654 it. Okay. I was trying to go back to the report that says that this dwelling was built in good  
 3655 faith.  
 3656  
 3657 Mr. Johnson - Right.  
 3658  
 3659 Ms. Harris - There would be no substantial detrimental impact on nearby  
 3660 property if this variance is approved. And we feel that it would be an impossible situation  
 3661 to tear down that extra three feet. So did we -- did I get a second on that motion?  
 3662  
 3663 Mr. Blankinship - Yes. Mr. Green seconded.  
 3664  
 3665 Ms. Harris - Okay. It's been moved and properly seconded that we  
 3666 approve this request. Any further discussion? All in favor of this approval, say aye.  
 3667 Opposed say no. It's been approved.  
 3668  
 3669 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr. Green,  
 3670 the Board **approved** application **VAR2018-00016 SUPERIOR STRUCTURES AND**  
 3671 **PROPERTIES, INC.'s** request for a variance from Section 24-94 of the County Code to  
 3672 build a one-family dwelling at 4931 Thornhurst Street (Parcel 812-721-8935) zoned One-  
 3673 Family Residence District (R-3C) (Varina). The Board approved the request subject to  
 3674 the following condition:  
 3675  
 3676 1. This variance applies only to the front yard setback requirement for the existing  
 3677 encroachment as shown on the survey from Carl Edward Duncan dated July 26, 2018



(Job No.: 17-1990). All other applicable regulations of the County Code shall remain in force.

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

Ms. Harris - Mr. Blankinship, the next case.

**VAR2018-00019**      **AURIS PROPERTY INVESTORS, LLC** requests a variance From Section 24-9 of the County Code to build a one-family dwelling at 1550 Kimbrook Lane (Parcel 830-722-3515), zoned Agricultural District (A-1) (Varina). The public street frontage requirement is not met. The applicant has 0 feet public street frontage where the Code requires 50 feet public street frontage. The applicant requests a variance of 50 feet public street frontage.

Mr. Blankinship - Would everyone here to speak to this case please stand and be sworn in. Raise your right hand. 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? Thank you. Mr. Gidley?

Mr. Gidley - Thank you Mr. Secretary. The subject property contains one acre and is located on Kimbrook Lane, which is a private road that extends eastward from Hanover Road. The parcel shown here was created from a larger 30-acre site in 1970. The current owners acquired the property in 2003, and they now have a contract to sell the property pending approval of a variance for the lack of public street frontage.

This is a view of the property from Kimbrook. The board actually approved a similar request for the lot across the road back in June. As noted, at the time there was an agreement between property owners that calls for a shared maintenance of Kimbrook, which as you can see, is actually in pretty good shape for a private road.

In evaluating this request, the property is arguably unreasonably restricted as it is. Although it was created after the 1960 public street frontage requirement, at the time, particularly Varina, people typically created lots and then were able to receive variances. Absent a variance, they would not have any reasonable beneficial use of the property. So staff believes the first main test is met.

As far as the five sub tests, staff believes all five are met. I'm going to focus briefly on number two dealing with substantial detriment because that's usually the most key. Since 1960, the board has approved a total of nine variances along Kimbrook. This request is simply a continuation of this pattern. The proposed home shown here is a rancher, and

3724 the proposed square footage at 1,344 square feet is consistent with other homes on that  
3725 street, so the design should not be detrimental in any way.

3726  
3727 Staff does not anticipate any substantial detrimental impact from this request, assuming  
3728 the owners are bound by the road agreement which is a condition in the staff report.

3729  
3730 So in conclusion the property has been in its current configuration since 1970. Absent of  
3731 variance, it would not have a reasonable beneficial use. The five sub tests are also met,  
3732 including no substantial detrimental impact. Appropriately, staff recommends approval  
3733 subject to the conditions in your staff report, and this concludes my presentation. If you  
3734 have any questions, I'll be free to answer them.

3735  
3736 Ms. Harris - Mr. Gidley, I noticed that the vicinity map does not indicate  
3737 wetlands, but according to the picture that you gave us in the packet and in my visit this  
3738 week, I see a lot of standing water. Is that a problem for this lot?

3739  
3740 Mr. Gidley - Let's get the view on there. You know, Miss Harris, I'm not  
3741 aware of any wetlands on the property. This time of year there has just been such a  
3742 deluge of rain. There are a lot of properties, including my own, that are just -- Believe  
3743 me, having inspected properties, I make sure mine drains properly. And even it's, you  
3744 know, rather damp.

3745  
3746 Mr. Blankinship - I know mine is a lot soggier than usual.

3747  
3748 Ms. Harris - So it should not be a problem?

3749  
3750 Mr. Gidley - -- I don't anticipate any problem. And it does look like it drains  
3751 off slowly towards this direction here, towards the northeast.

3752  
3753 Ms. Harris - If they did have that problem would it be covered in conditions  
3754 in conditions three or four?

3755  
3756 Mr. Blankinship - Yes.

3757  
3758 Ms. Harris - It would be?

3759  
3760 Mr. Blankinship - Yes, ma'am.

3761  
3762 Mr. Gidley - They would need a building permit and the Department of  
3763 Public Works would review the site for any environmental constraints.

3764  
3765 Ms. Harris - Okay.

3766  
3767 Mr. Gidley - Yes, ma'am.

3768  
3769 Ms. Harris - Are there other questions of Mr. Gidley? Okay. Thank you.

3770 Mr. Gidley - Thank you.

3771

3772

3773 Ms. Harris - Let's hear from the applicant, please.

3774

3775 Mr. Rennolds - Hello. My name's Ned Rennolds, R-E-N-N-O-L-D-S, with

3776 Auris Property Investors. We just propose to have a variance granted to allow us to build

3777 a single-family dwelling comparable to neighboring homes at this site.

3778

3779 As he mentioned, other homes have been constructed similar to this, and I think that this

3780 actual site here has already been approved for a variance like this several years ago but

3781 it had expired, because nothing came of it.

3782

3783 Ms. Harris - Okay.

3784

3785 Mr. Blankinship - Do you know anything about the existence of flood plains or

3786 wetlands on the property?

3787

3788 Mr. Rennolds - We were looking into that and it looked like it was okay. We

3789 have had a soil test done for the septic system, and that came out okay. But from what I

3790 understand, there will be, you know, one more layer of review before that's official.

3791

3792 Ms. Harris - Okay. Any questions of Mr. Rennolds?

3793

3794 Mr. Johnson - Yes. I noticed their private driveway.

3795

3796 Mr. Rennolds - Yes.

3797

3798 Mr. Johnson - Is there any regulations into how, since it's not County -- how

3799 we're going to keep the --

3800

3801 Mr. Rennolds - Yes. There is a road maintenance agreement with the

3802 community, the neighbors. I believe it involves the contribution of about \$10 a month for

3803 the occupant of the house to be involved with. Other than that, no. I think they're proud

3804 of their little private road and take good care of it.

3805

3806 Mr. Johnson - And also the setbacks. All of them seem to be close to the

3807 roadway, because if the roadway was larger than it probably would be a violation if it was

3808 on Henrico's right-of-way, a public road.

3809

3810 Mr. Rennolds - Sorry. Are you asking --

3811

3812 Mr. Johnson - I was just saying how the houses on that, you know, they're

3813 somewhat close to the narrow road. I'm just making an assumption on --

3814

3815 Mr. Rennolds - I think the size of the lot would allow us to position a house in

3816 several places that would, you know, allow us to comply with the requirements for a  
3817 building permit.

3818  
3819 Mr. Johnson - Okay.

3820  
3821 Mr. Rennolds - Yeah. Maybe if we could pull another picture up.

3822  
3823 Mr. Johnson - One that would have many of the houses in it.

3824  
3825 Mr. Rennolds - So you're talking about maybe the one right next to it?

3826  
3827 Mr. Blankinship - It appears to me, Mr. Johnson, that those two houses across  
3828 from each other there were built in 1962 and '63.

3829  
3830 Mr. Johnson - Oh, okay.

3831  
3832 Mr. Blankinship - And they are a little bit closer than they probably should be.  
3833 But you can also see that the property line there goes to the center of the street. The  
3834 property line of this property does not go to the center of the street. And you'll have to  
3835 setback 50 feet from that property line.

3836  
3837 Mr. Johnson - Okay.

3838  
3839 Mr. Blankinship - And that was also the case with the dwellings that were  
3840 approved recently by the board. So I don't think we're going to make that problem any  
3841 worse.

3842  
3843 Mr. Johnson - Okay.

3844  
3845 Mr. Blankinship - But that's a good observation of yours. I hadn't even noticed  
3846 that, that those two houses are a little closer together than they should be.

3847  
3848 Mr. Johnson - Okay. That's it.

3849  
3850 Ms. Harris - Okay. Any other questions? Thank you so very much.

3851  
3852 Mr. Rennolds - Thank you.

3853  
3854 **[After the conclusion of the public hearings, the Board discussed the case and**  
3855 **made its decision. This portion of the transcript is included here for convenience**  
3856 **of reference.]**

3857  
3858 Ms. Harris - Moving on to variance 2018-00019. Auris Property Investors,  
3859 LLC. They want to build a one-family dwelling on Kimbrook Lane. What is the pleasure  
3860 of the board?

3861



Mr. Johnson - I motion that we approve this. It's consistent with the comp plan and also zoning ordinance. And that the area do not -- well, and it's consistent with the comp plan.

Ms. Harris - Okay. Is there a second?

Mr. Reid - Second.

Ms. Harris - It's been moved and properly seconded that we approve this request for a variance. Is there any discussion on this motion? We know that other properties along this road has -- other properties have received variances so it's not unusual for this to happen. Okay. All in favor of this variance say aye. Opposed say no. The ayes have it and so ordered.

After an advertised public hearing and on a motion by Mr. Johnson, seconded by Mr. Reid, the board **approved** application **VAR2018-00019 AURIS PROPERTY INVESTORS, LLC's** request for a variance From Section 24-9 of the County Code to build a one-family dwelling at 1550 Kimbrook Lane (Parcel 830-722-3515), zoned Agricultural District (A-1) (Varina). The Board approved the variance subject to the following conditions:

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

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

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

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

5. The owners of the property, and their heirs or assigns, shall accept responsibility for maintaining Kimbrook Lane as provided in the Kimbrook Lane Road Maintenance Agreement recorded in Deed Book 3439 Page 1751.

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

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Ms. Harris - Mr. Blankinship, if you'll call the next case?

**VAR2018-00020 MANCHESTER CONSTRUCTION CORP.** requests a variance from Section 24-94 of the County Code to build a one-family dwelling at 2874 Old Memorial Drive (Parcel 841-709-4705), zoned Agricultural District (A-1) (Varina). The total lot area requirement is not met. The applicant has 0.975 acre lot area where the Code requires 1 acre lot area. The applicant requests a variance of 0.025 acre lot area.

Mr. Blankinship - Would everyone who intends to speak to this case please stand and be sworn. 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?

Mr. Caudell - Yes, sir.

Mr. Blankinship - Thank you, sir. And thank you for your patience. Mr. Gidley?

Mr. Gidley - Thank you, Mr. Secretary. The subject property which you can see here before you was divided from a two-acre tract in 1968 and it is currently unimproved. This is the view of the property right here. The applicant acquired it this past July.

As you can see, the property does have public street frontage and at 0.975 of an acre, which you can see on the plot plan here, it is just shy of the required one acre needed for a dwelling in the A-1 zoning district.

As a result, the applicant has applied for a variance that would allow for construction of a single-family dwelling on this property. In evaluating this request, the applicant acquired this lot by way of a tax sale and was under the impression it was an acre in size when he purchased it. So he did purchase it in good faith.

After the purchase, the survey before you showed it was 0.025 of an acre shy of the minimum one-acre requirement. Other than the slight lack of area, the property is suitable for a dwelling. As a result it would be unreasonable to prohibit the only practical use of this property which is a dwelling.

With respect to the five sub tests, as noted in your staff report, staff believes all are met. This would include no substantial detrimental impact on nearby property. The home, as you can see here, is a proposed 1,400 square-foot rancher and that is consistent with the residential development on the street.

In conclusion, the proposed use, as I said, is consistent with both the zoning, the comprehensive plan and the other dwellings in the area. The lot is suited for a dwelling other than being just shy of the minimum lot size. And as a result, staff can recommend approval of this request subject to the conditions in your staff report. Thank you.

3954 Ms. Harris - Okay. Any questions of Mr. Gidley?

3955

3956 Mr. Johnson - Yes. One question: Is there a wetland? Because I noticed

3957 from the road it kind of drops down, so I was just kind of curious from the last one.

3958

3959 Mr. Gidley - I'm not aware of this being a wetland, sir. It does, as you see,

3960 the topography here -- it does slope down to the northeast.

3961

3962 Mr. Johnson - Yes.

3963

3964 Mr. Gidley - And usually a wetland would be in a more level area where

3965 the water would accumulate.

3966

3967 Mr. Johnson - Okay. So it drains. Uh-huh.

3968

3969 Ms. Harris - Any other questions?

3970

3971 Mr. Johnson - That was it.

3972

3973 Ms. Harris - Thank you, Mr. Gidley. We'll hear now from the applicant.

3974 And we thank you for being patient.

3975

3976 Mr. Caudell - Hopefully the easiest one is last.

3977

3978 Mr. Johnson - Yes, sir.

3979

3980 Mr. Caudell - All right. Well, like I said, I don't own the property. I have a

3981 contract to buy it.

3982

3983 Mr. Blankinship - Tell us your name first, please.

3984

3985 Mr. Caudell - Mike Caudell, C-A-U-D-E-L-L. And doing my due diligence,

3986 we did a boundary survey and found out we were slightly less than one acre. So I applied

3987 for the variance. I'd still like to buy the lot and build a house on it. You know, other than

3988 the fact it's very minimally short of the acreage, I don't see any problem but that's up to

3989 you guys to decide.

3990

3991 Ms. Harris - Okay. Questions? You have a wooded lot so you have a lot

3992 of trees to bulldoze; is that true?

3993

3994 Mr. Caudell - There's some big trees on it, so there is actually not a lot of

3995 undergrowth. Some of the big trees will have to come down. And anything we have to -

3996 - there will be some buffer. A little bit of buffer. But not a lot.

3997

3998 Ms. Harris - Other questions of board members?

3999



4000  
4001 Mr. Johnson - No. It has a nice house right across the street from it that's  
4002 nice.  
4003  
4004 Ms. Harris - Okay. It's a nice neighborhood so --  
4005  
4006 Mr. Caudell - It's a nice quiet road.  
4007  
4008 Ms. Harris - Yes.  
4009  
4010 Mr. Caudell - You know, I think what I build there, it won't be a detriment at  
4011 all. It'll be an improvement, I think.  
4012  
4013 Ms. Harris - So you don't have an option yet? You don't have any buyers  
4014 yet for the home?  
4015  
4016 Mr. Caudell - I'm sorry?  
4017  
4018 Ms. Harris - Do you have any buyers, prospective buyers already for this?  
4019  
4020 Mr. Caudell - Oh, no. At first I was going to build a house and put my son  
4021 in it. But since this took a little while I've already bought another lot and started a house  
4022 for him somewhere else. But, you know, in the \$200,000 price range, these things sell  
4023 quickly. I mean, I built this exact same house at least 20 times in the last four years. And  
4024 they don't -- they sell by the time -- before they're framed usually they're sold.  
4025  
4026 Ms. Harris - Okay. Any other questions? Thank you. I think that  
4027 concludes your case.  
4028  
4029 Mr. Caudell - Thank you.  
4030  
4031 Ms. Harris - Okay. Members of the board, let's go to our voting procedure.  
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4033  
4034 **[After the conclusion of the public hearings, the Board discussed the case and**  
4035 **made its decision. This portion of the transcript is included here for convenience**  
4036 **of reference.]**  
4037  
4038 Ms. Harris - And the last case, the variance 2018-00020. Manchester  
4039 Construction Corporation. What is the pleasure of the board?  
4040  
4041 Mr. Johnson - Recommend approval of the variance. It's consistent with the  
4042 surrounding development, and the proposed building is consistent, as well. And it will not  
4043 have a detrimental impact upon adjoining properties, as well.  
4044  
4045 Mr. Bell - Second.



4046 Ms. Harris - Okay. And absent this variance, the lot has no use.

4047

4048 Mr. Blankinship: Right.

4049

4050 Mr. Johnson - Right.

4051

4052 Mr. Blankinship - Which is also, I think –

4053

4054 Ms. Harris - If they didn't get this, they will have no use.

4055

4056 Mr. Johnson - Right.

4057

4058 Mr. Blankinship - Do you think that was also the case on the previous one?

4059

4060 Ms. Harris - Yes.

4061

4062 Mr. Johnson - It was.

4063

4064 Mr. Blankinship - Kimbrook.

4065

4066 Ms. Harris - Because that is one of the criteria that we use. Okay. Any

4067 other discussion? Well, it's been moved and properly seconded that we approve this

4068 variance. Any other discussion on it? If not, all in favor of approve this variance say aye.

4069 Opposed say no. Ayes have it and so ordered.

4070

4071 Mr. Blankinship - Madam Chair, I didn't make a note of who seconded that

4072 motion.

4073

4074 Ms. Harris - Okay. You -

4075

4076 Mr. Johnson - I motioned –

4077

4078 Ms. Harris - Mr. Johnson made the motion.

4079

4080 Mr. Blankinship - Yes, Mr. Johnson made the motion.

4081

4082 Ms. Harris - Mr. Bell?

4083

4084 Mr. Bell - I did.

4085

4086 Mr. Blankinship - Mr. Bell did? Okay, thank you.

4087

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4090 After an advertised public hearing and on a motion by Mr. Johnson, seconded by Mr. Bell,

4091 the board **approved** application **VAR2018-00020 MANCHESTER CONSTRUCTION**

**CORP.'s** request for a variance from Section 24-94 of the County Code to build a one-family dwelling at 2874 Old Memorial Drive (Parcel 841-709-4705), zoned Agricultural District (A-1) (Varina). The Board approved this request subject to the following conditions:

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

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

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

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

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

Ms. Harris - Okay. Let's look at the minutes, please, from last meeting. I have a few minor corrections. On page 21, line 942, it should be an option rather than opinion. I'm not sure what should be -- the word should be option. They have the option to purchase those two additional parcels. Okay? Then on page 43, there are two lines there on page 43. Line 1921, affirmation is misspelled. So we can even check that. Okay. And also 1950, affirmation again. Where is that? It's a word and it's not -

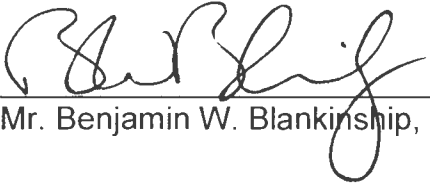
Mr. Green - Could I -- while I was not here for the vote, I would publicly, since we're recorded, like to affirm that had I been here I would have voted for Miss Harris and Mr. Bell, for their respective positions. Thereby hopefully it would look -- appear through voice it would appear we were unanimous.

Ms. Harris - Thank you. Thank you. Appreciate that. If there is no more business before this board, the meeting is adjourned.

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Ms. Helen E. Harris, Chairman



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Mr. Benjamin W. Blankinship, Secretary