

1 Minutes of the regular monthly meeting of the Planning Commission of Henrico County,
2 held in the County Administration Building in the Government Center at Parham and
3 Hungary Springs Roads beginning at 9:00 a.m. Wednesday, July 22, 2009.
4

Members Present: Mrs. Bonnie-Leigh Jones, Chairperson (Tuckahoe)
Mr. Ernest B. Vanarsdall, C.P.C., Vice-Chairperson (Brookland)
Mr. E. Ray Jernigan, C.P.C., (Varina)
Mr. Tommy Branin (Three Chopt)
Mr. R. Joseph Emerson, Jr., Director of Planning, Secretary
Mr. James B. Donati (Varina)
Board of Supervisors Representative

Member Absent: Mr. C. W. Archer, C.P.C. (Fairfield)

Others Present: Mr. David D. O'Kelly, Assistant Director of Planning
Ms. Leslie A. News, CLA, Principal Planner
Mr. Kevin D. Wilhite, C.P.C., AICP, County Planner
Mr. Michael F. Kennedy, County Planner
Ms. Christina L. Goggin, AICP, County Planner
Mr. Tony Greulich, C.P.C., County Planner
Mr. Matt Ward, County Planner
Mr. Gregory Garrison, County Planner
Mr. Lee Pambid, C.P.C., County Planner
Ms. Aimee Berndt, County Planner
Ms. Robin Wilder, Public Works
Mr. John Woodburn, Public Works
Mr. Tommy Catlett, Assistant Traffic Engineer
Ms. Kim Vann, Henrico Police
Ms. Holly Zinn, Recording Secretary

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6 **Mr. James B. Donati, the Board of Supervisors' representative, abstains on all**
7 **cases unless otherwise noted.**

8
9 Mrs. Jones - I'd like to call this meeting to order and ask that you stand
10 for the Pledge of Allegiance to the Flag.

11
12 Thank you. Good morning. Happy to have you with us this morning; it's kind of a
13 packed house. We're glad you're here and appreciate your time. This meeting for
14 subdivisions and plans of development is in order. We are going to be without Chris
15 Archer, our Commissioner from Fairfield this morning, and Mr. Donati from the Varina
16 District has just joined us as the representative from the Board of Supervisors. With
17 that, I'd like to turn over our meeting to our secretary, Mr. Emerson.

18
19 Mr. Emerson - Thank you, Madam Chair. The first item on your agenda
20 today is the request for deferrals and withdrawals. Those will be presented by Ms.
21 Leslie News.

22
23 Ms. News - Good morning, Madam Chair, members of the Commission.

24
25 Mrs. Jones - Good morning.

26
27 Mr. Jernigan - Good morning.

28
29 Ms. News - Staff has one request for deferral on this agenda that is
30 found on page 9 of your agenda and is located in the Varina District. This is POD-14-
31 09, IBEW – Multi-Purpose Building. The applicant is requesting a deferral to the August
32 13, 2009 meeting.

33
34 **PLAN OF DEVELOPMENT** (*Deferred from the June 24, 2009 Meeting*)

35
POD-14-09 **Engineering Design Associates for IBEW Building**
IBEW – Multi-Purpose **Corp.:** Request for approval of a plan of development, as
Building – 1400 E. Nine required by Chapter 24, Section 24-106 of the Henrico
Mile Road County Code, to construct a 10,790 square foot, one-
(POD-72-01 Rev.) story, multi-purpose meeting and training building on the
site of an existing office building. The 12.811-acre site is
located on the east line of E. Nine Mile Road (State Route
33), approximately 500 feet south of N. Airport Drive, on
parcel 825-720-7093. The zoning is B-3, Business District,
B-3C, Business District (Conditional) and ASO, Airport
Safety Overlay District. County water and sewer. (**Varina**)

36
37 Mrs. Jones - Is there anyone here in opposition to the deferral of POD-14-
38 09, IBEW – Multi-Purpose Building? No opposition.

39
40 Mr. Jernigan - Madam Chair, with that, I move for deferral of POD-14-09,
41 IBEW – Multi-Purpose Building, to August 13, 2009, per the applicant's request.

42
43 Mr. Vanarsdall - Second.

44
45 Mrs. Jones - Motion by Mr. Jernigan, seconded by Mr. Vanarsdall. All in
46 favor say aye. All opposed say no. The ayes have it; the motion passes.

47
48 At the request of the applicant, the Planning Commission deferred POD-14-09, IBEW –
49 Multi-Purpose Building, to its August 13, 2009 meeting.

50
51 Ms. News - Staff is aware of no further requests.

52
53 Mrs. Jones - Are there any other deferrals from the Commission?
54

55 Mr. Emerson - Madam Chair, that takes us to the next item on your agenda,
56 which is the expedited portion of the agenda. That will also be presented by Ms. Leslie
57 News.

58
59 Ms. News - Yes, sir. We have four items on our expedited agenda this
60 morning. The first item is found on page 6 of your agenda and is located in the Fairfield
61 District. This is a transfer of approval for POD-68-84, Parham East Medical Center.
62 Staff recommends approval. This is formerly Parham East Medical Village.

63
64 **TRANSFER OF APPROVAL**

POD-68-84
Parham East Medical
Center (Formerly Parham
East Medical Village) -
2201-2222 E. Parham
Road

Scott Douglas Corp for 4421 Dale, LLC: Request for transfer of approval as required by Chapter 24, Section 24-106 of the Henrico County Code from Parham-Woodman Medical Association and A Wing And A Prayer, LLC to 4421 Dale, LLC. The 3.6-acre site is located on the southern line of E. Parham Road, approximately 240 feet east of Woodman Road, on parcel 775-758-5019. The zoning is [R-6C], General Residence District (Conditional). County water and sewer. **(Fairfield)**

65
66 Mrs. Jones - Is there anyone here in opposition to this case, POD-68-84,
67 Parham East Medical Center (Formerly Parham East Medical Village)?

68
69 Mr. Vanarsdall - I move POD-68-84, Parham East Medical Center (Formerly
70 Parham East Medical Village), be approved on the expedited agenda. This is a transfer
71 of approval, and we have one item, the missing trees.

72
73 Mrs. Jones - Do we have a second?

74
75 Mr. Jernigan - Second.

76
77 Mrs. Jones - Motion by Mr. Vanarsdall, seconded by Mr. Jernigan. All in
78 favor say aye. All opposed say no. The ayes have it; the motion passes.

79
80 The Planning Commission approved the transfer of approval request for POD-68-84,
81 Parham East Medical Center (Formerly Parham East Medical Village), from Parham-
82 Woodman Medical Association and A Wing and A Prayer, LLC to 4421 Dale, LLC,
83 subject to the standard and added conditions previously approved and the following
84 additional condition:

- 85
86 1. The missing trees along Parham Road, as identified in the inspection report,
87 dated March 9, 2009 shall be corrected by October 15, 2009.

88

89 Ms. News - The next item is found on page 7 of your agenda and is
90 located in the Three Chopt District. This is transfer of approval for POD-14-01,
91 Brookstone Building (Formerly World Access Building). Staff can recommend approval.
92

93 **TRANSFER OF APPROVAL**

POD-14-01 **CB Richard Ellis for Imperial Health Services, LP:**
Brookstone Building Request for transfer of approval as required by Chapter
(Formerly World Access Building) – 2805 N. Mayland Investors, LC to Imperial Health Services, LP.
Parham Road The 11.73-acre site is located approximately 60 feet from
the northeast corner of the intersection of N. Parham Road
and Mayland Drive and fronting 211 feet on Parham Road
and 1,234 feet on Mayland Drive, on parcel 758-752-8262.
The zoning is O-2, Office District. County water and sewer.
(Three Chopt)

94
95 Mrs. Jones - Is anyone here in opposition to this transfer of approval for
96 POD-14-01, Brookstone Building (formerly World Access Building)? No opposition.
97

98 Mr. Branin - Madam Chair, I'd like to move for approval on the expedited
99 agenda of transfer of approval POD-14-01, Brookstone Building (Formerly World
100 Access Building).
101

102 Mr. Vanarsdall - Second.
103

104 Mrs. Jones - Motion by Mr. Branin, seconded by Mr. Vanarsdall. All in
105 favor say aye. All opposed say no. The ayes have it; the motion passes.
106

107 The Planning Commission approved the transfer of approval request for POD-14-01,
108 Brookstone Building (Formerly World Access Building), from Mayland Investors, LC to
109 Imperial Health Services, LP, subject to the standard and added conditions previously
110 approved.
111

112 Ms. News - The next item is found on page 18 of your agenda, and is
113 located in the Varina District. This is POD-18-09 Steak 'N Shake at White Oak Village
114 Shopping Center. Staff recommends approval.
115

116 **PLAN OF DEVELOPMENT**

117

POD-18-09
Steak 'N Shake at White
Oak Village Shopping
Center

Timmons Group for Laburnum Investment, LLC:
Request for approval of a plan of development, as
required by Chapter 24, Section 24-106 of the Henrico
County Code, to construct a one-story 3,200 square foot
restaurant with drive-through facilities in an existing
shopping center. The 1.06-acre site is located
approximately 400 feet east of S. Laburnum Avenue at its
intersection with Gay Avenue, on part of parcel 815-718-
5710. The zoning is B-3C, Business District (Conditional)
and ASO, Airport Safety Overly District. County water and
sewer. **(Varina)**

118

119 Mrs. Jones - Do we have anyone this morning in opposition to POD-18-
120 09, Steak 'N Shake at White Oak Village Shopping Center? There is none.

121

122 Mr. Jernigan - Madam Chair, with that I move for approval of POD-18-09,
123 Steak 'N Shake at White Oak Village Shopping Center subject to the annotations on the
124 plan, standard conditions for developments of this type, and following additional
125 conditions #29 through 34.

126

127 Mr. Vanarsdall - Second.

128

129 Mrs. Jones - Motion by Mr. Jernigan, seconded by Mr. Vanarsdall. All in
130 favor say aye. All opposed say no. The ayes have it; the motion passes.

131

132 The Planning Commission approved POD-18-09, Steak 'N Shake at White Oak Village
133 Shopping Center, subject to the annotations on the plans, the standard conditions
134 attached to these minutes for developments of this type, and the following additional
135 conditions:

136

137 29. The proffers approved as a part of zoning case C-29C-06 shall be incorporated
138 in this approval.

139

140 30. The developer shall install an adequate restaurant ventilating and exhaust
141 system to minimize smoke, odors, and grease vapors. The plans and
142 specifications shall be included with the building permit application for review and
143 approval. If, in the opinion of the County, the type system provided is not
144 effective, the Commission retains the rights to review and direct the type of
system to be used.

145

146 31. Evidence of a joint ingress/egress and maintenance agreement must be
147 submitted to the Department of Planning and approved prior to issuance of a
certificate of occupancy for this development.

148

149 32. The location of all existing and proposed utility and mechanical equipment
150 (including HVAC units, electric meters, junction and accessory boxes,
transformers, and generators) shall be identified on the landscape plans. All

- 151 equipment shall be screened by such measures as determined appropriate by
152 the Director of Planning or the Planning Commission at the time of plan
153 approval.
- 154 33. The ground area covered by all the buildings shall not exceed in the aggregate 25
155 percent of the total site area.
- 156 34. No merchandise shall be displayed or stored outside of the building(s) or on
157 sidewalk(s).

158
159 Ms. News - The final item is on page 19 of your agenda and is located in
160 the Brookland District. This is POD-21-09, Healthsouth Richmond Rehabilitation
161 Hospital Addition. Staff recommends approval.

162
163 **PLAN OF DEVELOPMENT**

164
POD-21-09 **Timmons Group for Healthsouth Corporation:** Request
Healthsouth Richmond for approval of a plan of development, as required by
Rehabilitation Hospital Chapter 24, Section 24-106 of the Henrico County Code,
Addition – 5700 Fitzhugh to construct one-story 3,700 square foot addition with 9
Avenue private bedrooms and one support room to an existing
(POD-36-91 Rev.) healthcare facility. The 5.74-acre site is located on the
southeast corner at the intersection of Libbie and Fitzhugh
Avenues, on parcel 770-738-7063. The zoning is R-5,
General Residence District. County water and sewer.
(Brookland)

165
166 Mrs. Jones - Do we have anyone in opposition to POD-21-09,
167 Healthsouth Richmond Rehabilitation Hospital Addition? We do have opposition. I'd like
168 our secretary to explain the process for expedited items that do have opposition.

169
170 Mr. Emerson - Yes, ma'am. On the expedited agenda, staff must be
171 recommending approval of the item. The applicant does have to submit a letter stating
172 agreement with staff recommendations and conditions. There has to be no known
173 opposition existing. If there is opposition, the item will be removed from the expedited
174 agenda and heard in the order as it appears on the regular agenda. Again, any
175 Commission member can also request an item be removed from the expedited agenda.

176
177 Mrs. Jones - So, we will hear this case in its order on the regular agenda.
178 Sir, did you have a question that could be—All right. We will hear this in its—

179
180 Mr. Emerson - If it's just a question, we may be able to answer it.

181
182 Mr. Vanarsdall - If you just have a question, come on down.

183
184 Mrs. Jones - All right. We'll go ahead and let you come forward now, but if
185 there is a discussion that needs to come about as a result of this, then we will hear it in
186 its regular order. If you could come down to the microphone, please. These

187 proceedings are recorded, and we need to hear what you say. If you could give us your
188 name, please, for the record?

189
190 Mr. Le - Yes. My name Khanh Le. I'm the resident in the back of the
191 building. I apologize for anything that I'm not so correct in my expressing because—

192
193 Mrs. Jones - Sir, if you could talk into the microphone so we can hear
194 you.

195
196 Mr. Le - Sorry. This is the first time I've attended such a public
197 hearing.

198
199 Ms. News - We're glad you're here.

200
201 Mr. Le - Okay. I don't have any opposition, but I'd just like to have a
202 request that a fence be built in the back where the extension will be made for the
203 building.

204
205 Mrs. Jones - All right. I think we probably should hear this in its order on
206 the agenda.

207
208 Mr. Branin - Absolutely.

209
210 Mrs. Jones - Thank you. We'll get to the case later. It will be pulled off of
211 the expedited agenda right now. If you could take your seat, we'll get to it in a few
212 minutes.

213
214 Mr. Le - Okay, thank you.

215
216 Mrs. Jones - Thank you.

217
218 Mr. Vanarsdall - Thank you.

219
220 Ms. News - That completes our expedited agenda.

221
222 Mr. Emerson - Madam Chair, that takes us to the next item on our agenda,
223 which is Subdivision Extensions of Conditional Approval. Those will be presented by Mr.
224 Pambid.

225

226 **SUBDIVISION EXTENSIONS OF CONDITIONAL APPROVAL**
 227 **FOR INFORMATIONAL PURPOSES ONLY**
 228
 229

Subdivision	Original No. of Lots	Remaining Lots	Previous Extensions	Magisterial District	Recommended Extension
SUB2008-00025 (SUB-17-08) Ellington at Wyndham (July 2008 Plan)	91	62	0	Three Chopt	07/28/10
SUB2008-00056 (SUB-39-07) Hanover-Meadow (June 2007 Plan)	11	11	1	Varina	07/28/10

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Mrs. Jones - Good morning, Mr. Pambid.

Mr. Pambid - Good morning, members of the Planning Commission. This month there are two conditional subdivisions for which extensions have been requested. These are for informational purposes only and do not require Commission action at this time. I can now field any questions you may have regarding these subdivisions.

Mrs. Jones - Are there any questions from the Commission regarding the subdivision extensions? All right, thank you very much.

Mr. Pambid - Thank you.

Mr. Emerson - Madam Chair, that takes us into your regular agenda, with the first item appearing on page 3.

SUBDIVISION (Deferred from the June 24, 2009 Meeting)

**SUB-06-09
 Hampshire
 (April 2009 Plan)
 Hames Lane/Peavey
 Street**

Bay Design Group, P.C. for Boushra and Edna Hanna, Donald M. and S. B. Whitehorn and Hanna Properties, LLC: The 7.13-acre site proposed for a subdivision of 12 single-family homes is located at the southeast terminus of Peavey Street, on part of parcels 742-773-4344 and 5604. The zoning is R-2AC, One Family Residence District (Conditional). County water and sewer. (Three Chopt) 12 Lots

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 249
 250
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 252

Mrs. Jones - Good morning, Mr. Garrison. Is there anyone with us today in opposition to SUB-06-09, Hampshire? Before Mr. Garrison gives his report, if our secretary could review the ground rules for opposition,

253 Mr. Emerson - Yes, ma'am, Madam Chair. The public hearing follows the
254 following rules and regulations of the Commission. The applicant is allowed ten minutes
255 to present the request, and time may be reserved for responses to testimony. The
256 opposition is allowed ten minutes to present its concerns. Commission questions do
257 not count into the time limits. The Commission may waive the time limits for either party
258 at its discretion.

259
260 Mrs. Jones - Thank you. Mr. Garrison?

261
262 Mr. Garrison - Good morning. The applicant is requesting approval to re-
263 subdivide lots 13 and 14 in the Bridlewood Subdivision to extend and create 12 lots in
264 the Hampshire Subdivision. Staff has received concerns from adjacent residents
265 regarding wetlands and drainage. In April, the applicant held a community meeting in an
266 attempt to address these concerns. Additionally, this project was deferred by the
267 Planning Commission from their April 22, 2009 and June 24, 2009 meetings in an
268 attempt to further address drainage concerns. On April 24th, staff met onsite to discuss
269 options for the applicant to consider. Public Works has determined that the plans at
270 this stage adequately address drainage and wetlands. The general requirements have
271 been met for staff to recommend conditional approval subject to the annotations on the
272 plans, standard conditions for developments of this type, and added conditions 13
273 through 21. Staff and representatives of the applicant are available to answer any
274 questions that you may have.

275
276 Mrs. Jones - Are there questions from the Commission for Mr. Garrison?

277
278 Mr. Branin - I have none.

279
280 Mrs. Jones - All right. How would you like to proceed, Mr. Branin?

281
282 Mr. Branin - Let's jump right in to the opposition.

283
284 Mrs. Jones - All right. What we'll do now, then, is ask you all when you
285 come forward to make your points to please keep the time limits in mind, to state your
286 name at the mic., and to make your comments. Please try not to be repetitive since
287 there is a limited amount of time. So, whoever would like to come forward and start that
288 process.

289
290 Mr. Branin - If you would like whoever is going to speak to move down,
291 that way—Down here.

292
293 Ms. Stein - Good morning. My name is Lisa Stein, and I thank you for
294 letting us have the opportunity to address our concerns.

295
296 As you all know, Margie Swart, one of my neighbors in Millrace, has been very active in
297 opposition to this. Unfortunately, Margie is away on vacation. I spoke with her last night
298 and came up with a way to sum up our concerns in opposition.

299

300 Since the last meeting, it has come to our attention that the Whitehorns, who own the
301 right portion of it—which would include all of Lots 7, 8 and 9, and a third of Lot 6 and
302 Lot 10—back in 2007, they went for a tax assessment appeal and were approved. This
303 information was substantiated by Mark Stansberry, who is a Henrico County appraiser.
304 The 1.95-acre portion of this over 9-acre parcel was reassessed due to, quote, “severe
305 hydric soil at the back of the parcel.” That is the exact parcel that we’re talking about
306 for those lots.

307

308 According to the United States Department of Agriculture’s website, shrinking and
309 swelling of soil, which is also known as severely hydric soil, causes much damage to
310 building foundations, and a high shrink/swell potential indicates a hazard to
311 maintenance of structures built in or on it.

312

313 Now, since he was given his tax assessment reduction, that parcel was valued at \$2500
314 per acre. Now five homes are going to be built—if this is approved—on those parcels
315 of land. So, virtually, by decreasing his tax assessment, it was noted it’s basically
316 useless land, but now, if this is approved, I just don’t see how the County can go back
317 and say that this land is not severely hydric and assess it now at the typical rate
318 between \$90,000 to \$100,000 for the five homes that are going to be built on it.

319

320 The second point that I’d like to mention is that the Planning Commission unanimously
321 denied this subdivision in the past and recommended to the Board of Supervisors that it
322 should not be approved for rezoning. Nothing really has changed since then, except for
323 the drainage system that is now going to drain into a privately-owned pond. The
324 subdivision plat of 12 lots was not proffered in the zoning approval, and you do have
325 the discretion to change it. It doesn’t have to stay 12 lots. In light of my first point, I
326 think that it should be changed.

327

328 I attended the rezoning hearing. At that time, Attorney Conclin noted that the applicant
329 was not debating the subdivision and the plat, and that they were only debating the
330 rezoning. Mr. Glover, who is a member of the Board of Supervisors, made a special
331 mention to all in attendance that although they were approving the rezoning, we would
332 have the opportunity for input during the planning and subdivision phase, which we are
333 now in. It is certainly part of the meeting minutes, and we could go back and find that.
334 Now, we all hear that they have met all the requirements, and you people must approve
335 it. Two meetings ago, Ms. O’Bannon noted that Bay Design may have to go back to the
336 drawing board again, and yet nothing has changed except for disappearing wetlands.
337 The notion that this must be approved has been mentioned several times in e-mails
338 from both Dan Caskie and Attorney Conclin that have been sent to all of you.

339

340 Now, Margie wanted me to mention that it seems like there is a fear that you, as the
341 deciding committee, can possibly be sued over this. Margie wanted me to bring up that
342 you can only be sued if your decisions were made in an arbitrary or capricious manner.
343 That means that you would have an absence of rational connection between facts
344 found and choices made, and that the decision was made without reasonable grounds

345 or adequate consideration. Obviously, with all the meetings that we've had, and the fact
346 that two of you have felt so compelled by all of this information that you actually wanted
347 to go out and walk the property, I don't think anyone can say that there's been
348 inadequate information.

349

350 The third point is that there is an extreme lack of common area for the subdivision.
351 Hampshire currently consists of 250 homes on 129 acres. They propose to add 12
352 more homes on 7 acres so the only common area for all of these 129 acres is 2.75
353 acres which is unusable to any homeowner because it is mostly wetlands, and a large
354 part of it is also in a floodplain. Because Hampshire has been piecemealed together
355 over the years—like this little 12 plots of another 20-some the last time—I think this is
356 something that we should call to your attention because there is really no common area
357 other than unusable land for the homeowners.

358

359 The last point that I'd like to bring up is the offsite pond. According to Mr. Condlin in an
360 e-mail that he sent to everyone yesterday, except for us homeowners, the pond is a
361 part of the common area of the Hampshire Homeowners' Association. Danielle Kenny
362 is here, and I'll defer that to her because she is actually the private owner of the pond.
363 Our concern with that is that Mr. Condlin noted in his e-mail yesterday that ownership of
364 the pond does not affect the validity of the subdivision plat and its acceptance of storm
365 water. I think Danielle could note that. He also noted that the people of Hampshire
366 continue to use that. I find that hard to believe because Ms. Kenny has posted, *No*
367 *Trespassing* signs all along the fence that surround her pond.

368

369 In conclusion, every subdivision map has a stamp of approval that states that it was
370 approved by the Henrico County Planning Commission and Henrico County Director of
371 Planning. These words come from Margie's e-mail to all of you. It does not say that it
372 was approved by the Army Corps of Engineers, by the DEQ, or by the Board of
373 Supervisors. You have unanimously denied this application in the past. Several of you
374 have such overwhelming concerns over this parcel of land that you actually came to
375 see. The surrounding neighbors have provided unbelievable amounts of information
376 regarding the poor soil and terribly wet conditions, which is now substantiated by the
377 fact that a tax appeal was given to Mr. Whitehorn. There are other homeowners that
378 have expressed concerns because of constant water in their crawlspaces, and yet
379 these homes in Millrace are not built on severely hydric soil; they're only close to
380 wetlands. I simply ask that before you consider approving this subdivision in its current
381 form, that you ask yourself if you would personally spend over \$500,000 to build your
382 dream home on this land. Would you have a son or a daughter build on this land
383 knowing what you know about it? Future homeowners will know, and they'll know they
384 can come back to these meetings. They can look up these meeting minutes and see
385 the concerns that we brought forward. If they come and they have problems with the
386 water that is in their crawlspaces, they will definitely be back to talk to you about it.

387

388 I thank you so much.

389

390 Mrs. Jones - Thank you. Are there questions for Ms. Stein? Of the ten
391 minutes for the opposition, there are 2-1/2 minutes left.

392
393 Mr. Kenny - I'll make it as fast as I can.

394
395 Mrs. Jones - Well, no. Just keep your comments to ones that haven't
396 been raised so far.

397
398 Mr. Kenny - Sure. Hi, my name is Kevin Kenny, and my wife, Danielle
399 Kenny, is here as well. We live in Bridlewood Subdivision on Hames Lane. We are also
400 the owners of the downstream pond.

401
402 I'd like to start by thanking the Planning Commission, especially Mr. Branin, for your
403 extreme patience in listening to everyone's views over this really long application
404 process.

405
406 We believe that the arguments raised by Mrs. Swart and the concerned citizens in
407 Millrace are strong enough on their own to deny this application for a subdivision.
408 Certainly, if this subdivision ever goes live, impacted homeowners will have no lack of
409 evidence indicating that all participants in this process were fully aware of the hydric soil
410 conditions and drainage issues.

411
412 On the downstream side where we are, we believe that the facts further bolster the
413 case for denying this application. I want to stop for a moment to be clear about my
414 language when we ask for denial of the application, as this is a change from a position
415 that we have long held. On numerous occasions, Mrs. Swart and my wife and I have
416 requested concessions that would protect our pond, downstream property, Millrace
417 homeowners, and would-be owners in the proposed development area, and permit the
418 development to continue without challenge. However, the applicant has continued to
419 flatly reject the possibility of any concession that would take into account citizen
420 concerns. This has given us no option but to take action to help prevent this
421 development. The pond is a recreational pond, and it is private property; it is not a
422 storm retention facility.

423
424 Common law supports that the upstream development cannot result in undue impact to
425 the downstream property. Per data from the State website on the Virginia Storm Water
426 Management Program, a typical city block generates nine times more runoff than a
427 woodland area. You could argue that there is some difference between this
428 development and a city block, but because of the size and nature of the proposed
429 engineering and development, there is no argument that there will not be increased
430 volume, velocity, frequency, duration, and peak flow rate of runoff, and increased
431 pollution levels in the water. In the proposed case, the storm water will have no
432 opportunity to be absorbed by natural pervious surfaces—the ground. In other words,
433 automobile oil, grease, brake pad dust, bacteria from animal waste, excess lawn care
434 fertilizers and pesticides, backwash pool chemicals, toxins from roofs and road
435 materials, hydrocarbons, and a host of other pollutants would have a clear shot onto my

436 land, into what is now a recreational pond that my family and I both fish in. Aside from
437 these dangerous particulates, there would also be a significant increase in debris to jam
438 up the pond and increase my personal maintenance costs at the benefit of the County
439 and the developer.

440
441 Public Works believes that my recreational pond is fit for this runoff because it has the
442 capacity. First, the applicant cannot get permission to hard pipe directly into the pond,
443 per the Department of Environmental Quality and, I believe, even Public Works due to
444 existing buried sewer pipes. There is no way that flow will magically enter the pond
445 when it can almost just as easily go around the pond and increase the risk of
446 downstream flooding. Capacity is a concern. Still—and I don't want to sound too flip—a
447 plan for the citizens to urinate in the James because it has the capacity would never be
448 approved. My point being that even if capacity was resolved, it is not the only factor.
449 The pond is private and recreational. Yes, it has some upgrades that occurred during
450 the last Hampshire Subdivision phase; however, none of the water from that or any of
451 the other 250+ homes in Hampshire direct water into the pond. It is not a sediment trap
452 for third parties to dump in. No one has permission to increase the flow of water onto
453 our property.

454
455 Everyone has to accept that conditions change. Early on in the application, the
456 proposed land use was not consistent with the 2010 Land Use Plan, which called for
457 EPA land use of a watershed enhancement area. There were even density issues, yet
458 rezoning was approved. The application references Twin Hickory Elementary School
459 and Short Pump Middle School. This property no long falls in their attendance zones.
460 Well, ownership and future use of the pond have changed as well. The only remaining
461 reference as common area is a recordation area that will be resolved. The Planning
462 Commission recommended denial of this application on January 10, 2008. One reason
463 was due to issues with the drainage plan. It's now over a year and a half later, and the
464 drainage plan is still not final. The existing one won't even hold up in court.

465
466 Is this the proper time to give this issue due consideration? Yes. As stated during the
467 rezoning process, the drainage plan will be reviewed and approved by the Planning
468 Commission at the time of subdivision review. No drainage plan that is incomplete or
469 that relies on illegal flow should be used to support the approval of this application.

470
471 Out of respect for the environment, Millrace, and existing Hampshire residents and
472 would-be homeowners, we ask that you deny this application for subdivision. Thank
473 you.

474
475 Mrs. Jones - Thank you, Mr. Kenny. Do we have questions for Mr.
476 Kenny? All right. Mr. Branin, would you like to extend the time for opposition.

477
478 Mr. Branin - Are they out of time?

479
480 Mr. Emerson - Yes, 16 minutes over.

481

482 Mr. Branin - Yes.
483
484 Mrs. Jones - All right.
485
486 Ms. Krug - I'll make this very brief. I live on Lot 13.
487
488 Mrs. Jones - Would you state your name, please?
489
490 Ms. Krug - I'm Sharon Krug. I live on Lot 13 in Millrace. I appreciate
491 everyone's time in coming out to my piece of property. Today, I had to have the
492 plumber come back out. I recently had a sump pump installed under my foundation. It
493 goes off so frequently we're now having trouble with the sump pump. We've had it
494 about six weeks. He's coming out to see how much stress it's under. I know that I'm
495 sitting on wetlands. I have wetland plants under my trampoline. My half-acre that I
496 bought for \$95,000 backs to the property that was appraised at \$5,000. The wetlands
497 do not strategically stop where my fence line is. I know I'm sitting on wetlands. I have
498 had so much trouble with my land; it's unfair. It's very unfair. I want to know why my
499 home was ever approved to be built on this piece of property, number one. Number
500 two, why was there a CO given without a sump pump under the foundation? I'm very
501 upset about the conditions that my beautiful home sits upon.
502
503 The other thing I wanted to make a point about is that we have disturbed our neighbors
504 with our sump pump issues; they have complained. We've tried to rectify the situation
505 by draining it out towards the back of the land so we've had to tie in some piping.
506 We're growing moss in our backyard. We have barren spots in our backyard. It's
507 hideous, it is truly hideous. This is an issue about common sense. It's not about black
508 and white; it is about common sense. These homes should not be sitting on some of
509 this partial shrink/swell soil.
510
511 This plan has to be reworked because when these homes go up and all the natural
512 absorption is taken away, and there's a homeowner sitting in the house, don't think for
513 a second they won't be barking in my ear about what they're sitting on. They can put in
514 their nice swale, but if there is no natural place for this water to run off to, they're going
515 to have the same issues I have. My home should probably, unfortunately, never have
516 been erected on this piece of property. We have mold we can smell under the
517 foundation. I don't even want to get into how much we've spent trying to get the grade
518 better. We've called the builder; we've called the County. I don't know what else we
519 can do. We're sitting on a lot that is wetlands, and now you're talking about building on
520 other wetlands? It's not right. It's a common-sense issue, and that's what it boils down
521 to. Thank you.
522
523 Mr. Vanarsdall - I have a question for you.
524
525 Ms. Krug - Yes, sir.
526

527 Mr. Vanarsdall - Did you see any indication of all this when you bought the
528 house, when you first looked at the house or looked at the yard? Did you see anything?
529

530 Ms. Krug - No, sir, I did not see a thing. You know, you're excited when
531 you're building your home, and you visit when the footings go in, and then the
532 foundation. It was during the winter and we didn't have a lot of rain or snow so it was
533 pretty normal looking at that time. We weren't given any indication that we were sitting
534 on partial—because that's what it is—hydric soil. I appreciate the ones of you that have
535 come out to look at my backyard. Now, I'm having trouble in my front yard because the
536 drain looks like a geyser when we get a storm. It's hideous, it truly is. Probably needed
537 to have a better grade; I don't know. The soil is just a big sponge. It's very
538 disheartening.
539

540 Mr. Vanarsdall - Have you ever called on the person or persons, or the
541 company that built the house? Have you ever called on them?
542

543 Ms. Krug - Yes, sir. They were very much into coming out to visit. It
544 was a smaller builder, so it wasn't like he was so busy with too many irons in the fire.
545 They came out to the house several times, looked under the foundation, saw the water.
546 They said, "This is what you need to do." We did it; it didn't work. They came back out,
547 "Well, maybe you need to try a different route." We tried to tie everything in together to
548 drain it; that didn't work. Things got clogged up. We have had water under our
549 foundation off and on for five years, and more on than off. And now the sump pump is
550 going off—I told you, every 30 seconds when it rains, and even today it's going off
551 every 10 minutes. Every 10 minutes. And now it's making a *clunk-clunk* sound. We
552 called the plumber Monday, "Can you please come back out; are we burning this motor
553 out?" We've tied it into a pipe trying to get it out of the yard because we've disturbed
554 our neighbor's yard and they've complained. We love our house; we don't want to have
555 to move, and I think we'd have a hard time selling at this point.
556

557 Mr. Vanarsdall - Thank you.
558

559 Mrs. Jones - Thank you, Ms. Krug. Mr. Branin, would you like to extend
560 time to the remaining folks?
561

562 Mr. Branin - How many more remain? One?
563

564 Mrs. Jones - Okay. Sir?
565

566 Mr. Kluna - My name is Marcus Kluna. I live in the lot right next to the
567 proposed extension, so I live in Hampshire. I believe it's Lot 20. I live at 11500 Peavey
568 Street. While I completely echo what has been said in terms of the issues, I do have—
569 and this is something that I have not brought up in previous meetings—a walk-out
570 basement. So I'm kind of lucky in that sense that the water rushes out. I had a patio
571 extension done last year to this, and I was always wondering why is there water every
572 day coming underneath that patio. I'm not talking about just a little trickle; I'm talking

573 about a lot of water. I had it regraded earlier this year just to finish out my backyard. I
574 mentioned in the last meeting that the guy who came out with the little Bobcat, he got
575 stuck in my backyard. He sunk in. I had a hard time regrading it, redoing the
576 landscape. He told me, "What you have is a problem of the hydric just going
577 underneath your foundation, and it's draining out under your patio. It's looking for ways
578 to get out, and it found one way." There's a daily stream. We put in a drainage pipe to
579 get rid of that so that my backyard wouldn't constantly be standing in water. There are
580 many issues.

581
582 I know we have a lot of experts in Public Works, but there is an example that I brought
583 up with the Board of Supervisors. I lived over in Twin Hickory before I moved over to
584 Hampshire, and I had problems in my backyard after the high school was erected, after
585 the elementary school was erected. From the Corps of Engineers, their 100-year
586 floodplain, what was considered to be 100-year water coming into my yard was
587 basically a good summer rain every time it happened. I got somebody from Public
588 Works out. The gentleman, unfortunately, is no longer with Public Works. He said,
589 "You know, when we talked to Hunt back then at the time, we mentioned to them don't
590 build so close to the wetlands; they're going to come back, and the people are going to
591 have issues." That's exactly what I saw there. Being in this lot that's really downstream
592 right next to the pond, I'm afraid of what's going to happen when all of this is leveled.
593 Water had nowhere to go. I'm going to get it back in my backyard. Who's going to
594 guarantee me? Who's going to come out and guarantee me, "We're going to fix it for
595 you, we're going to take care of it and get rid of the drainage"? Is the County going to
596 pay for it? Is the developer going to pay for it? I'm going to be sitting there with
597 problems that I'm going to have to put in money.

598
599 I'm really concerned about this. I know there are experts that have looked at this, but
600 nature sometimes has its own way of dealing with things. I appreciate your time. I'm in
601 opposition to this, obviously, due to multiple concerns that were mentioned, as well as
602 my own. Thank you very much.

603
604 Mrs. Jones - Are there questions? Thank you.

605
606 Mr. Branin - I'd like to have the applicant make any brief comments they
607 would like to, and then I would like to have staff comment on a couple of the questions
608 that were mentioned.

609
610 Mrs. Jones - All right, Mr. Condlin.

611
612 Mr. Condlin - Madam Chair, Mr. Emerson, members of the Commission, I
613 am Andy Condlin from Williams Mullen here representing Mr. and Mrs. Hanna. I have
614 with us Mr. Atkinson from Williamsburg Environmental, as well as Mr. Caskie from Bay
615 Design.

616
617 Obviously, this has been a difficult case. It has a lot of history. I was involved in the
618 zoning case. I just became involved because of the legal questions that were involved

619 in the subdivision approval. On one hand, I think you'll hear from the staff that,
620 obviously, this meets the standards that are required by the County and State Code
621 with respect to subdivisions. That was an obligation that we committed to by law and
622 during the zoning case, and we have met those standards. Staff has recommended
623 approval; that means something, and we, of course, ask that you follow that.

624

625 Of course there's another side on the other hand, which is there is a lot of emotion, a lot
626 of impact, concerns, and a lot of heartfelt concerns that people have brought up. I am
627 not going to address each one of the items that have been brought up. We have tried to
628 let folks know. We've obviously been dealing with Ms. Swart, who is a good
629 communicator and lets everyone know as far as a notice goes.

630

631 I will bring out a couple of points in more general form. Millrace, which is to the right on
632 the map that you're looking at, is a much older subdivision. The homes that were
633 developed during that time were constructed on wetlands. They were actually
634 constructed during a different design in the process from that standpoint. So with the
635 hydric soils, there are ways that can be dealt with that. We do realize that some of the
636 property is wet, but we're not building on wetlands. We have all of our permits that have
637 been delineated. They've been confirmed, and that's why we have Williamsburg
638 Environmental here. The only impact, or the only construction, is on the road crossing,
639 which is very typical.

640

641 We also committed during the zoning case to design the drainage plan; that was
642 approved by staff, and it was designed to accept the drainage from Hampshire and
643 Millrace onto our property, and to be able to deal with that so that the volume doesn't
644 increase. We continued with that, and that, again, still meets the standards and will
645 work.

646

647 We've provided for a geotechnical engineer to help with the design and make sure that
648 the homes are constructed. Of course, as you know, from the CO phase, in order to
649 get a CO, we have to confirm that we've build pursuant to the plans, the grading is
650 correct, and everything has been constructed accordingly.

651

652 Finally, with respect to the pond, it is offsite. Mr. Kenny made a number of points, and I
653 agree with them. We cannot increase the volume, and our proposal is not to do
654 anything illegal. We're not asking for a waiver; we're not asking for a variance. That
655 pond was there before Hampshire, and it accepts drainage, storm water drainage from
656 our property, from Millrace, from Hampshire—even from Bridlewood, parts of
657 Bridlewood and parts of Hampshire so it's receiving. It is downstream. It is no different
658 than any other downstream property. They have certain obligations, and we have
659 certain obligations to both upstream and downstream from us. We have to abide by all
660 the laws, and we're proposing to abide by each of the requirements that have been set
661 forth by the local and state code, and federal law.

662

663 Finally, there was a comment that said nothing has changed. Something has changed
664 since the last time you saw this case. The Board of Supervisors has approved this

665 property for 12 lots. We have the right, by zoning, to build 12 lots and to do for
666 residential zoning as we're proposing. That was a significant change. That was a policy
667 and a legislative decision by the Board of Supervisors to approve the zoning case at
668 that time. The statement made, as we all know, is that if you meet the standards, the
669 Code requires approval. If it can't meet the standards, it has to be stated why you didn't
670 meet the standards and what you need to do in order to meet those standards. Staff
671 has recommended approval. We'd ask that you follow that recommendation and
672 approve this case today.

673
674 I think Mr. Hanna would like to say a few words as well. Otherwise, we'd be happy to
675 answer any questions.

676
677 Mrs. Jones - Before you leave the podium, are there questions for Mr.
678 Condlin?

679
680 Mr. Vanarsdall - I have a question, Mr. Condlin. First of all, I have a
681 statement. She wasn't speaking of legislature or paperwork; she was speaking nothing
682 has changed in the subdivision. The question I have is what assurances do we have up
683 here that the same thing won't happen to these 12 lots that happened where these
684 people live now?

685
686 Mr. Condlin - Well, some of the folks—I'll break it up between not knowing
687 each and every property. Millrace was developed quite a while ago. I mean, as folks
688 had said all through the zoning case, they were constructed on wetlands, why have the
689 wetlands changed. Well, the rules have changed, actually. There are a lot more
690 requirements, they've become a lot more restrictive and a lot more conservative with
691 respect to what you can and can't do to handle wetlands. This is hydric soil. The
692 environmental engineers have told us with hydric soil, there are ways you have to deal
693 with that. Millrace, a lot of those things weren't done. In Hampshire, again, we can't go
694 through each and every lot. There are a number of lots around us that are built on the
695 very same type of soil that were done correctly, and the homes are built correctly and
696 do not have the problems. Mr. Hanna was in one of those lots, and a number of folks
697 have lived in those lots that have not had those problems. So, there are ways to
698 accomplish it. We've tried to accomplish that. I've never done a proffer to design a
699 drainage plan during a zoning case before, but we did that because this was an unusual
700 situation and we wanted to try to alleviate some of those concerns. Is there ever a
701 100% guarantee in every case? Of course not, but we've learned as we've gone
702 through, and the standards and requirements are significantly higher now in order to
703 meet those standards.

704
705 Mr. Vanarsdall - If something does happen, where does this leave the people
706 that are going to move in these homes? We don't know who they are, and they don't
707 know [unintelligible].

708
709 Mr. Condlin - Right.

710

711 Mr. Vanarsdall - The applicant doesn't carry any kind of insurance, and
712 they're not bonded.

713
714 Mr. Condlin - One of the things that the applicant is required to do, quite
715 frankly, is—remember the standards that we talked about with respect to getting the
716 CO, and there will be a geotechnical engineer. But with respect to the homebuyer
717 themselves, it's up to both the homebuilder and the lot builder with respect to the
718 grading to make sure that those are done. That's required. That's part of the CO that
719 necessary standards have been met, which allows for the building of the home on that
720 lot, will that help alleviate any concerns about the drainage, that the drainage has been
721 adequately addressed. If it hasn't been adequately addressed and they still get a CO,
722 they obviously have a claim. They have a warranty on their new home that they can
723 bring against the builder and the lot developer. We've handled cases in the past in
724 those situations where they have to go back out and re-grade and accommodate for
725 that.

726
727 Mr. Vanarsdall - I have one other question, Madam Chair.

728
729 Mrs. Jones - Of course.

730
731 Mr. Vanarsdall - This is a question that has bothered me throughout this
732 whole process. What has the applicant done to improve anything that these people
733 complained about? What has the applicant done? I haven't seen the applicant do
734 anything to satisfy anybody. Maybe you can't answer that because you just got on
735 board.

736
737 Mr. Condlin - Well, I was certainly part of the zoning case, and we did
738 reduce the number of lots, but some folks would say that's not anything. But that was
739 requested. They asked for a further reduction in lots. It was very difficult for Mr. Hanna,
740 having had to pay a certain standard, and, as you know, you go through the numbers in
741 which you try to buy the property and develop the property. Having to take care of a lot
742 of the storm water issues as we have has become more expensive. He wants to get a
743 return and make a profit on the property, which there is nothing wrong with that. So we
744 didn't reduce the lots further. That was something they asked, for us to eliminate two,
745 three, and even four lots. No, we haven't reduced the number of lots. We have
746 designed the drainage, early on. Receiving drainage from Millrace, there were a
747 number of concerns that the type of drainage from the individual lots—I won't say it was
748 illegal, but it was improperly done by some of the individual lot owners. We went ahead
749 and designed our system in order to accommodate accepting that because we are
750 downstream, and it is an artificial downstream. We accepted that lot and, quite frankly,
751 we didn't have to. We've also designed the drainage system above and beyond what
752 we're trying to do because that was a major concern that they had with respect to that.
753 With respect to the common area, no, we're only 12 lots. We didn't do anything with
754 that, provide any additional common area from that standpoint.

755

756 They've asked for various things, but the only thing that we could have really responded
757 to was reducing the number of lots and designing of the drainage system, which we
758 tried to do, and to provide assurances for the homeowners that buy those that it's been
759 engineered correctly, above and beyond what was typically required.

760

761 Mr. Vanarsdall - Thank you.

762

763 Mrs. Jones - I have a question, Mr. Condlin. Without getting too glazed
764 over with legalize, the pond is in private hands—

765

766 Mr. Condlin - Yes, ma'am.

767

768 Mrs. Jones - —but it's the property of the Hampshire Homeowners'
769 Association. Is that correct?

770

771 Mr. Condlin - It's my understanding that it's part of the common area for
772 Hampshire, that is part of the common area designated on the subdivision plat. What
773 rights the Hampshire homeowners have to use that pond is something completely
774 separate, but my understanding is that it accepts drainage from Hampshire, which is
775 what I intended. What I meant when I said that statement was that it's used by
776 Hampshire as part of storm water drainage coming off of parts of Hampshire. I don't
777 think there are any rights, to my knowledge. I haven't gone through all the covenants
778 and the easements that they have on the Hampshire property to say that they have the
779 right to go on and use the pond. They probably don't, at that point, have the right to
780 use it for recreation, to go on the property, boat on it, or whatever, but it has to, being
781 downstream, accept water. Just like we accept water from Millrace and Hampshire, it
782 has to accept water from Millrace, Hampshire, and our property as well.

783

784 Mrs. Jones - Should there be a problem with the accepting of water,
785 which is the main purpose for this arrangement, whose responsibility is that to fix and
786 pay for that?

787

788 Mr. Condlin - Well, it depends on who's causing the problem. There are
789 trespass rights and there are vicarious rights with respect to making sure that you
790 accept downstream water and don't keep people either upstream or downstream and
791 damaging them. If that pond were to go away or to be blocked so that it didn't accept
792 downstream water, and started building up water for folks upstream, for Hampshire and
793 for Millrace and our property, they would have a potential claim against the—even vice
794 versa. If there are pollutants that are above and beyond that which are allowed by law,
795 then you'd have a claim against the same folks the same way. If there's an increase in
796 volume that they're not proposing, they would have a claim against those homeowners,
797 and the design of the subdivisions that are causing that increase in volume. It's no
798 different, it's just a downstream. It just happens to be in proximity very close to us, but
799 it's no different than any other downstream that would have the same rights.

800

801 Mrs. Jones - Are there monitoring schedules in place for this, or is it
802 simply complaint-driven after a problem has arisen?
803

804 Mr. Condlin - Well, my understanding is that there is a dam on the
805 property. There are certainly additional standards that are required with respect to
806 having a dam on your property, and different obligations by the landowner for
807 maintenance from that standpoint. What kind of monitoring they have above and
808 beyond that, I'm not aware of any from this point.
809

810 Mrs. Jones - You must admit this is a very unusual situation.
811

812 Mr. Condlin - Well, it's unusual in the fact that this has an infill, which is
813 always difficult and the hydric soils that a lot of the folks have had to deal with
814 throughout the years. But having a downstream pond? We've done it in a lot of other
815 cases. We talked a little bit about Three Chopt and Barrington. Barrington is accepting
816 those new subdivisions—I forget the name of the subdivision. They're accepting the
817 water; it was designed as such, to be able to accept the storm water. There just
818 happened to be a pond, and it just happened to be right next door. But a downstream
819 flow of water is typically an issue that you have to make sure that the volume can be
820 accepted. Then there are other rights that the landowner would have if there are
821 pollutants or an increase in volume, or damages that are otherwise done because of
822 the storm water that comes down. You can't regulate everything. It's a question of did
823 you cause it, and if you caused it, you're responsible for it.
824

825 Mrs. Jones - But there is common area. There is no associated use for
826 them. They can't boat, they can't fish—
827

828 Mr. Condlin - That's my understanding. I haven't read it, but the fact that
829 it's common area has nothing to do with the fact that it accepts storm water. It just
830 happens to be part of the common area. I don't know what the obligations are for
831 contribution for maintenance in Hampshire. That's not part of our common area; it's
832 just downstream and that's where our water flows naturally. So we have the right to put
833 it in a channel to flow into that channel as it goes through. And it just happens to be to
834 the pond.
835

836 Mrs. Jones - Thank you.
837

838 Mr. Jernigan - Mr. Condlin, I want to correct you on one thing. You said the
839 Board of Supervisors passed this zoning and told you you could build 12 lots. Well, they
840 passed the zoning. The 12 lots weren't in with the Board; that's with the Planning
841 Commission.
842

843 I guess you realize that we are the last line of defense between something good and
844 something bad. That's the reason everybody here has worked on this case so hard.
845 We don't want to see people coming in with the problem that Millrace is having. One
846 thing that hasn't happened—and Mr. Vanarsdall brought this up—is we haven't heard

847 any assurances from the applicant that, "If you have problems down there, we're going
848 to take care of it." That would go a long way. We've heard this case three times, and
849 nothing's been said; nothing's changed. The only thing that changed in this case was
850 the wetlands. When it came to us originally, it was about 2.4 or 2.6, and it went down to
851 1.2. I walked this property. When you leave Ms. Swart's yard, it has signs in there that
852 say *wetlands*. As soon as you walk across her property line, it's buildable land. It's the
853 same topo, same everything. So, I see some problems there. Maybe what she's sitting
854 on shouldn't be tagged wetlands. She can't do anything in there. Like I said, you have
855 a straight imaginary line that comes through there; it changes the whole thing. I want
856 some assurances.

857
858 Mr. Condlin - I thought Mr. Hanna was, you know—I did want him to
859 speak; he is going to speak right after this. With respect to the wetlands, Ms. Swart, I
860 believe, was in Millrace? Is that right?

861
862 Mr. Jernigan - Yes.

863
864 Mr. Condlin - Okay. At that time, in talking with—and Mr. Atkinson can
865 address this, if you want any more detail, but my understanding with respect to why the
866 wetlands stopped is, you know, the homeowners built—the builders built homes on top
867 of the wetlands, and the homeowners made a number of improvements within the
868 wetlands so some of the wetlands, some have been preserved on Millrace. It actually
869 changed the course of the wetlands as it left their properties onto ours. Our wetlands
870 actually changed because of the impact and the increase in drainage. It put a lot of it
871 into the drainage system that they had and otherwise poured it into specific areas. So,
872 there was a change. Because of the concern, we went back through. Typically, we
873 don't delineate wetlands; we make an estimate. We make an application, potentially,
874 down at the Army Corps during the zoning case. At the zoning case, we designed the
875 drainage and we got delineation. That's one of the reasons it changed at that time,
876 because we went back to the Army Corps. They walked the property with Williamsburg
877 Environmental, and they determined specifically during that time this is exactly where
878 the wetlands are, and we got that permitted at that time. Can it happen during zoning
879 cases? A lot of times it can, but it's pretty unusual. In that case, we tried to be above
880 board, we tried to get all the information we could because drainage is such an issue, to
881 help define that. You're right, the Army Corps doesn't stamp us, but Army Corps does
882 have jurisdiction over wetlands. You have jurisdiction over the subdivision so we tried to
883 accommodate that from the get-go, from the very start. It's almost like we're penalized
884 because we haven't moved off of that, because we have provided all that information
885 early on through the wetlands information, the drainage system, and trying to receive all
886 the information via a geotechnical engineer that we've committed to, and some of the
887 design issues that we've committed to in the proffers themselves. We tried to commit to
888 those early, to say we can design this so that we don't have the same problems as
889 Millrace, so we don't have some of the same problems that some of the folks in
890 Hampshire have.

891

892 Mr. Hanna does want to speak. We've met with the neighbors a number of times
893 during the zoning case. I've been in contact with Ms. Swart throughout the process.
894 She called me a couple of times. I've referred her to Mr. Caskie. We've been in
895 contact with the neighbors quite a bit to talk about this. I'm not sure whether something
896 has changed or not means it's a bad case. As staff has said, we've gone through
897 environmental a ton. They've looked at this. I'm sure they're going to be called up here.
898 They said this will work. This meets the standards as we know it now. Planning staff
899 has said the same thing, so I'm not sure what else we can do in order to meet the
900 standards, and why this—I know it doesn't make you feel better to say, "Well, he meets
901 all the standards, but I feel uncomfortable." Well, we do meet all the standards.
902 Legally, we've done everything not only that we're obligated to do, we've done above
903 and beyond that, and we've tried to go above and beyond by meeting with the
904 neighbors and designing this early on.

905
906 Mr. Vanarsdall - Mr. Condlin, I know that you just got in on this, but Mr.
907 Caskie is sitting over there. One of the strange things about this—Oh, I also walked the
908 property with Mrs. Swart—one of the strange things is that it seems like you can read
909 the e-mails that are this thick and, we started getting copies of them.

910
911 Mr. Condlin - Mmm-hmm.

912
913 Mr. Vanarsdall - It seems that the opposition was always wrong, or that's not
914 what was said, or that's not the way it is. One so-called expert said it's this, and
915 another that. It's been confusing for us all along.

916
917 Mr. Condlin - That is the difficulty of this case because, you know,
918 unfortunately, I've been on the opposite of staff on too many occasions, and I haven't
919 won too many of those battles in front of the Planning Commission or the Board of
920 Supervisors because, you know, rightfully so, staff has your ear, and they have the
921 experts to rely on. In this case, we worked extremely hard to get staff comfortable, and
922 to design it in such a way that staff had dictated. I think that does mean something
923 from experts. Now, they might bring up a lot of issues. A number of issues have been
924 brought up, particularly by Ms. Swart. She's coordinating the, you know, arbitrary and
925 capricious nature of the appeal. She's talking about the Planning Commission
926 recommendation and what that means and the tax assessment appeal. There are a lot
927 of answers to those. Yes, the tax assessor may have one opinion, but he's an
928 appraiser. He's not an engineer; he's not in the Environmental Department. He's not
929 with the Army Corps. Those standards have been set for a reason. Those are the
930 experts, and that's who we're relying on. I feel like the staff support should carry a lot of
931 weight. I think it does, obviously, because they're your experts. They're the ones that
932 you have to rely on, and they're, quite frankly, an objective viewer of this whole case.
933 They're not the ones who have the money in it; they're not the ones driven by their
934 objective. They can look at it from a professional standpoint.

935

936 Mr. Vanarsdall - You're one of the main zoning attorneys that we have in the
937 area, and you've dealt with big ones, and small ones, and full-size ones. You know
938 what give-and-take means.
939
940 Mr. Condlin - Yes, yes.
941
942 Mr. Vanarsdall - It's very seldom that you don't have something.
943
944 Mr. Condlin - Right. Well, I'll tell you this—
945
946 Mr. Vanarsdall - That's all I need to say about that.
947
948 Mr. Condlin - Well, I'll say this, that the give-and-take is that they want a
949 number of lots; they really don't want it built at all, as has been said to us a number of
950 times. Or they want three or four lots eliminated altogether. Well, out of 12-lot
951 subdivision, you're asking for a quarter to a third of the lots to disappear. That's not
952 necessarily going to solve the issues that they're concerned about. Those are the only
953 concessions that would seem to resolve the issue in their minds. Every time we've tried
954 to make a concession in the zoning case, new issues came up. That's the concern that
955 we had, is that there was nothing that would seem to satisfy what they were actually
956 asking for.
957
958 Mr. Branin - On the original zoning case, how many lots were there?
959
960 Mr. Condlin - Fifteen.
961
962 Mr. Branin - Prior to moving it above the creek lines?
963
964 Mr. Condlin - Oh, I don't know. That's asking a lot of my memory.
965
966 Mr. Branin - My recollection was there were like 21 lots.
967
968 Mr. Condlin - Yes.
969
970 Mr. Branin - The first thing that we requested that it be brought up above
971 the—
972
973 Mr. Condlin - That's right. We had an access coming out to Hames Lanes,
974 which, obviously, didn't meet anyone's standards so we eliminated that and brought it
975 up above where the green line is you see on the bottom of the subdivision area. So,
976 yes, it was in the 20's. I forget the exact number.
977
978 Mr. Branin - Okay.
979
980 Mrs. Jones - Mr. Condlin, just one more very quick comment here. I
981 guess not really a question, but—Sure, we depend on all of the incredible resources we

982 have through our County departments, and everybody gives us a very professional
983 approach and reaches their conclusions in the very best way possible. I think Mr.
984 Vanarsdall's point about in the end, most cases are a bit of a balancing act—is very well
985 taken. In this particular case, what concerned us in the beginning with the rezoning
986 case—and we voiced that concern—and what's concerning us still is the fact that even
987 with everyone's best good-faith estimate of what kind of impacts this will have for the
988 development of these lots, and for the future homeowners—I really think most of where
989 our concern lies is the future homeowners. What we're not hearing, the other part of
990 the balancing act, which is—Let's just say in spite of everyone's best professional
991 efforts, they're wrong. Let's just say. Where is the safety net for the future
992 homeowners? We're hearing that, in some cases, even with the certain fixes that might
993 be applicable to certain situations, sump pumps are failing because they can't keep up
994 with the demand. I'm really concerned about how in all good conscience we can feel as
995 if we're not setting someone up for a problem. So, what I'd like to hear when Mr.
996 Hanna comes up is very specifically how he could address that particular point.

997
998 Mr. Hanna - Good morning. My name is Boushra Hanna.

999
1000 Mrs. Jones - Good morning, Mr. Hanna.

1001
1002 Mr. Jernigan - Good morning.

1003
1004 Mr. Hanna - I just want to mention that I've been pursuing this with my
1005 engineers and my attorney from the beginning of that process to ensure that everything
1006 is done according to the applicable codes, standards, and law. It's just my nature. I'm
1007 a registered professional engineer in the Commonwealth, along with other states so it is
1008 just my nature to really go to the length to make sure everything is done according to
1009 the right standards.

1010
1011 We started this process with a larger scale but had a lot of opposition who felt that this
1012 subdivision should not be there. When we built on our land, we were promised that
1013 nothing was going to be built behind us. That was the main objective in the meeting,
1014 opposition. It all of sudden changed into a different kind of criteria or a different public
1015 concern, which is the wetland and the drainage.

1016
1017 The good news is really all the standards like what Millrace has been designed for and
1018 established is based on allowing homes and a home site to be built on impacted
1019 wetland. Thank goodness for that new requirement of [unintelligible]. This is no longer
1020 the case. So we avoided placing homes where the wetlands would be impacted. We
1021 mitigated a work around that, and went through the process of [unintelligible] in the
1022 design. So, we were proactive since the beginning. We listened to the concerns that
1023 were raised. Yes, I would build a home for myself in there, for my son in there. I have
1024 no concern about living nearby. I built a house with a basement, but it engineered dry
1025 which is a key element. We have the technology to deal with all of these issues; it
1026 shouldn't be a concern at all. I'm going to be selective on who is going to be the
1027 builder; I assure you that. We're going to make sure that they will abide with all the

1028 rules and regulations and make sure all the concerns—matter of fact, recently we have
1029 added into the requirement that geotechnical samples be taken so we will know exactly
1030 what we're dealing with, and design according to the specification of that land, of the
1031 findings of that land. So, we're proactive. We know what we're dealing with. We'll do all
1032 we can to make sure that there are going to be decent homes in this area, and I'll be
1033 proud to live there, to have my son live there.

1034

1035 Mrs. Jones - And if there is a problem? Are you available to fix it?

1036

1037 Mr. Hanna - Whatever I have control over. I cannot control the builder. If
1038 the builder did something wrong, I'm going to be after the builder, obviously. I'll do what
1039 I have control over, which is do what I said in the beginning—select the right contractor,
1040 make sure geotechnical is being done and sampling is being done, make sure it's
1041 engineered dry, make sure it's [unintelligible] okay. And I'll monitor whatever I can to
1042 monitor, and I'm going to have engineers and geotechnical engineers. This subdivision
1043 is really out of sequence. Matter of fact, we didn't have to do all of the things that we
1044 have done already so far. We went above and beyond what is the basic requirement,
1045 and we're going to continue to do that because I want to be proud of the outcome of
1046 that project. It's just the nature of the engineer.

1047

1048 Mr. Vanarsdall - Would you go so far as to put a condition on the case that
1049 you'll be responsible if something goes wrong?

1050

1051 Mr. Hanna - I'll be responsible for what I have control over. Nobody is
1052 responsible if something—

1053

1054 Mr. Vanarsdall - But you wouldn't put it in writing is what you're saying.

1055

1056 Mr. Hanna - I will assure that I've selected the right contractor, make sure
1057 the contractor is working closely with all of the issues that have been addressed in
1058 here—and some of them have already been put in writing. You do whatever is good
1059 engineering.

1060

1061 Mr. Vanarsdall - That answer's no. Thank you.

1062

1063 Mr. Hanna - I cannot do a blanket assurance for anything. I'll do whatever
1064 I have control over. Nobody will ask anyone to sign a blank check.

1065

1066 Mr. Jernigan - Mr. Hanna, I don't think Mr. Vanarsdall is referring to how
1067 the house is built. I think mainly what we're speaking of here is drainage. They're not
1068 worried about the molding or anything like that on the house. We're worried about if
1069 these houses have water running under them, or under the foundations, what can we
1070 do to get it straight?

1071

1072 Mr. Hanna - Sure.

1073

1074 Mr. Jernigan - That's what I think everybody is looking for. One of the
1075 suggestions I made to Mr. Condlin yesterday—which hasn't been mentioned—and I
1076 mentioned in a hearing before, is rather than these houses be conventional, they be put
1077 on a elevated concrete slab. It'll cost you a few more dollars, but you don't have that
1078 problem. You would have a water barrier in there, and then you have concrete that
1079 keeps you from having that problem. When I went over in Millrace, one of the problems
1080 there is the crawlspaces are lower than the outside grade of the house by as much as
1081 eight to ten inches. That will get water under the house right there. That's why that
1082 young lady has her sump pump going all the time. If the grade under the house was a
1083 little higher, she might not have as many problems as she's having. What we're saying
1084 is if you would commit to having your finger on the pulse of this a little more, and
1085 watching when the construction on the foundation goes in, we might feel a little better.
1086 We want to make sure the water gets out of there.

1087
1088 Mr. Hanna - I'm committed. Yes, I'm fully committed to make sure
1089 everything is built by the appropriate standards, and take into consideration the factors
1090 to mitigate this concern. Some of those practices are proper venting, elevation of the
1091 home rather than slab-on-grade, and getting the right assembling of the soil. We will
1092 have an engineer working with the proper soil. Rather than treating it as a standard site,
1093 we will treat each home site as a specific site whether it's appropriate drainage,
1094 appropriate sloping, appropriate foundation, appropriate crawlspace. Yes, I'm
1095 committed to watch all of this process to make sure it is being done in a way to
1096 eliminate these concerns.

1097
1098 One thing that is with us right now is the fact that we don't have the old standard that
1099 Millrace was built on. This is a positive step. We're not building over impacted soil.
1100 Given these criteria by itself, it's reassuring and a good step in our favor to make sure
1101 this is not going to happen again, like what happened in Millrace.

1102
1103 I assure you I will monitor. I'll work closely with the engineers, and I will make sure all is
1104 being followed. I can assure you of that.

1105
1106 Mrs. Jones - Any more questions for Mr. Hanna?

1107
1108 Mr. Jernigan - I don't have any more.

1109
1110 Mrs. Jones - Thank you, Mr. Hanna.

1111
1112 Mr. Hanna - Thank you.

1113
1114 Mr. Jernigan - Mr. Branin, are we going to hear from Mr. Woodburn today
1115 or not?

1116
1117 Mr. Branin - I was planning on it.

1118
1119 Mr. Jernigan - You are?

1120
1121 Mrs. Jones - So they shouldn't get too comfortable over there.
1122
1123 Mr. Branin - No, time to put your shoes back on. Mr. White, can you
1124 come up, please?
1125
1126 Mr. White - Keith White with Public Works.
1127
1128 Mr. Branin - Are you familiar with this case and this project at all?
1129
1130 Mr. White - Yes.
1131
1132 Mr. Branin - And have we had a couple of meetings in regards to this?
1133
1134 Mr. White - Yes.
1135
1136 Mr. Branin - All right. Could you restate the statement that you made to
1137 me about hydric soil in western Henrico?
1138
1139 Mr. White - There are a lot of hydric soils in western Henrico or a lot of
1140 hydric soils in Henrico.
1141
1142 Mr. Branin - And we have a lot of projects that are built on hydric soils,
1143 and when they're done properly, we haven't had issues, taking Millrace and part of
1144 Hampshire out. The applicant put in some assurances for certificate of occupation for
1145 any building. This is Condition #20. "For any building in this development, the engineer
1146 of record shall certify that the site has been graded in accordance with the approved
1147 grading plans." When we were going through the zoning and so forth at Millrace and
1148 Hampshire, what we found out was a lot of the time the grade was set properly at
1149 clearing off grade, but when it came time for the building, the builders actually raised
1150 the back yard up eight inches for sod, which changed the grade, which created a bunch
1151 of these problems. They've also put in geotechnical analysis of the soils, and
1152 developed building the building according to recommendation with dry crawlspaces and
1153 so forth. Is it Public Works' opinion that these conditions will help ensure, and alleviate
1154 the problems that we're seeing in the adjoining neighborhoods?
1155
1156 Mr. White - It should. The geotech report is above and beyond what the
1157 standard requirement is. A lot grading certification is what is required. It's a standard
1158 Public Works' requirement.
1159
1160 Mr. Branin - In regards to stormwater, this project and the private pond,
1161 are you able to comment—Well, before we do that. What comments would you like to
1162 address?
1163
1164 Mr. White - Listening to the comments, I kind of came up with three
1165 topics, one of which was the lot grading, the onsite drainage. We do, in fact, have the

1166 lot grading certification requirements now; they're in place. Prior to getting a building
1167 permit, the engineer of record will certify that the grading has been done on the lots in
1168 accordance with the approved subdivision plan.

1169
1170 Mr. Branin - Have you seen that in any other cases, that they have to
1171 certify and come through and—

1172
1173 Mr. White - It's a standard requirement now. Pretty much every
1174 subdivision now has lots that are certified grading-wise before they issue a building
1175 permit.

1176
1177 Mr. Branin - When did that start?

1178
1179 Mr. White - Two and a half, three years ago. The onsite drainage
1180 system that is proposed, there is a perimeter system, extra storm drainage, a storm
1181 sewer that was put in, and swales to pick up the water from off site, as well as have a
1182 place to discharge the onsite water into, to collect it. The second topic was wetlands.
1183 There was a lot of discussion about wetlands. The County doesn't regulate wetlands.
1184 We don't issue permits for it. What we are responsible for is that when a plan comes in
1185 showing impacts to wetlands, we have to have evidence that they've received the
1186 necessary permits. The County doesn't do the delineation. The Corps and/or DEQ
1187 verify the delineation of wetlands, and that's been done in this case. The plan reflects
1188 the approved delineation. The last one was the outfall, which I think is where you were
1189 going with the stormwater discharge. The County's requirements are governed by the
1190 Erosion and Sediment Control Law and Regulations with regard to discharging storm
1191 water off your site onto somebody else. The proposal satisfies those requirements. The
1192 pond that's in Hampshire 4 was upgraded at that time to accommodate the drainage
1193 adequately in accordance with the State code and regs, and the County's requirements,
1194 to accommodate the drainage from this site in its developed state. There has been no
1195 increase in volume based on what the pond is sized for.

1196
1197 Mr. Branin - Okay. The next question I have to ask Mr. Tokarz.

1198
1199 Mrs. Jones - Are there any other questions for Mr. White?

1200
1201 Mr. Jernigan - I have a question. Mr. White, you've been an engineer for
1202 some time. In drainage, how many cases have you seen where it looked good on paper
1203 but didn't work?

1204
1205 Mr. White - I wouldn't want to hold that just to drainage; it's true across
1206 the board. Obviously, there are going to be times when what's on paper won't work, but
1207 I have to go by what's on the paper. According to the proposal, it satisfies the conditions
1208 of the County requirements.

1209
1210 Mr. Jernigan - But it does happen.

1211

1212 Mr. White - It does happen.
1213
1214 Mr. Jernigan - Okay. Thank you.
1215
1216 Mrs. Jones - Mr. White, listening to your comments, and then listening to
1217 Mr. Hanna as he discussed the changes in the standards, and the engineering
1218 techniques, and those kinds of things, I'm drawing from that the older subdivisions,
1219 such as Millrace, may well have had few problems if they had been engineered under
1220 today's standards. Is that a correct conclusion on my part?
1221
1222 Mr. White - That would be a correct conclusion. We try to learn from the
1223 past and eliminate that issue in the future. That's why the new regs and the new
1224 requirements and policies came about.
1225
1226 Mrs. Jones - In your professional opinion, from looking at this 12-lot
1227 proposal, can those 12-lots—depending on what the geotechnical survey indicates—be
1228 developed successfully given today's standards and techniques to take care of the
1229 issues with the drainage and the water?
1230
1231 Mr. White - Yes, given what was on that plan, it was approvable from
1232 Public Works' standpoint.
1233
1234 Mr. Vanarsdall - You may have already answered this. What determines the
1235 size of the pipes there? What determines that when there are no other subdivisions
1236 around? How do you determine what to put in there for the future?
1237
1238 Mr. White - It's based on the proposed land cover conditions, different
1239 runoff ratios, constants that are applied to the drainage area. When the Hampshire
1240 pond was revamped with Hampshire 4, the design accounted for the runoff from this
1241 project as it would be developed into a subdivision, not as it was with woods but as it
1242 would be with yards, and roads, and houses. They projected what was going to come
1243 off the site, and that's what they sized the system for.
1244
1245 Mr. Vanarsdall - So the pipes are pretty large in there.
1246
1247 Mr. White - Yes. I think there are approximately 57 acres, close to 60,
1248 that goes through the pond. That was sized based on the developed condition.
1249
1250 Mr. Vanarsdall - Thank you.
1251
1252 Mrs. Jones - Thank you very much.
1253
1254 Mr. Branin - Mr. Tokarz?
1255
1256 Mr. Tokarz - Tom Tokarz, County Attorney's Office.
1257

1258 Mr. Branin - Mr. Tokarz, there was the comment that Ms. Stein made that
1259 we were worried about being sued. I'll address Ms. Stein in regards to that. The County
1260 of Henrico Planning Commission wasn't worried about being sued. What we were
1261 concerned about was making decisions that could either result in a civil suit amongst
1262 your neighborhood and Mr. Hanna, or a decision that wouldn't be favorable to Mr.
1263 Hanna or your neighborhood. So, when we hear case law brought up in a public
1264 hearing, none of us—There used to be a Commissioner here that was an attorney that
1265 was from the Three Chopt District, but none of us are attorneys. So when someone
1266 starts citing case law in a public hearing, when it goes legal, we will automatically stop
1267 because they're citing law, and refer to the County's attorneys. So, that was done in
1268 the last meeting, and we stopped it because of the legality, not *the* suit or *a* suit. It was
1269 legality. We are not attorneys, so we have to stop when someone is citing case law or
1270 bringing up laws from different states that may or may not apply. We're going to stop
1271 and do the right thing, which is address those questions to our County attorneys.

1272
1273 Mr. Tokarz, there were many questions in the last meeting—which you and I had a
1274 meeting with all the County staff—in regards to the pond and the water that will be
1275 flowing from this project to a privately-owned pond now. As you know, case law was
1276 cited that in one other case somewhere else that someone had sued and stopped the
1277 development, I believe, from dumping the water from that site onto that pond. Would
1278 you, in reviewing this project, in reviewing the design, in reviewing the entirety of the
1279 questions and the comments brought out by the minutes that you read, state if there is
1280 a legal reason why this case, in regards to the stormwater and the pond, cannot go
1281 forward?

1282
1283 Mr. Tokarz - Yes, sir, Mr. Branin. Members of the Commission, like Mr.
1284 Condlin, I'm relatively new to this particular case. I have had the opportunity to review
1285 the minutes, I have met with the staff; I've reviewed the plans; I've reviewed a number
1286 of e-mails, including the ones that referred to case law. I've talked to one of the
1287 neighbors on the phone on a couple of occasions about a concern that the drainage
1288 from the proposed subdivision may be illegal because it's being put into a private pond.
1289 I guess the place that I find myself in today is that as you've heard this case, I had the
1290 same reaction. There are a whole bunch of different interests that are involved here, all
1291 of them legitimate. You have the owner of the property that's sought to be developed,
1292 who wishes to develop his property in a way that's permitted by the rezoning for the
1293 case. You have the adjoining neighbors in Millrace that have concerns about their
1294 drainage situation, the sump pump and the wetlands. You have the owner of the
1295 private pond who has a bundle of rights that he purchased at the time that the pond
1296 was purchased. You have the people who are owners in the Hampshire Subdivision,
1297 who have a subdivision plat that shows that the pond is part of the common area, and
1298 you have those owners who also are subject to restrictive covenants, and they have
1299 rights to enforce those covenants, which include the right to use the common area.

1300
1301 For today, though, in terms of the Planning Commission's decision, the Planning
1302 Commission's jurisdiction is relatively limited here. You are not charged with the
1303 obligation under the law to resolve all of the property rights that owners of Millrace may

1304 have, of the private pond may have, of the owners and potential owners of homes in
1305 Hampshire may have. It's certainly appropriate to consider their concerns and to make
1306 sure that the standards of the ordinance are met, to make sure that those interests are
1307 protected, but in terms of the jurisdiction of the Commission, by the time you get to the
1308 subdivision process, rezoning having already been approved, what Virginia law states is
1309 that the Commission is required to approve a subdivision that meets all the
1310 requirements of the zoning and subdivision ordinances of the County. I'm not an
1311 engineer, and I know that you're not and you have to rely on the engineers as to why,
1312 but when Mr. White and the Public Works Department tell you that it meets all the
1313 requirements of the State code, and you have the Planning staff telling you that the
1314 subdivision plan meets all of the requirements of the subdivision ordinance, at that point
1315 I believe you have no discretion to do anything further than to approve the plan.
1316

1317 Now, that's in contrast to rezoning, where rezoning is a legislative decision, when all
1318 sorts of things like the Comprehensive Plan can be considered, whether it's a wise plan,
1319 use of the property—all those things can be considered on rezoning. At this point,
1320 given the fact that you have rezoning approved, your jurisdiction is limited to simply
1321 determining that the requirements of the ordinance have been met, and if you make
1322 that finding, then under Virginia law, you're required to approve the subdivision. That's, I
1323 think, the legal posture in the case before you today.
1324

1325 Mrs. Jones - Are there questions for Mr. Tokarz?

1326
1327 Mr. Jernigan - Yes. I have a question, Mr. Tokarz. I heard what you said,
1328 but let's say for some reason we fail this case, what's the next step?
1329

1330 Mr. Tokarz - You mean if you reject the case?

1331
1332 Mr. Jernigan - Yes, sir.
1333

1334 Mr. Tokarz - Under State law, the applicant for rezoning would have the
1335 right to appeal that decision to the Circuit Court, and state the reasons why they believe
1336 the subdivision should be approved.
1337

1338 Mr. Jernigan - Okay. Thank you.
1339

1340 Mrs. Jones - All right. Mr. Tokarz, thank you. Mr. Branin?
1341

1342 Mr. Branin - This case—when it started 27 years ago—has caused a lot
1343 of sleepless nights. Another comment for Ms. Stein—Ms. Stein, yes, there were
1344 several Commissioners out on this project. When it's in a different district and there are
1345 questions and comments on the case, not only do we talk to each on the phone on a
1346 regular basis, but we also will go out into a different district and look. So, this case did
1347 have issues, so you did see other Commissioners out on the property. That isn't that
1348 uncommon. We'd made a comment that there were other Commissioners out. I'm just
1349 letting you know, and everybody else in the room know, that we actually do do our job,

1350 and work pretty darn hard at it. So, we do go to other districts and check out if there are
1351 any questions. I talk to my fellow Commissioners and ask them for advice, and ask
1352 them to look at plans on different cases. We are a single Commission, and we do work
1353 together. So, that's why you saw other Commissioners.

1354

1355 This case has been a very long one. This case has brought up many questions from the
1356 get-go. It was our recommendation for denial at zoning, which was overturned—well,
1357 the decision was made for approval at zoning. We have put in as many occurrences as
1358 possible, more so than we've done in any case, and at this point I have really no other
1359 course of action than to move for approval of SUB-06-09, Hampshire, with conditions
1360 13 through 21.

1361

1362 Mrs. Jones - There is a motion by Mr. Branin. Do I hear a second?

1363

1364 Mr. Jernigan - Well, we have to have a second to vote on it, so.

1365

1366 Mrs. Jones - There is a motion by Mr. Branin, a second by Mr. Jernigan.
1367 All in favor say aye. All opposed say no. The ayes have it; the motion passes.

1368

1369 The Planning Commission granted conditional approval to SUB-06-09, Hampshire,
1370 subject to the standard and added conditions previously approved and the following
1371 additional conditions:

1372

1373 13. Each lot shall contain at least 13,500 square feet.

1374 14. The plat shall contain a statement that the common area is dedicated to the
1375 common use and enjoyment of the homeowners of Hampshire and is not
1376 dedicated for use by the general public. This statement shall refer to the
1377 applicable article in the covenants recorded with the plat.

1378 15. Prior to requesting the final approval, a draft of the covenants and deed
1379 restrictions for the maintenance of the common area by a homeowners
1380 association shall be submitted to the Department of Planning for review. Such
1381 covenants and restrictions shall be in a form and substance satisfactory to the
1382 County Attorney and shall be recorded prior to recordation of the subdivision
1383 plat.

1384 16. The proffers approved as part of zoning case C-40C-07 shall be incorporated in
1385 this approval.

1386 17. Any future building lot containing a BMP, sediment basin or trap and located
1387 within the buildable area for a principal structure or accessory structure, may be
1388 developed with engineered fill. All material shall be deposited and compacted in
1389 accordance with the Virginia Uniform Statewide Building Code and geotechnical
1390 guidelines established by a professional engineer. A detailed engineering report
1391 shall be submitted for the review and approval by the Building Official prior to the
1392 issuance of a building permit on the affected lot. A copy of the report and
1393 recommendations shall be furnished to the Directors of Planning and Public
1394 Works.

- 1395 18. The final plat for recordation shall contain information showing The Chesapeake
1396 Bay Preservation areas, if any, in accordance with Chapter 19, Section 19-72
1397 (18), of the Henrico County Code, as determined by the Director of Public
1398 Works.
- 1399 19. The owner shall not begin clearing of the site until the following conditions have
1400 been met:
- 1401 (a) The site engineer shall conspicuously illustrate on the plan of
1402 development or subdivision construction plan and the Erosion and
1403 Sediment Control Plan, the limits of the areas to be cleared and the
1404 methods of protecting the required buffer areas. The location of utility
1405 lines, drainage structures and easements shall be shown.
- 1406 (b) After the Erosion and Sediment Control Plan has been approved but prior
1407 to any clearing or grading operations on the site, the owner shall have the
1408 limits of clearing delineated with approved methods such as flagging, silt
1409 fencing, or temporary fencing.
- 1410 (c) The site engineer shall certify in writing to the owner that the limits of
1411 clearing have been staked in accordance with the approved plans. A
1412 copy of this letter shall be sent to the Department of Planning and the
1413 Department of Public Works.
- 1414 20. Prior to issuance of a certificate of occupancy for any building in this
1415 development, the engineer of record shall certify that the site has been graded
1416 in accordance with the approved grading plans.
- 1417 21. A geotechnical engineering analysis shall be provided for the bearing capacity
1418 and expansive properties of the soils on each lot. This soils analysis shall be
1419 included with the building permit application that is submitted to the Building
1420 Official to construct the single family dwelling or accessory structure on the lot. A
1421 foundation drainage system shall also be provided for each dwelling unless
1422 evidence is submitted with the building permit application to demonstrate that
1423 groundwater will not infiltrate the crawlspace. The design and installation of the
1424 foundation drainage system shall be subject to approval by the Building Official
1425 in accordance with the Virginia Uniform Statewide Building Code.

1426
1427 Mrs. Jones - Mr. Secretary, I've had a request that we take a five-minute
1428 recess.

1429
1430 FIVE-MINUTE RECESS

1431
1432 Mrs. Jones - At 10:35, I'd like to call this meeting of the Planning
1433 Commission back to order, please.

1434
1435 Mr. Branin - Mr. Kennedy, would you tell the people out there we have
1436 come back?

1437
1438 Mrs. Jones - I'd like to take a moment here to welcome Katherine Calos
1439 from the Times-Dispatch, who slipped in during the previous case and I didn't have a
1440 chance to say hello to her. Happy to have you with us.

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We will pick up where we left off, and Mr. Secretary will take us through the next case.

C-8C-09 James W. Theobald for CP Other Realty, LLC: Request to conditionally rezone from B-2C Business District (Conditional) to B-3C Business District (Conditional), part of Parcel 735-763-7898, containing approximately 1.680 acres, located on the north line of West Broad Street (U. S. Route 250) approximately 1,650 feet east of N. Gayton Road. The applicant proposes a car wash. The use will be controlled by zoning ordinance regulations and proffered conditions. The Land Use Plan recommends Mixed Use. The site is in the West Broad Street Overlay District.

Mrs. Jones - Good morning. Ms. Sherry, before you begin, is there anyone with us this morning in opposition to C-8C-09, James W. Theobald for CP Other Realty, LLC? We have no opposition.

Ms. Sherry - Good morning. This proposal would allow for a full-service carwash. The subject site is an integral part of a larger 4.76-acre development that was originally rezoned via case C-43C-05, with the intention that the proposed uses on that parcel be both visually and physically compatible with each other and the Town Center West properties.

The 2010 Land Use Plan recommends mixed-use development for the subject property. The site is also within the West Broad Street Overlay District, and the Far West Broad Street Special Strategy Area. The goal of the mixed-use designation in the West Broad Street Overlay District is to encourage large-tract, well-planned, mixed-use development with a unified design and an integrated mixture of compatible uses to provide better traffic flow and appearance along West Broad Street in contrast to the traditional methods of strict retail uses.

The request to rezone the subject property independent of a unified plan for the larger parcel and the Town Center West is not consistent with the 2010 Land Use Plan and the West Broad Street Overlay District. In addition, the proposed carwash has the potential to have a negative impact on the undeveloped properties of other sites, including the proposed hotel to the north, and the development within Town Center West.

The applicant has submitted amended proffers dated July 21st, which you have just received. Included in these proffers, along with recently amended proffers, are new elevations, a concept plan, as well as proffers that provide an increased percentage of brick; a brick screen wall; screening of HVAC equipment; specifications for shade structures; and a lighting and landscape plan to be submitted for Planning Commission approval.

Whereas the proffers provide improvements to the overall quality of development, there are unresolved issues related to visual impact to the north, signage, outdoor speakers, and interconnectivity as noted in the staff report. Additionally, the brick screen wall

1487 along the western and southern property lines has been proffered by the applicant, but
1488 is not clearly depicted on the concept plan. To ensure this design feature is
1489 implemented, the wall should be labeled on the concept plan.

1490
1491 Staff does not support this request; however, if the Planning Commission recommends
1492 approval, staff believes these issues should be addressed in order to ensure the same
1493 level of quality that was proffered with the original application. Staff notes time limits
1494 would need to be waived to accept the amended proffers this morning.

1495
1496 This concludes our presentation. I would be happy to answer any questions.

1497
1498 Mrs. Jones - Do we have questions from the Commission?

1499
1500 Mr. Branin - I don't. I'd like to hear from the applicant. Actually, the
1501 applicant and owner.

1502
1503 Mrs. Jones - Good morning. Would you state your name for the record?

1504
1505 Mr. Carr - Paul Carr, CEO.

1506
1507 Mr. Branin - Mr. Carr, you guys are making a request for rezoning to build
1508 a Car Pool. Why this site?

1509
1510 Mr. Carr - It's just a logical growth mechanism for us. We've had a lot
1511 of success in Henrico County, Broad Street in particular. It's just a natural growth for
1512 us.

1513
1514 Mr. Branin - How many people will you employ?

1515
1516 Mr. Carr - Somewhere between 50 and 100.

1517
1518 Mr. Branin - If this project is approved and zoning goes to the Board and
1519 approved there, what would you say, three months of going through permitting? So,
1520 would you be starting it in 2009?

1521
1522 Mr. Carr - Based on the timing that I see from here forward, I would
1523 probably close on the property sometime in December, if all went well. We'd start
1524 building as soon as we had our permits, maybe 30 days after that. The building process
1525 would be four to five months.

1526
1527 Mr. Branin - Really, four to five months? That's all I have. Mr.
1528 Theobald?

1529
1530 Mr. Theobald - Yes, sir. For the record, Jim Theobald, here on behalf on
1531 Car Pool.

1532

1533 Mr. Branin - Outdoor speakers.
1534
1535 Mr. Theobald - Yes, sir.
1536
1537 Mr. Branin - Are there outdoor speakers?
1538
1539 Mr. Theobald - There are some, but they are not allowed by your ordinance
1540 to be audible beyond the property line in the West Broad Street Overlay District.
1541
1542 Mr. Branin - Will they be proffered that they will not exceed?
1543
1544 Mr. Theobald - I don't have to proffer them because it's an ordinance
1545 requirement in the West Broad District. It's not a guideline; it's an ordinance
1546 requirement that outdoor speakers may not be audible beyond the property line. We
1547 don't typically proffer things that are actually part of your ordinance. So, you're
1548 covered. That was your question, right?
1549
1550 Mr. Branin - Thank you, Mr. Theobald; I feel better now.
1551
1552 Mr. Vanarsdall - You don't know what it turned out to be.
1553
1554 Mr. Branin - Get Mr. Tokarz back in here; I'm dealing with an attorney.
1555 Wall height, sir.
1556
1557 Mr. Theobald - Wall height, yes. The wall height—let me show you on this
1558 drawing, which is very busy. The wall is actually depicted here. This is a screen wall so
1559 that if you're driving eastbound on West Broad Street, the screen wall begins here in
1560 this area, and it continues. It ramps up to six feet in height and continues all the way
1561 around the site, all along the Broad Street frontage, and ties back into the far corner of
1562 the building. It is designed to screen the cars that are waiting and also the vacuum
1563 activities, as well as turning into the wash bay so you won't see the garage doors. So,
1564 this wall is a six-foot-high wall until somewhere in here where it tapers on down. These
1565 cars are on the entrance road, not on the site itself. So, the screening wall, if you will, is
1566 over here and ramps up to six feet in height, goes across the front of Broad. You're
1567 looking at the western elevation. Here, you're looking from Broad Street, and you can
1568 see the wall continuously all the way across the entrance to the wash bay, which is
1569 behind the wall in the area. Then, of course, there's a 50-foot landscape buffer in front
1570 of that. So, we tried to take care in mitigating any visual impacts. It is a six-foot wall; it
1571 does taper down to a point along that west elevation.
1572
1573 Mr. Branin - Okay. We have worked on this case for quite a bit of time
1574 now, with input from staff, with input from Mr. Kaechele. There were two designs
1575 originally that were proposed. Mr. Kaechele and I both did public surveys in the district
1576 on a couple different occasions on which one people actually preferred. One was very
1577 Jeffersonian, and then this one that you have here, which is what most people
1578 preferred. From what I gather from the people that were asked in the district, they're

1579 very favorable to Car Pool because Car Pool has been cleaning cars in western
1580 Henrico for many years. Also, the location. As you see, we have no opposition to the
1581 location. It's a good location. You're not backing up to any neighborhoods like the one
1582 proposed in Twin Hickory.

1583

1584 Mr. Theobald - That wasn't Car Pool.

1585

1586 Mr. Branin - That wasn't Car Pool? Well, that became quite an issue. Car
1587 Pool has a good name in the West End. As carwashes go, you have no tents. It's the
1588 Taj Mahal of carwashes, so. I have no further questions.

1589

1590 Mrs. Jones - Quick confirmation. The vacuuming?

1591

1592 Mr. Theobald - Yes.

1593

1594 Mrs. Jones - Is that done under cover?

1595

1596 Mr. Theobald - It's in this area behind the screening wall.

1597

1598 Mrs. Jones - Isn't that done under cover at other Car Pools?

1599

1600 Mr. Vanarsdall - We need to get you on the microphone there.

1601

1602 Mr. Theobald - Are you talking about this area, Paul?

1603

1604 Mrs. Jones - Could you talk into the microphone please?

1605

1606 Mr. Carr - Yes, ma'am. The canopy for this location is going to be a
1607 permanent brick and steel roof structure. The roof is going to match the roof of the
1608 building. It will still be hard to see. You may see a little of the roofline above the wall, but
1609 it's going to match the green galvanized roof of the building.

1610

1611 Mrs. Jones - Has that been depicted on your elevation?

1612

1613 Mr. Carr - I'm not sure. No, but it will be just below where it says, "Car
1614 Pool" on that. Actually, it is depicted there, but it's a flat roof. What we have done
1615 through our meetings with everybody is make that a hip roof that matches the rises on
1616 the building.

1617

1618 Mrs. Jones - Okay. So, the elevations aren't exactly what we're finishing
1619 up here with, but it will be that compatible roof style.

1620

1621 Mr. Carr - I will do it either way. I'll do it flat if you don't want to see the
1622 roof, which would be less expensive, or I will build the roof that you see up there, if
1623 you'd rather it match.

1624

1625 Mrs. Jones - I'm only talking about the canopy.
1626
1627 Mr. Carr - That's what I'm talking about. As it stands now, it's like a flat
1628 roof carport.
1629
1630 Mr. Branin - A lot of the carwashes around the pre-vacuum they put
1631 under tents. This is going to be brick, and it's going to match the building. Which do you
1632 think is better, a flat roof or a pitched roof?
1633
1634 Mrs. Jones - Mr. Branin, I would not propose to impose my aesthetics
1635 upon you.
1636
1637 Mr. Branin - Like the two buildings, this roof issue came up in many
1638 discussions as well, so I felt obliged to ask you as well, Ma'am.
1639
1640 Mrs. Jones - I think the lowest visual impact.
1641
1642 Mr. Branin - That's why I prefer the flat roof.
1643
1644 Mrs. Jones - I do have one other question for our applicant. This has
1645 been before us for quite a while, and we've all given it a whole lot of thought. Being
1646 visually and physically compatible with the [unintelligible] west design is really a key to
1647 this, as well as what's really important to me, the West Broad Street Overlay. In my
1648 district as well, we have areas, special strategy areas, and I think it's really, really
1649 important to keep the spirit of that within any development. Pedestrian connectivity is a
1650 big part of that. Can you show me on your plan here how you've integrated that?
1651
1652 Mr. Theobald - I can. I will show you on this plan, and then I'm going to
1653 show you the POD for the hotel that you previously approved with two restaurants in
1654 front of it so you can see the similarity.
1655
1656 First of all, one would wonder about pedestrian connectivity with a carwash in terms of
1657 pedestrians wanting to walk to or from the carwash. Nonetheless, we have incorporated
1658 similar features. Essentially, there's a sidewalk along Broad, which will remain, and then
1659 there's a walkway through here that crosses the drive aisle, comes down this side of the
1660 building, and then you have to go through the drive aisle on the back of the carwash.
1661 You'll see where that was the same face as with the proposed restaurants. You then
1662 continue through—it's drawn on here—this landscape aisle into the front for the hotel.
1663 Let me show you.
1664
1665 This is the POD that you approved for two restaurants and a hotel. The Car Pool site is
1666 basically here. Here is the same island, the same cross of the drive aisle, same
1667 sidewalk down through here. Now, what our plan does not have is a congregating area
1668 or sitting area, if you will, along that line of sidewalk, but there's still the island here.
1669 There's the island that connects all the way to the hotel. There's a sidewalk along Broad
1670 Street, the same connectivity points in terms of vehicular access into the Japanese

1671 restaurant here, another curb cut back here, and then the road goes all the way back to
1672 the property line here. So, it's really the same plan but for an area here, which I would
1673 suggest to you that I just don't see people recreating along these properties along West
1674 Broad Street. We did discuss our plans with the hotel developer, who is our seller, who
1675 had input and comment onto the plan as to the orientation, etcetera. We also
1676 discussed it with the owner of the Japanese restaurant and with Breeden, who
1677 developed all of Town Center West, who, in fact, attempted to sell us an outparcel on
1678 his site for this.

1679
1680 I disagree that it's not consistent with the Land Use Plan. Mixed-use is mixed-use, and
1681 this is just another one of those uses. The architecture, designed by Jack Shady,
1682 especially for this project I think is high design. The bigger impact, I think, is the 3,000
1683 cars that surround Short Pump Town Center, all of which we would like to clean. So, it
1684 fits, and we've tried hard to make it fit aesthetically through screening. There is also a
1685 very complicated reciprocal easement agreement, a copy of which I have with me. It's
1686 on record. It provides both for development standards, obligations as to additional
1687 internal access, etcetera, throughout the whole site. That was done as a part of the
1688 original joint development. We also have reciprocal easement agreements with Mr.
1689 Patel who owns the hotel site behind us. He will be putting in an underground
1690 stormwater facility for this project in the middle back where that sitting area was shown
1691 on the original plan. That's consistent with the original plan. All of us are jointly
1692 participating in the driveway access improvements and circulation patterns.

1693
1694 Also, for what it's worth, we're talking to Virginia Power. Although this is on a parcel
1695 that's retained by Mr. Patel, the substation that's in back here potentially now has
1696 access. The ring road is complete into the back of the mall, and we're seeing if we can't
1697 get them to release their easement rights. You may recall the hotel POD that was up a
1698 moment ago had a gate or chain across here. It's a private easement that's not for the
1699 public at that point on Broad Street. We're seeing if we can't make that go away. That's
1700 solely up to Dominion Virginia Power, but presuming they can get the type of equipment
1701 that they desire, it's a much easier route back here. So, we are pursuing that.

1702
1703 Mrs. Jones - Not to belabor this, but in answer to your comment about
1704 why in the world pedestrian connectivity is an issue with a carwash, actually, in my view,
1705 it's to the question of whether this is an appropriate use because of the standards that
1706 have been set for this particular development. That's why I asked the question.
1707 Secondly, labeling the brick wall. Will that be done? Has that been done?

1708
1709 Mr. Theobald - I don't believe that label is on there. It's a very busy drawing,
1710 as you can see, but there's no problem adding that.

1711
1712 Mrs. Jones - Okay. The other thing is, is there any area here designated
1713 for folks—since I use Car Pool a lot, I'm speaking from personal experience—for folks
1714 to sit outside as their car is being washed?

1715

1716 Mr. Theobald - Is there any outside space on here? Is it over here? Back
1717 in here? Back in here, yes. There's an interior waiting room along the front here where
1718 we saw some of the glass and apparently an outdoor area back here on the corner of
1719 the building.

1720
1721 Mrs. Jones - I appreciate that. Thank you.

1722
1723 Mr. Theobald - Okay, you're welcome.

1724
1725 Mr. Branin - Madam Chair, I have no more questions.

1726
1727 Mrs. Jones - Anyone else have questions from the Commission?

1728
1729 Mr. Branin - I would like to move to waive the time limits for C-8C-09,
1730 James W. Theobald for CP Other Realty, LLC.

1731
1732 Mr. Vanarsdall - Second.

1733
1734 Mrs. Jones - Motion by Mr. Branin to waive the time limits, seconded by
1735 Mr. Vanarsdall. All in favor say aye. All opposed say no. The ayes have it; the motion
1736 passes.

1737
1738 Mr. Branin - I would like to move for approval of C-8C-09, James W.
1739 Theobald for CP Other Realty, LLC.

1740
1741 Mr. Vanarsdall - Second.

1742
1743 Mrs. Jones - Motion by Mr. Branin, seconded by Mr. Vanarsdall. All in
1744 favor say aye. All opposed say no. The ayes have it; the motion passes.

1745
1746 **REASON:** Acting on a motion by Mr. Branin seconded by Mr. Vanarsdall, the
1747 Planning Commission voted 4-0 (one absent, one abstention) to recommend the Board
1748 of Supervisors **grant** the request because it is appropriate business zoning in this area.

1749
1750 **MR. DONATI LEFT THE MEETING AFTER THIS CASE (C-8C-09).**

1751 **LANDSCAPE AND LIGHTING PLAN**

1752 LP/POD-62-01
Trinity United Methodist
Church – Parking
Expansion – 7910 Rock
Creek Road

McKinney and Company for Trinity United Methodist Church: Request for approval of a landscape and lighting plan, as required by Chapter 24, Sections 24-106 and 24-106.2 of the Henrico County Code. The 2.38-acre site is located on the north line of Rock Creek Road, approximately 350 feet east of Forest Avenue, on parcels 758-739-3229, 2233, 1436, 757-739-8840 and 9939. The zoning is R-3, One Family Residential District. County water and sewer. **(Tuckahoe)**

1753
1754 Mrs. Jones - Do we have anyone with us this morning in opposition to
1755 LP/POD-62-01, Trinity United Methodist Church—Parking Expansion? All right, thank
1756 you. Mr. Garrison, you can proceed.

1757
1758 Mr. Garrison - Good morning.

1759
1760 Mrs. Jones - Good morning.

1761
1762 Mr. Garrison - The applicant is requesting approval of a landscape and
1763 lighting plan at Trinity United Methodist Church. A revised plan has been submitted that
1764 addresses staff's comments concerning relocating light poles out of the parking islands
1765 to allow large deciduous trees. The photometric plan that includes existing light fixtures
1766 was also included. Staff has received concerns from adjacent property owners
1767 regarding the light intensity; however, the applicant is replacing one existing Cobrahead
1768 fixture with a 15-foot Colonial fixture. Additionally, to assist in mitigating the potential
1769 visual impacts, the proposed landscape plan provides a 35-foot buffer along Rock
1770 Creek Road, combined with a mixture of large deciduous trees (Zelkovas), and
1771 evergreen shrubs on top of a four-foot berm. Therefore, staff can recommend approval
1772 of LP/POD-62-01, subject to annotations on the plan and the standard conditions for
1773 landscape and lighting plans.

1774
1775 Mrs. Jones - Questions for Mr. Garrison? Just for my own education,
1776 Greg, the height of the selected species of trees for the landscape plan at maturity is
1777 about how tall?

1778
1779 Mr. Garrison - At maturity? The Zelkova is going to get—are you talking
1780 about the parking lot or in the buffer?

1781
1782 Mrs. Jones - In the parking lot.

1783
1784 Mr. Garrison - Oh, the Elms. They'll get up to 50 feet. They're a large tree.

1785
1786 Mrs. Jones - Then those that are on the berm can be—?
1787

1788 Mr. Garrison - Zelkovas will be a large tree, too, at maturity.
1789
1790 Mrs. Jones - So, they will, at maturity, which could be how long, if they're
1791 planted at, what eight feet or so?
1792
1793 Mr. Garrison - Well, they usually plant at—a 2-1/2 inch caliper is our
1794 requirement. Usually 25 years, 20 years is kind of the projected—how we look at
1795 things.
1796
1797 Mrs. Jones - Just thinking about how long until they really have their full
1798 impact.
1799
1800 Mr. Garrison - The shrubs will grow faster. The Hollies typically will grow
1801 faster.
1802
1803 Mrs. Jones - I should have thought to ask you before, but thank you. I
1804 was wondering about that. No other questions? I would like to have the applicant
1805 come forward, if I could.
1806
1807 Mr. Burcin - Good morning, I'm Stacey Burcin with McKinney and
1808 Company, here on behalf of Trinity United Methodist Church.
1809
1810 Mrs. Jones - Good morning, Mr. Burcin. We've had a whole lot of
1811 conversations about this case.
1812
1813 Mr. Burcin - Yes, we have.
1814
1815 Mrs. Jones - I think the reason that we have is because there is a long
1816 history that far predates me, and I wanted to be very, very careful that we took into
1817 consideration all the elements that were raised during previous discussions. You, as
1818 well, have referred to the past history in trying to blend the interests of the neighbors
1819 and the needs of the church, and the budget involved, and the design. So, we had just
1820 a couple of things that were yet to be fine-tuned before we got to this hearing this
1821 morning. I think we're there, but just so, on the record, we discuss them.
1822
1823 Mr. Burcin - Okay.
1824
1825 Mrs. Jones - Could you talk about where we stand at the moment with the
1826 gate?
1827
1828 Mr. Burcin - Yes.
1829
1830 Mrs. Jones - After that, the situation with the drop pole and the lighting
1831 impacts, as it impacts the neighbors, and you feel that'll be taken care of.
1832

1833 Mr. Burcin - As far as the gate, this goes back to some neighborhood
1834 concessions that we made back in 2001-2002 with the original POD. The
1835 neighborhood had asked us to restrict access to that portion of the parking lot where it
1836 comes off the new driveway on Rock Creek Road.

1837

1838 Mrs. Jones - Could you show that on the—

1839

1840 Mr. Burcin - Sure. Here. Okay, it would be this driveway right here.
1841 There are a couple of design features that were down with that driveway. Number one,
1842 we created a drive that did a dog-leg through the parking lot so that you wouldn't have a
1843 situation where people would likely cut through. Secondly, you wouldn't have a wall
1844 wash of light. You don't see it on this as much, but you come over a hill, and then you
1845 come down the hill to Rock Creek Road. If we had to have a straight driveway, you'd
1846 end up with a wash of light coming down overtop of neighbors into their front yards.

1847

1848 Then, we selected this location for a couple of reasons. One, we wanted to meet all the
1849 technical engineering requirements for sight distances and things like that. This one met
1850 both the vertical and horizontal curves and the sight distances we need there. More
1851 importantly, it was selected so that the driveway came out between the two houses
1852 there, so you wouldn't necessarily have your headlights shining out directly into the front
1853 of someone's house. We discussed with the neighbors that this parking lot really isn't
1854 used that often because it is somewhat remote to the church. It was suggested that we
1855 put a gate up there or we put a restriction so as to not have people come in and drive
1856 through there. Now people come in off Forest Avenue and turn into the first parking lot
1857 here. That's the movement that the neighbors are used to. They didn't want them
1858 bypassing this driveway and coming in through here as much as possible. We agreed
1859 that we'd put some sort of access restriction there.

1860

1861 Unfortunately, that got interpreted to be a gate over the years; and we're not arguing
1862 with a gate. When the plan of development was signed, the actual construction
1863 documents of the parking lot, staff asked us to put a gate on there. We didn't have a
1864 design for a gate there. We picked an industrial tube type gate. We picked that and just
1865 put it on the drawings then, knowing that we'd work something out after that. It's not the
1866 best solution, but it's a solution. It provides the access there. We discussed the details
1867 of the gate. We wanted to kind of make it blend into the background, so we're probably
1868 going to paint the gate black in color, or dark green, something like that that's not going
1869 to be very visible, versus a high-visibility yellow. We're looking at putting wood posts on
1870 the side there with something decorative along the top, per our discussions this
1871 morning. That's kind of where we stand with the gate.

1872

1873 Your other questions were dealing with the—

1874

1875 Mrs. Jones - So you're going to have—How are we going to have this
1876 solved this morning? What kind of notations will be made?

1877

1878 Mr. Burcin - I would suggest that we put a notation on the plan that the
1879 final details for the gate be provided to staff prior to signature of the final plans.
1880

1881 Mrs. Jones - All right. Knowing that this is going to reflect as much of a
1882 residential character as we can within a simple design that works with the site plan.
1883

1884 Mr. Burcin - Yes. I think that we'd probably like to talk to Ms. Sealy, who
1885 lives across the street, one more time—she's probably the one that's the closest
1886 involved there—to see what she feels about the tube gate versus some other solution.
1887

1888 Mrs. Jones - Well, a black faux iron I think is a good way to go, so I
1889 suggest that to you as probably a good alternative. We will make notations on the plan
1890 to that effect.
1891

1892 Mr. Burcin - Okay.
1893

1894 Mrs. Jones - All right, now the drop pole.
1895

1896 Mr. Burcin - The drop pole. In the back part of this parking lot, right here
1897 where—we've been calling this the H island. There has historically been a power pole
1898 located about here where the pointer is now. It has run across here and gone to here
1899 where it split and went to two houses. That's been there probably since the houses
1900 were built in the late '40's, early '50's, maybe earlier. I don't know exactly when the
1901 houses were built, to be honest with you. It has been a while. When we built the first
1902 phase of the parking lot, we were able to build that without moving the pole. When we
1903 built the second phase, we had to move this pole, so we just moved it in to this point
1904 where it is now to accommodate the excavation. We've already done that and have
1905 already paid Virginia Power to put up a new pole, moved it, and sat it there. The reason
1906 we needed power to that H island is that from there, it goes underground and goes into
1907 conduits. It feeds all the lighting that exists in this parking lot over here. So we're
1908 currently looking at that. I know your recommendation has been to get rid of it. I know
1909 the church is looking at that particular aspect. It is costly, and we're trying to weigh out
1910 the pros and cons of what it costs versus what the aesthetic appeal is. We will have
1911 that wire going across this portion of the parking; it has been there all along, but it is an
1912 opportunity to get rid of it if possible. We don't have the final answer on that yet
1913

1914 Mrs. Jones - All right. So, we'll go ahead and have that represented on
1915 the plan this morning in its current position.
1916

1917 Mr. Burcin - Yes.
1918

1919 Mrs. Jones - Know that there is a possibility that it could go underground
1920 if the church deems that doable between now and the final.
1921

1922 Mr. Burcin - Yes, that's correct.
1923

1924 Mrs. Jones - Okay. All right. The landscaping—I think we worked it out as
1925 well as we could with a nod to the neighbors, a nod to the needs of the church, and the
1926 requirements of the County. So, unless anything has changed early this morning, we
1927 have what we see before us.

1928
1929 Mr. Burcin - That's correct. This is consistently the plan that we've been
1930 showing the neighbors going back to 2001 when we first started this with just one
1931 correction. In Greg's presentation, he indicated we have a 35-foot buffer; it's actually a
1932 25-foot buffer along the roadway. What is required of us is a 10-foot, but we have
1933 voluntarily, in agreement with the neighbors, built a 25-foot one.

1934
1935 Mrs. Jones - That was at the time of POD?

1936
1937 Mr. Burcin - Yes.

1938
1939 Mrs. Jones - I thought it was 35 as well.

1940
1941 Mr. Burcin - I mean, it should be depicted as 25 there, and it's supposed
1942 to be 25.

1943
1944 Mrs. Jones - Are your light poles on this plan?

1945
1946 Mr. Burcin - Light poles are not on this plan.

1947
1948 Mrs. Jones - Okay.

1949
1950 Mr. Burcin - You have a revised light plan in your addendum.

1951
1952 Mrs. Jones - Okay.

1953
1954 Mr. Burcin - I touched a little bit on the lighting plan. This church has
1955 been using Virginia Power to provide lighting on its site for as long as anybody could
1956 remember. For that reason, they have specifically worked with Virginia Power to let
1957 them continue being the lighting provider out there. That limited our possibilities and our
1958 options a little bit on how lighting could be designed. When we met with the neighbors
1959 back in 2001, one of the things they looked at is that when you build the new parking
1960 lot, you're not going to put the lighting poles up like the ones you have in the old parking
1961 lot. They were pointing to the old Cobraheads. They're slightly out of character for that
1962 neighborhood. We promised them that when we build the new parking lot, any new
1963 lighting will be lower scale, and will be more of a Colonial-type fixture. So we've gone
1964 from a 35-foot Cobrahead in this area that exists today, and we've taken it down now to
1965 a 15-foot Colonial style fixture. It has been moved now into the middle of the parking
1966 field.

1967
1968 Mrs. Jones - All right, thank you. Are there any other questions? I know a
1969 lot of the folks who have worked hard on this. Some couldn't be here today. I know

1970 Tom Kelham is with us today. I think the plan is moving quickly for several reasons. My
1971 understanding, if you could confirm, is that the church would like to have this plan in
1972 place by the beginning of the fiscal year. Correct?

1973
1974 Mr. Burcin - That is correct. Obviously, if you've been by there, you've
1975 noticed a lot of rock out there, and that has slowed the process down quite a bit. As I
1976 understand it, they would like to have these parking lots completed by September 1.

1977
1978 Mrs. Jones - And when will the rock be leaving?

1979
1980 Mr. Burcin - As soon as they can get it out of there. It's not by anybody's
1981 wishes; it's there because it has to be broken into small pieces before it can be hauled
1982 off and taken to the disposal site.

1983
1984 Mrs. Jones - Thank you very much. All right. I'm satisfied that this has
1985 been worked through in the ways in which we can to make it a good case and make it
1986 sensitive to the neighbors. I thank the church for their efforts on behalf of the neighbors'
1987 wishes. This has been a long process, but the parking lot is coming into shape, and I
1988 think the landscaping will do a lot to mitigate the effects of the light and the changed
1989 landscape. It's always hard when change comes right to your front door.

1990
1991 All right. With that, I would like to make a motion. I'd like to move for approval of
1992 LP/POD-62-01, Trinity United Methodist Church—Parking Expansion. This is at 7910
1993 Rock Creek Road. I would like to make that recommendation with the standard
1994 conditions for landscape and lighting plans, and the additional notations on the
1995 addendum.

1996
1997 Mr. Jernigan - Second.

1998
1999 Mr. Branin - Second.

2000
2001 Mrs. Jones - Well—

2002
2003 Mr. Jernigan - Three.

2004
2005 Mr. Branin - Pick one.

2006
2007 Mrs. Jones - Motion by Mrs. Jones, seconded by Mr. Jernigan. All in favor
2008 say aye. All opposed say no. The ayes have it; the motion passes.

2009
2010 The Planning Commission approved the landscape and lighting plan for LP/POD-62-01,
2011 Trinity United Methodist Church—Parking Expansion, subject to the standard conditions
2012 attached to these minutes for landscape and lighting plans.

2013

2014 **PLAN OF DEVELOPMENT, LIGHTING PLAN, AND TRANSITIONAL BUFFER**
2015 **DEVIATION**

2016

POD-15-09
Chick-fil-A at Ridge
Shopping Center
(POD-68-82 Rev.)

Horton and Dodd, P.C. for Chick-fil-A and LCL Company: Request for approval of a plan of development, lighting plan, and transitional buffer deviation, as required by Chapter 24, Sections 24-106 and 24-106.2 of the Henrico County Code, to construct a one-story 4,287 square foot restaurant with drive-through facilities to replace an existing restaurant in an existing shopping center. The transitional buffer deviation is to permit a retaining wall with an opaque fence within the required 25 foot transitional buffer adjacent to Ridgehaven subdivision. The 0.97-acre site is located on the east line of Parham Road, approximately 850 feet south of Fargo Road, on parcel 754-745-0612 and part of parcels 753-745-9332 and 754-745-3707. The zoning is B-2C, Business District (Conditional). County water and sewer. **(Three Chopt)**

2017

2018 Mrs. Jones - Is there anyone with us this morning in opposition to POD-
2019 15-09, Chick-fil-A at Ridge Shopping Center? No opposition. Good morning.

2020

2021 Ms. Goggin - Good morning. The plan you have before you proposes a
2022 Chick-fil-A with a drive-thru. The site was originally developed as a Burger Chef in 1970
2023 and replaced with the existing Hardee's in 1982.

2024

2025 Public Works is accepting a two-foot easement for the new sidewalk along Parham
2026 Road in lieu of right-of-way dedication. The proposed plan includes a request for a
2027 transitional buffer deviation to encroach ten feet into the required 25-foot transitional
2028 buffer adjacent to the Ridgehaven subdivision. At present, this buffer area is a heavily-
2029 wooded ravine and will retain a good amount of existing vegetation on the site once
2030 developed. The deviation is for a retaining wall and six-foot white vinyl opaque fence.
2031 An opaque fence was proffered with C-45C-80, and that rezoning case was to allow a
2032 drive-thru for the Burger Chef. A six-foot wall of brick or architectural block is permitted
2033 by the zoning ordinance as an administrative transitional buffer deviation, but the
2034 applicant needs to meet the adopted proffers.

2035

2036 Letters advertising this development and deviation request were sent to the adjacent
2037 property owners July 10, 2009, and staff has not been contacted concerning this
2038 request.

2039

2040 Should the Commission choose to approve the transitional buffer deviation, staff
2041 recommends approval subject to the annotations on the plan, standard conditions for
2042 developments of this type, condition 11B, and additional conditions 29 through 38 in
2043 your agenda. The applicant's engineer, Greg Dodd, is here in attendance to speak to
2044 the transitional buffer deviation request. We have Scott Thigpen from Chick-fil-A and

2045 Bobby Marchetti just in case the Commission has any questions for them. I'd be happy
2046 to answer any questions the Commission may have of me.

2047
2048 Mrs. Jones - Are there questions? All right. Would you like to hear from
2049 the applicant about the buffer deviation?

2050
2051 Mr. Branin - I don't think it's necessary, but we can, if you'd like to. I
2052 would like to hear from the applicant.

2053
2054 Mr. Dodd - Good morning. My name is Greg Dodd. We're civil
2055 engineers for Chick-fil-A, Horton and Dodd, P.C. What we have before you is a request
2056 for a deviation of the transitional buffer. What we're using in that transition is a stacked
2057 block retaining wall. We've used a similar situation on our Chick-fil-A in Williamsburg
2058 with great success. We had submitted to Christina a rendering and photos. It showed
2059 this use in Williamsburg. Perhaps you have that, if you're interested in seeing what that
2060 looks like. It is just a stacked block retaining wall; very attractive. It has the opaque
2061 fence on the back. Of particular note is in Williamsburg where we used this, as in this
2062 case, there is extensive vegetation that is on the outside of this wall. So actually, in
2063 Williamsburg, you can hardly see the wall from the property that we're shielding this use
2064 from. So, that's the kind of situation that we're going to have here. It will be virtually
2065 impenetrable as you look through the site here. We would solicit your support.

2066
2067 Mrs. Jones - That was actually my concern, that there be adequate
2068 vegetation to soften the effects of this wall. Will the vegetation be on both sides?

2069
2070 Mr. Dodd - Right now, we don't have vegetation on our side, but we can
2071 provide for that. We can provide a small strip, as you see in the photo, for some
2072 vegetation on our side of the wall.

2073
2074 Mrs. Jones - That's always a good idea. That was my concern.

2075
2076 Mr. Branin - I don't disagree with the vegetation, Mr. Dodd, on the interior
2077 side. It will help with softening it a little.

2078
2079 Mr. Dodd - I think we can provide that. It won't be a lot of vegetation.

2080
2081 Mr. Branin - Much like that.

2082
2083 Mr. Dodd - Much like you see.

2084
2085 Mr. Branin - The Hardee's has been there for a long time. Even though I
2086 grew up in the neighborhood, I really don't remember a Burger Chef. I think it's going to
2087 be a strong addition to an area that is remaking itself and revitalizing itself. I think this
2088 will be a good addition. I'm ready to make a motion, if that's okay with you.

2089
2090 Mrs. Jones - Absolutely.

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Mr. Branin - I'd like to move that POD-15-09, Chick-fil-A at Ridge Shopping Center, be approved with the transitional buffer deviation change, and standard conditions for developments of this type, and the following additional conditions 11B and 29 through 38, and the addition of the vegetation line on the interior of the fence.

Mr. Vanarsdall - Second.

Mrs. Jones - Motion by Mr. Branin, seconded by Mr. Vanarsdall. All in favor say aye. All opposed say no. The ayes have it; the motion passes.

The Planning Commission approved POD-15-09, Chick-fil-A at Ridge Shopping Center, subject to the annotations on the plans, the standard conditions attached to these minutes for developments of this type, and the following additional conditions:

- 11B. Prior to the approval of an electrical permit application and installation of the site lighting equipment, a plan including light spread and intensity diagrams, and fixture specifications and mounting heights details shall be revised as annotated on the staff plan and included with the construction plans for final signature.
- 29. The right-of-way for widening of Parham Road as shown on approved plans shall be dedicated to the County prior to any occupancy permits being issued. The right-of-way dedication plat and any other required information shall be submitted to the County Real Property Agent at least sixty (60) days prior to requesting occupancy permits.
- 30. A concrete sidewalk meeting County standards shall be provided along the east side of Parham Road.
- 31. The proffers approved as a part of zoning case C-45C-80 shall be incorporated in this approval.
- 32. The developer shall install an adequate restaurant ventilating and exhaust system to minimize smoke, odors, and grease vapors. The plans and specifications shall be included with the building permit application for review and approval. If, in the opinion of the County, the type system provided is not effective, the Commission retains the rights to review and direct the type of system to be used.
- 33. In the event of any traffic backup which blocks the public right-of-way as a result of congestion caused by the drive-up facilities, the owner/occupant shall close the drive-up facilities until a solution can be designed to prevent traffic backup.
- 34. Approval of the construction plans by the Department of Public Works does not establish the curb and gutter elevations along the Henrico County maintained right-of-way. The elevations will be set by Henrico County.
- 35. Evidence of a joint ingress/egress and maintenance agreement must be submitted to the Department of Planning and approved prior to issuance of a certificate of occupancy for this development.
- 36. The location of all existing and proposed utility and mechanical equipment (including HVAC units, electric meters, junction and accessory boxes,

- transformers, and generators) shall be identified on the landscape plans. All equipment shall be screened by such measures as determined appropriate by the Director of Planning or the Planning Commission at the time of plan approval.
37. The ground area covered by all the buildings shall not exceed in the aggregate 25 percent of the total site area.
38. No merchandise shall be displayed or stored outside of the building(s) or on sidewalk(s).

PLAN OF DEVELOPMENT

POD-17-09
 Quaker Steak and Lube –
 Redevelopment of 8000
 West Broad Street
 (POD-12-83 Rev.)

Willmark Engineering, PLC for Virginia Lube Partners at Broad Street, LLC: Request for approval of a plan of development, as required by Chapter 24, Section 24-106 of the Henrico County Code, to redevelop an existing one story 6,400 square foot restaurant building and construct a patio area addition and pick-up window for drive-through facilities. The 1.56-acre site is located on the north line of W. Broad Street (U.S. Route 250) at the northeast corner of the intersection of Colyer Street and W. Broad Street (U.S. Route 250), on parcel 764-752-2945. The zoning is M-1, Light Industrial District. County water and sewer. **(Brookland)**

Mrs. Jones - Is there anyone with us in opposition to POD-17-09, Quaker St—I have a hard time saying the name; I want to say Quaker State—Steak and Lube? There is no opposition. Good morning, Mr. Pambid.

Mr. Pambid - Good morning members of the Planning Commission. The proposal calls for the rehabilitation of an existing restaurant site and vacant building. This is formerly the Bennigan’s on Broad Street. As you can see, this is the current condition of the building; let me go through a couple of extra pictures here just to illustrate that. Included in the plan are a small addition for walk-in freezers and refrigerators, a pick-up lane and window, and an outdoor patio.

Staff has received revised plans in electronic format that show various changes pursuant to suggestions and comments. Several architectural changes have been made from the prototypical style, and this rendering will illustrate some of the colors that they came to us with originally. In the revised renderings, a base of several courses of red brick have been added, along with red brick columns around the entire building. Red brick planters have also been added along the patio area, and the developer has agreed to use a color other than stark white for the EIFS. This color has not yet been identified, but would most likely be a cream to light beige.

An integral part of the architectural elevations is a sign display in the shape of an arrow bearing the word “EAT” in capital letters. The revision shows a sign of similar

2171 proportions, but the bottom of the sign has been placed on a red brick base to match
2172 the brick on the main building.

2173
2174 For reference, I have photos of other stores from other locations. I have Newport News;
2175 this is a picture of that. I have Bloomsburg, Pennsylvania. That's an image, but I think it
2176 gets its point across. I also have Charleston, West Virginia.

2177
2178 Time limits would have to be waived should the Planning Commission choose to act on
2179 this plan. This concludes my presentation. I can now field any questions you may have
2180 regarding this POD. The developer, Grant Giltz, and the engineer, Mark Williams, are
2181 also here to address your questions.

2182
2183 Mr. Vanarsdall - Mr. Pambid, do you have everything you need to
2184 recommend this?

2185
2186 Mr. Pambid - The staff can recommend approval based on what's been
2187 submitted. I know that there were some ongoing discussions regarding the sign and
2188 maybe the building color, but I think that we've received sufficient assurance from Mr.
2189 Giltz regarding the building color, which I know initially was a main concern of staff.
2190 They've also shown the effort to provide additional brick.

2191
2192 Mr. Vanarsdall - How long have you had this?

2193
2194 Mr. Pambid - I've had that for—Well, I received that about ten minutes
2195 before the meeting started this morning.

2196
2197 Mrs. Jones - I'd like to just make sure I understood. In your illustrations
2198 that you showed us from other locations—

2199
2200 Mr. Pambid - Yes, ma'am.

2201
2202 Mrs. Jones - —it seems to me that there are certain elements that are not
2203 in all of these. For instance, the "EAT" sign, I didn't see on the other locations, did I?
2204 Did I miss that?

2205
2206 Mr. Pambid - Bloomsburg did not appear to have an "EAT" sign.

2207
2208 Mrs. Jones - It has an automobile.

2209
2210 Mr. Pambid - I does have a car on top. This is actually an older prototype
2211 building, and I think that Mr. Giltz would address that better. But no, this does not have
2212 an "EAT" sign. It may be just a function of the angle the picture was taken. This is
2213 another image of the Charleston, West Virginia, building. There is no "EAT" sign visible
2214 on this site either.

2215

2216 Mrs. Jones - So, the "EAT" sign is not a signature design point for this
2217 franchise.

2218
2219 Mr. Pambid I will let Mr. Giltz respond to that.
2220

2221 Mr. Jernigan - Mrs. Jones, I discussed this with Mr. Vanarsdall that right
2222 now on their signage, does the yellow arrow or the Quaker Steak really meet Code.
2223 Both of them are above the roof deck. I see Mr. Tyson is here from the Permit Center,
2224 so he might know.

2225
2226 Mr. Vanarsdall - I'm going to call on Mr. Tyson.
2227

2228 Mrs. Jones - All right.
2229

2230 Mr. Pambid - We actually have received revised architecturals—this was
2231 late in the afternoon yesterday—that show an increased roof height that would permit
2232 that signage. Again, as you stated, Mr. Tyson is also here to address questions of
2233 signage. Those architecturals were received late yesterday and were cursorily
2234 reviewed.

2235
2236 Mrs. Jones - Do you have them to show us?
2237

2238 Mr. Pambid - I do. If you'll just bear with me for a moment, I think I have
2239 them on the desktop here. This is a cross-section of the building that we received
2240 yesterday. As you can see, the roof height is along this line here. They did that in order
2241 to accommodate some signage, but I would think that would address the roof height
2242 issue in conjunction with the signs.

2243
2244 Mr. Jernigan - We haven't seen that.
2245

2246 Mr. Pambid - We did get this late yesterday afternoon, and it didn't make it
2247 in time to include.

2248
2249 Mr. Vanarsdall - I don't have any questions for Mr. Pambid, but I want to hear
2250 from Mr. Tyson. I just want to ask him one question.

2251
2252 Mr. Tyson - Good morning, Madam Chair, members of the Commission;
2253 it's nice to see you again.

2254
2255 Mrs. Jones - Good morning, Mr. Tyson.
2256

2257 Mr. Branin - Nice to see you, Mr. Tyson.
2258

2259 Mr. Vanarsdall - Tell me about the sign plan. You have it, but it's not in
2260 scale?
2261

2262 Mr. Tyson - Mr. Vanarsdall, we received a prospective sign package. As
2263 the Commission knows, signage is not generally covered under POD approval, but
2264 given the extent of the signage and the way it sort of fits into the architecture, Mr.
2265 Vanarsdall asked that I take a look at it beforehand. I received some PDF's that I don't
2266 think are actually to scale, so I couldn't measure their exact dimension. According to the
2267 plan that they submitted, however, they have a total of 175 square feet of signage. In
2268 this zoning district, they're permitted a maximum of 250 square feet of signage, and
2269 that's in the aggregate. That's attached and detached signage. One thing that doesn't
2270 show up on the plans that they've submitted to us is if there is going to be additional
2271 freestanding signage. I think there used to be a Bennigan's sign out on Broad Street on
2272 a pole. That isn't shown on their plan, so I haven't counted that. One thing I did notice
2273 is that on the "EAT" sign, because it is actually two-faced—you can read it coming
2274 either east or west—the zoning ordinance only requires you to count one face of it.
2275 They've actually counted two, so their signage that they are proposing is slightly less
2276 than they think they're proposing. Again, they are allowed 250 square feet, and have
2277 proposed slightly less than 170-some-odd square feet.

2278
2279 Again, the signage is not permitted above the roofline in this district. We had handled
2280 that on parapet walls in a couple of different ways in the past, either having that space
2281 completely conditioned all the way to the roof as an atrium for some other usable
2282 space. If they've moved the roof deck up to this point and the signage is below that
2283 point, then it would be considered under the roofline and would be permitted.

2284
2285 Mr. Vanarsdall - So you don't know what is going to become of the old
2286 Bennigan's sign?

2287
2288 Mr. Tyson - Again, this is not really part of your POD approval; it will
2289 come in as a separate sign package that we'll review in the Department of Community
2290 Development and work with them on getting their sign permits. So, at this stage, I can't
2291 really tell you, without seeing colored renderings and scale drawings that I can put a
2292 scale on, what their exact sign dimensions are going to be.

2293
2294 Mr. Branin - Would you define "roofline"?

2295
2296 Mr. Tyson - The Building Code defines "roof" as where the roof deck and
2297 membrane are located.

2298
2299 Mr. Branin - Not the parapet.

2300
2301 Mr. Tyson - No. It looks to be that would be the top.

2302
2303 Mr. Branin - Okay. Thank you.

2304
2305 Mr. Vanarsdall - Thank you. How long have you had that?

2306
2307 Mr. Tyson - I received these yesterday.

2308
2309 Mr. Vanarsdall - Thank you.
2310
2311 Mrs. Jones - Mr. Tyson, if the old Bennigan's sign becomes the new sign
2312 for this, will that affect this adversely?
2313
2314 Mr. Tyson - It will affect the square footage in this way. They are
2315 permitted 250 square feet of signage in total. Because it's at a corner, they can have
2316 two freestanding signs with a total square footage of 150 square feet in the aggregate.
2317 So, they could potentially do one 150-square-foot detached sign, or two 75-foot
2318 detached signs, but one would have to be on one frontage and one on the other.
2319 Whether or not this "EAT" sign counts as detached or attached depends on the
2320 construction of that element. Without seeing architectural elements, I don't know if it is
2321 attached to the canopy or not. If it is not attached, it counts as detached signage. They
2322 would not be able to use the Bennigan's tall pole unless they could make it meet the
2323 square footage requirement. So that's still sort of up in the air.
2324
2325 Mrs. Jones - I understand.
2326
2327 Mr. Vanarsdall - Thank you.
2328
2329 Mr. Tyson - Thank you.
2330
2331 Mr. Vanarsdall - Mr. Williams, will you come down to the podium?
2332
2333 Mr. Williams - My name is Mark Williams. I'm with Willmark Engineering.
2334
2335 Mr. Vanarsdall - Seems to me that this entire building, the whole building—
2336 not this one, but the one that we—I thought I had a picture of it.
2337
2338 Mr. Williams - Bennigan's?
2339
2340 Mr. Vanarsdall - It seems like to me the whole building is the corporate logo.
2341
2342 Mr. Williams - I think Mr. Giltz would be the best person to discuss—
2343
2344 Mr. Vanarsdall - The sign, the building, the colors, and the car—it seems like
2345 that's all building. Is that right?
2346
2347 Mr. Giltz - Good morning, Grant Giltz.
2348
2349 Mrs. Jones - Could you come up to the mic., please? Thank you.
2350
2351 Mr. Giltz - We do have our identifications on the building.
2352
2353 Mr. Vanarsdall - All your identification is on the building.

2354
2355 Mr. Giltz - Correct. Sure, we are trying to capture an image. We do
2356 have a unique concept that's definitely been a typical chain restaurant. In some
2357 instances, there is a car on our roof. So yes, to answer your question, there are images
2358 of Quaker's branding on the building. I understand the "EAT" arrow is a discussion of
2359 contention. I would like to just simply address the "EAT" arrow. I think that's the big
2360 issue. I guess if I could just ask one question. Are there any other issues about the
2361 building, aside from the arrow at this point, that maybe I could address, and then we
2362 can come back to the arrow, if that's okay?
2363
2364 Mr. Vanarsdall - You can't address anything else for me. Thank you.
2365
2366 Mr. Giltz - Thank you.
2367
2368 Mr. Vanarsdall - Mr. Williams, since you're the engineer on the job, I'm going
2369 to do something that you're not going to be very pleased with. I'm going to defer this
2370 case. I'll tell you why I am. I don't like what I see. I don't like the way everything came
2371 in late.
2372
2373 Mr. Williams - If I can address that.
2374
2375 Mr. Vanarsdall - I'm talking. I'm going to defer it. As you know, we don't have
2376 a meeting in August, so I'm going to defer it to September 10, 2009, which is not 60
2377 days, it's about 49 days. I want to then address again the "EAT" sign. I've already told
2378 Mr. Giltz—Mr. Giltz is, what, the general manager? I've already told him my
2379 uncomfortable feeling about that; it didn't seem to do any good.
2380
2381 Mr. Williams - I would like to state for the record. When we submitted this
2382 project, I met with Mr. Pambid. There were some concerns from staff regarding the
2383 elevations. We immediately addressed those concerns. We continued to work with
2384 Lee; I think he would be able to speak to that. As we continued to change the
2385 elevations, colors, adding brick, and making modifications, it became evident that there
2386 may have been more to it. So I pushed for the meeting on Friday that we had, which
2387 you were at. When we left that meeting on Friday, it was everybody's understanding
2388 that if a base, a brick base was on the "EAT" sign, and the square footage of the "EAT"
2389 sign was reduced, that would be acceptable. Those were actually some suggestions
2390 that staff had. So, that was on Friday, and it's only Wednesday. On Monday, I get a call
2391 from Lee, and there is indication that we needed to get rid of the "EAT" sign altogether.
2392 We made further improvements to the architectural, and I think there was a great deal
2393 of effort on a lot of people's part to provide the information to staff with very late notice.
2394 I feel that throughout the whole process we worked very hard to provide everything that
2395 was asked in a very short order. You had referenced that that information was
2396 presented to you late. The changes that are in the information that we gave to you
2397 weren't brought up until yesterday—or late Monday. So I'm not sure how much faster
2398 the information could have gotten to you.
2399

2400 Mr. Branin - I didn't write your name down. What's your name?
2401
2402 Mr. Williams - Mark Williams.
2403
2404 Mr. Branin - Okay. Mr. Williams, did you hear my case, how we spoke
2405 about how we work as one Commission and all of us work together, and all of us have
2406 the information? Do you know when I received 90% of this information?
2407
2408 Mr. Williams - No, sir.
2409
2410 Mr. Branin - When they handed it to me before the case started.
2411
2412 Mr. Williams - The original elevations were submitted with the plans.
2413
2414 Mr. Branin - We try to work together to get this done. He's not saying that
2415 you did anything wrong other than we don't have ample time to get it approved. We're
2416 not saying that you were 100% at fault because it's taking time; we just ran out of time
2417 to make a good evaluation.
2418
2419 Mr. Williams - Well, I—
2420
2421 Mr. Branin - It's not going to be under discussion because the
2422 Commissioner has decided he's going to defer it, which I'm going to second it because
2423 I'd like to look at it some more since my district is directly across the street.
2424
2425 Mr. Williams - Can I just ask one thing before we go through the deferral?
2426 Is there an opportunity because of certain time constraints—Is there another alternative
2427 to bring this before the Planning Commission sooner, perhaps at the night meeting?
2428 Correct me if I'm wrong, but that's two weeks from now.
2429
2430 Mr. Vanarsdall - Let me cut it off there and thank you for what you have
2431 done. I was in the same meeting on Friday. I am not comfortable with what this is. I
2432 have spoken with Mr. Giltz and told him my concerns. We'll defer it today, and you all
2433 can work on it. It makes a difference now that you said this building, the whole building,
2434 is really a corporate logo. So, I thank you, Mr. Williams. My motion is to defer case
2435 POD-17-09, Quaker Steak and Lube, until September 10, 2009.
2436
2437 Mr. Branin - Second.
2438
2439 Mrs. Jones - Motion by Mr. Vanarsdall, seconded by Mr. Branin. All in
2440 favor say aye. All opposed say no. The ayes have it; the motion passes.
2441
2442 At the request of the Commission, the Planning Commission deferred case POD-17-09,
2443 Quaker Steak and Lube, to its September 10, 2009 meeting.
2444

2445 **PLAN OF DEVELOPMENT**

2446
POD-20-09
Meadow Springs Run –
Meadow Road

Willmark Engineering, PLC for Meadow Road Development, LLC: Request for approval of a plan of development, as required by Chapter 24, Section 24-106 of the Henrico County Code, to construct 50 detached dwellings for sale with zero lot lines. The 29.91-acre site is located between the north line of I-64 and the south line of Meadow Road at its intersection with Chartwood Drive, on parcel 833-718-6524. The zoning is R-5AC, General Residential District (Conditional) and ASO, Airport Safety Overlay District. County water and sewer. **(Varina)**

2447
2448 Mrs. Jones - Do we have anyone with us this morning in opposition to
2449 POD-20-09, Meadow Springs Run? All right.

2450
2451 Mr. Garrison - Good morning, again.

2452
2453 Mrs. Jones - Good morning.

2454
2455 Mr. Jernigan - Good morning.

2456
2457 Mr. Garrison - The applicant is requesting approval of 50 age-restricted
2458 single-family homes in a gated zero lot line subdivision. You may recall the conditional
2459 approval for Meadow Springs was granted at the May 27, 2009 Planning Commission
2460 meeting. Today you are considering the POD.

2461
2462 Staff has received details of the amenities to be provided in the park; the details are
2463 located in your addendum. However, staff still has concerns that the patio provided is
2464 not adequate and has requested a cover or roof be provided. The applicant, Mr.
2465 Williams, is reluctant to agree to this and is here to present his case. Mr. Williams has
2466 also requested that the architectural elevations typically submitted with a POD be
2467 approved separately. Therefore, the architectural plans will come back for a public
2468 hearing at a later date.

2469
2470 Should the Commission act on this request, staff can recommend approval subject to
2471 the conditions listed in the agenda, and added condition #41 in the addendum that
2472 states architectural plans shall be approved by the Planning Commission prior to
2473 construction plan approval.

2474
2475 Staff and representatives of the applicant are available to answer any questions that
2476 you may have.

2477
2478 Mrs. Jones - Are there questions for Mr. Garrison? No? All right, thank
2479 you very much. Would you like to hear from the applicant?

2480

2481 Mr. Jernigan - Yes, ma'am.
2482
2483 Mrs. Jones - All right. Applicant, would you come forward and state your
2484 name?
2485
2486 Mr. Williams - My name is Jason Williams. I'm the managing partner for
2487 this project.
2488
2489 Mr. Jernigan - Mr. Williams, per our conversation yesterday, and Mr.
2490 Garrison, we added #41, which was the architectural plan can come back through. Also
2491 per our discussion on the amenities, I'm going to make this motion with it, that we will
2492 amend—we will do #9 amended, which is your landscaping package. When that
2493 comes back for approval, we will include amenities, which are the park benches or the
2494 gazebo, whatever we come up with. I told you at that point, after you had 15 units up
2495 and sold, that we would do that. Is that okay with you?
2496
2497 Mr. Williams - That's acceptable.
2498
2499 Mr. Jernigan - Okay. I don't have any more questions.
2500
2501 Mrs. Jones - All right. Are there any other questions for Mr. Williams?
2502
2503 Mr. Jernigan - Okay. Madam Chair, with that I will move for approval of
2504 POD-20-09, Meadow Springs Run on Meadow Road, subject to the conditions for
2505 developments of this type, with #9 amended, #29 through 40, the addition of #41 on the
2506 addendum, and staff approval.
2507
2508 Mr. Branin - Second.
2509
2510 Mrs. Jones - Motion by Mr. Jernigan, seconded by Mr. Branin. All in favor
2511 say aye. All opposed say no. The ayes have it; the motion passes.
2512
2513 The Planning Commission approved POD-20-09, Meadow Springs Run, subject to the
2514 annotations on the plans, the standard conditions attached to these minutes for
2515 developments of this type, and the following additional conditions:
2516
2517 9. AMENDED - A detailed landscaping plan for the common area, including the
2518 pocket park, shall be submitted to the Department of Planning for review and
2519 Planning Commission approval prior to the issuance of the sixteenth lot
2520 occupancy permit.
2521 29. The subdivision plat for Meadow Springs Run shall be recorded before any
2522 building permits are issued.
2523 30. A concrete sidewalk meeting County standards shall be provided along the south
2524 side of Meadow Road.
2525 31. Details for the gate and locking device at the entrance road shall be submitted
2526 for review by the Traffic Engineer, Police and approved by the County Fire

- 2527 Marshall. The owner or owner's contractor shall contact the County Fire
2528 Marshall prior to completion of the fence installation to test and inspect the
2529 operations of the gates. Evidence of the Fire Marshall's approval shall be
2530 provided to the Department of Planning by the owner prior to issuance of
2531 occupancy permits.
- 2532 32. The proffers approved as a part of zoning case C-49C-07 shall be incorporated
2533 in this approval.
- 2534 33. A note in bold lettering shall be provided on the erosion control plan indicating
2535 that sediment basins or traps located within buildable areas or building pads
2536 shall be reclaimed with engineered fill. All materials shall be deposited and
2537 compacted in accordance with the applicable sections of the state building code
2538 and geotechnical guidelines established by the engineer. An engineer's report
2539 certifying the suitability of the fill materials and its compaction shall be submitted
2540 for review and approval by the Director of Planning and Director of Public Works
2541 and the Building Official prior to the issuance of any building permit(s) on the
2542 affected sites.
- 2543 34. The pavement shall be of an SM-2A type and shall be constructed in accordance
2544 with County standard and specifications. The developer shall post a defect bond
2545 for all pavement with the Department of Planning - the exact type, amount and
2546 implementation shall be determined by the Director of Planning, to protect the
2547 interest of the members of the Homeowners Association. The defect bond shall
2548 remain in effect for a period of three years from the date of the issuance of the
2549 final occupancy permit. Prior to the issuance of the last Certificate of
2550 Occupancy, a professional engineer must certify that the roads have been
2551 designed and constructed in accordance with County standards.
- 2552 35. The owners shall not begin clearing of the site until the following conditions have
2553 been met:
- 2554 (a) The site engineer shall conspicuously illustrate on the plan of
2555 development or subdivision construction plan and the Erosion and
2556 Sediment Control Plan, the limits of the areas to be cleared and the
2557 methods of protecting the required buffer areas. The location of utility
2558 lines, drainage structures and easements shall be shown.
- 2559 (b) After the Erosion and Sediment Control Plan has been approved but prior
2560 to any clearing or grading operations of the site, the owner shall have the
2561 limits of clearing delineated with approved methods such as flagging, silt
2562 fencing or temporary fencing.
- 2563 (c) The site engineer shall certify in writing to the owner that the limits of
2564 clearing have been staked in accordance with the approved plans. A
2565 copy of this letter shall be sent to the Department of Planning and the
2566 Department of Public Works.
- 2567 (d) The owner shall be responsible for the protection of the buffer areas and
2568 for replanting and/or supplemental planting and other necessary
2569 improvements to the buffer as may be appropriate or required to correct
2570 problems. The details shall be included on the landscape plans for
2571 approval.

- 2572 36. The location of all existing and proposed utility and mechanical equipment
2573 (including HVAC units, electric meters, junction and accessory boxes,
2574 transformers, and generators) shall be identified on the landscape plans. All
2575 equipment shall be screened by such measures as determined appropriate by
2576 the Director of Planning or the Planning Commission at the time of plan
2577 approval.
- 2578 37. Roof edge ornamental features that extend over the zero lot line, and which are
2579 permitted by Section 24-95(i)(1), must be authorized in the covenants.
- 2580 38. Eight-foot easements for construction, drainage, and maintenance access for
2581 abutting lots shall be provided and shown on the POD plans.
- 2582 39. Building permit request for individual dwellings shall each include two (2) copies
2583 of a layout plan sheet as approved with the plan of development. The developer
2584 may utilize alternate building types providing that each may be located within the
2585 building footprint shown on the approved plan. Any deviation in building footprint
2586 or infrastructure shall require submission and approval of an administrative site
2587 plan.
- 2588 40. Windows on the zero lot line side of the dwelling can only be approved with an
2589 exception granted by the Building Official and the Director of Planning during the
2590 building permit application process.
- 2591 41. **ADDED** - Architectural plans shall be submitted and approved by the Planning
2592 Commission prior to construction plan approval.

2593
2594 Mr. Emerson - Madam Chair, that takes us to page 19 of your regular
2595 agenda to the item that was taken from the expedited agenda, POD-21-09.

2596
2597 **PLAN OF DEVELOPMENT**

2598
POD-21-09
Healthsouth Richmond
Rehabilitation Hospital
Addition – 5700 Fitzhugh
Avenue
(POD-36-91 Rev.)

Timmons Group for Healthsouth Corporation: Request
for approval of a plan of development, as required by
Chapter 24, Section 24-106 of the Henrico County Code,
to construct one-story 3,700 square foot addition with 9
private bedrooms and one support room to an existing
healthcare facility. The 5.74-acre site is located on the
southeast corner at the intersection of Libbie and Fitzhugh
Avenues, on parcel 770-738-7063. The zoning is R-5,
General Residence District. County water and sewer.
(Brookland)

2599
2600 Mrs. Jones - Do we have the folks in the audience who wish to ask
2601 questions of this POD? Okay. I lost you for a moment. Ms. Berndt, you can begin.

2602
2603 Ms. Berndt - Thank you. Good morning. The complete expansion
2604 increases the existing rehabilitation center’s capacity by nine bedrooms. The plan also
2605 proposes an additional support room and emergency generator for the existing 40-
2606 bedroom rehabilitation hospital. That would make 49 beds in total. The 3,700-square-
2607 foot expansion features an all-brick façade to match the existing building, and the

2608 applicant has committed to providing a brick generator enclosure also to match the
2609 building.

2610
2611 At the Commissioner's request, staff has added condition #31 in the addendum that
2612 limits the generator testing to Monday through Friday between 9 a.m. and 4 p.m.

2613
2614 In compliance with the Commission's previous approvals for this development on POD-
2615 36-91, Jeff Reskin of Healthsouth has provided evidence that he contacted the
2616 presiding officer of Monumental Floral Gardens Civic Association prior to filing this
2617 request. Leading up to this morning, staff had not received any calls of opposition or
2618 concern, but we do have some people in the audience—one in particular—who have
2619 some concerns. Staff has had an opportunity to discuss with the applicant what these
2620 concerns may be, which include a fence. We had heard earlier a request for a fence.
2621 There is an existing fence along that property line now, so there's a little confusion
2622 there. I'll let the applicant address that. Also, there was discussion about the adequacy
2623 of parking. The parking requirement for this is one space for every two beds. That
2624 would make 25 spaces required by Code. The applicant shows 93 spaces on site
2625 existing. That's almost four times the parking requirement. Also, there is parking
2626 permitted along Fitzhugh Avenue on portions adjacent to the site so there is street
2627 parking, and it is permitted.

2628
2629 Staff recommends approval of this request, subject to the annotations on the plan,
2630 standard conditions for developments of this type, and additional conditions 29 through
2631 31. The applicant's representatives are here, Mitch Mitchell from Timmons and Dave
2632 Ruskin from Healthsouth. I'm happy to answer any questions that the Commission may
2633 have of me as well.

2634
2635 Mrs. Jones - Questions from the Commission?

2636
2637 Mr. Vanarsdall - I think the opposition is about a fence.

2638
2639 Ms. Berndt - There was opposition about a fence, but I think, perhaps,
2640 there were some other issues in talking during recess with the applicant.

2641
2642 Mr. Vanarsdall - Did he go away?

2643
2644 Ms. Berndt - The fence gentleman has left. She may represent both of
2645 them.

2646
2647 Mr. Vanarsdall - This is being recorded; that's why we ask you to come to the
2648 microphone. State your name.

2649
2650 Ms. Sword - I'm Suzanne Sword, and I own the property at 1402 Lake
2651 Avenue. I have—the gentleman who was here about the fence—I have his name. Do
2652 you want his name?

2653

2654 Mrs. Jones - Please.

2655

2656 Ms. Sword - It was Khanh Le. K-h-a-n-h. And last name, Le, L-e. He
2657 resides at 5710 Cutshaw Avenue. He was the man who was requesting a fence to be
2658 built there. I know nothing more than that. He had to leave to go to work, so I said I
2659 would give that information to you.

2660

2661 My concerns are the fact—and I don't know if you're aware of the millions of dollars that
2662 have been put into the sewage problems that have existed in this area for years,
2663 especially along Lake Avenue. Whenever we would get a heavy rain, basements would
2664 back up with sewage. This is a big problem which the County has addressed. It's such
2665 extensive repair work that it has to be done over many years. I'm not sure exactly
2666 where they are in the process of fixing this. I just want to make sure that since you're
2667 adding more sewage here with this that the—

2668

2669 Mr. Vanarsdall - They are in your neighborhood.

2670

2671 Ms. Sword - Right. They are repairing it, but I want to make that—

2672

2673 Mr. Vanarsdall - They have been, but I don't know what—

2674

2675 Ms. Sword - I'm not sure that they have completed all the work that this
2676 additional sewage—

2677

2678 Mr. Vanarsdall - Here's what I'd like for you to do. Give your name, address,
2679 and phone number and everything to Ms. Berndt. We'll have Public Works come out
2680 and look at it.

2681

2682 Ms. Sword - Okay.

2683

2684 Mr. Vanarsdall - And see what they can do.

2685

2686 Ms. Sword - I'm also concerned about the parking. I know she just
2687 addressed this. I understand that they lease ten spaces across the street at that parking
2688 area, so obviously they don't have enough parking. I just want to make sure that
2689 parking is not going to continue going down Fitzhugh, which would be on my property.

2690

2691 Mr. Vanarsdall - You're saying that they don't have enough parking now?

2692

2693 Ms. Sword - They are already parking on Fitzhugh and have also leased,
2694 as I understand it, ten spaces from the medical center across the street. I wonder do
2695 you really have enough parking spaces. I know you do by Code, but—

2696

2697 Ms. Berndt - I don't go out there every day. I don't drive by there often.
2698 On my site visit, I did notice that people do park on Fitzhugh, and like I said, that was
2699 permitted. There is permitted parking along Fitzhugh. There is no prohibition of parking

2700 on that street. However, while I did observe parking on Fitzhugh, there were empty
2701 spaces in the front lot. So, I think it's a preference of the people who are parking on that
2702 street. Maybe they're going across the street to where those other spaces are leased.
2703 I wasn't aware of the lease agreement, but that isn't figured into the 93 spaces that they
2704 are providing, which are well above and beyond Code.
2705

2706 Mr. Vanarsdall - This is what they were doing across from St. Mary's Hospital
2707 on Morningside, the one that is parallel with Monument. People visiting were parking
2708 over there. I think that's what it is now, isn't it?
2709

2710 Ms. Berndt - I couldn't say for sure.
2711

2712 Mr. Vanarsdall - Don't you think it would be the visitors?
2713

2714 Ms. Berndt - Are you asking if the visitors are the ones parking on the
2715 street? I would suppose so, but it could be anybody, though. It's permitted parking.
2716

2717 Mr. Vanarsdall - Would you make a note to have Traffic look into that for her?
2718 Thank you for coming.
2719

2720 Mrs. Jones - Could we discuss the fence a little bit? I'm confused about
2721 the fence. There is an existing fence?
2722

2723 Mr. Vanarsdall - There's a fence back there.
2724

2725 Ms. Berndt - I think the gentleman from Healthsouth and Mitch Mitchell
2726 should address that. They've actually gone out there and looked at the fence, so they
2727 have a little more information. I haven't seen the fence personally, but I've been told
2728 that there is a fence back there and that it is in good condition.
2729

2730 Mr. Vanarsdall - I saw a fence back there. So he wants an additional fence.
2731 Come on down and state your name.
2732

2733 Mr. Mitchell - Good morning. Mitch Mitchell with Timmons Group. There is
2734 an existing fence; we surveyed the fence. There is an eight-foot fence along the back
2735 rear of the property between the residential. As you get further away from the
2736 improvements, it does step down to a four-foot fence. Mr. Ruskin stated earlier that he'd
2737 be willing to work on it if there's an additional fence needed or increasing the height of
2738 the four-foot fence or what have you.
2739

2740 Mr. Vanarsdall - So he would be willing to take care of that spot.
2741

2742 Mr. Mitchell - Yes, sir. I'm not sure exactly what the concern is, but he'd be
2743 willing to work with them.
2744

2745 Mrs. Jones - Can you refresh my memory? What kind of fence is it?

2746
 2747 Mr. Mitchell - It's a wood fence.
 2748
 2749 Mr. Vanarsdall - It's a wooden board fence. It's like a privacy fence.
 2750
 2751 Mr. Mitchell - It's heavily landscaped, too, so there's quite a buffer in
 2752 there.
 2753
 2754 Mrs. Jones - I missed it when I went by to look.
 2755
 2756 Mr. Vanarsdall - Ms. Berndt, should we put a condition on here about the
 2757 fence?
 2758
 2759 Ms. Berndt - We could do #9 amended, and it would be on the landscape
 2760 plan.
 2761
 2762 Mr. Vanarsdall - Thank you. Are you ready for a motion?
 2763
 2764 Mrs. Jones - No more questions? Okay.
 2765
 2766 Mr. Vanarsdall - I move POD-21-09, Healthsouth Richmond Rehabilitation
 2767 Hospital Addition, be approved with the annotations on the plan, standard conditions for
 2768 developments of this type, conditions 29 and 30, 31 added on the addendum, and I
 2769 want to add #9 amended.
 2770
 2771 Mr. Jernigan - Second.
 2772
 2773 Mrs. Jones - Motion by Mr. Vanarsdall, seconded by Mr. Jernigan. All in
 2774 favor say aye. All opposed say no. The ayes have it; the motion passes.
 2775
 2776 The Planning Commission approved POD-21-09, Healthsouth Richmond Rehabilitation
 2777 Hospital Addition, subject to the annotations on the plans, the standard conditions
 2778 attached to these minutes for developments of this type, and the following additional
 2779 conditions:
 2780
 2781 9. AMENDED - A detailed landscaping plan shall be submitted to the Department
 2782 of Planning for review and Planning Commission approval prior to the issuance
 2783 of any occupancy permits.
 2784 29. Outside storage shall not be permitted.
 2785 30. The location of all existing and proposed utility and mechanical equipment
 2786 (including HVAC units, electric meters, junctions and accessory boxes,
 2787 transformers, and generators) shall be identified on the landscape plan. All
 2788 building mounted equipment shall be painted to match the building, and all
 2789 equipment shall be screened by such measures as determined appropriate by
 2790 the Director of Planning or the Planning Commission at the time of plan
 2791 approval.

2792 31. **ADDED** - The hours of testing for the emergency generator shall be restricted to
2793 Monday through Friday between the hours of 9 a.m. and 4 p.m.

2794 **PLAN OF DEVELOPMENT**

2796

POD-19-09
Glen Allen Baptist Church
Addition – 3028 Mountain
Road

Hulcher and Associates, Inc. for Glen Allen Baptist Church: Request for approval of a plan of development, as required by Chapter 24, Section 24-106 of the Henrico County Code, to construct a two-story 3,473 square foot addition to an existing church with offices, elevator and classrooms. The 10.50-acre site is located on the north line of Mountain Road, approximately 280 feet east of Warren Road, on parcels 769-768-6414, 8344 and 770-768-1630. The zoning is R-2A, One Family Residential District. County water and sewer. **(Brookland)**

2797

2798 Mrs. Jones - Is anyone in the audience opposed to POD-19-09, Glen
2799 Allen Baptist Church Addition? No opposition. Hello, Mr. Ward.

2800

2801 Mr. Ward - Hello. This request is to construct a two-story, 3,473-square-
2802 foot classroom and office addition onto the northern elevation of Glen Allen Baptist
2803 Church. We do have a revised plan that will show us the new layout. Since preparation
2804 of the agenda, staff received a revised plan showing adequate parking and adequate
2805 drive aisle widths. If you go out there today, this will be a little bit wider, and this will be
2806 marked off as pedestrian access here. There will be additional parking provided in the
2807 back of the building. As you can see, this is where the addition will go. Also, staff
2808 wanted to note on the elevations for the building addition, you can see here that brick
2809 on the northern side will be proposed with the future expansion, which will come back,
2810 hopefully, for subsequent Planning Commission review and approval. Today we are
2811 asking for EIFS. Even though staff has labeled it as, "add brick," we're going to leave
2812 that as EIFS.

2813

2814 Staff can recommend approval of the POD, subject to the revised plans, standard
2815 conditions for developments of this type, annotations on the plan, and conditions 29
2816 and 30 added on page three of the addendum. The applicant is here, as well as his
2817 representative, Charles Hankins, engineer, and Henry Harris, the architect. I'd be
2818 happy to answer any questions you may have of me.

2819

2820 Mrs. Jones - Any questions for Mr. Ward?

2821

2822 Mr. Vanarsdall - I don't have any.

2823

2824 Mrs. Jones - All right, thank you. Did you want to hear from the
2825 applicant?

2826

2827 Mr. Ward - And a waiver of time limits for the revised plan is needed.

2828
2829 Mr. Vanarsdall - Thank you, Mr. Ward. I move to waive the time limits on
2830 POD-19-09, Glen Allen Baptist Church Addition.

2831
2832 Mr. Branin - Second.

2833
2834 Mrs. Jones - Motion by Mr. Vanarsdall, seconded by Mr. Branin. All in
2835 favor say aye. All opposed say no. The ayes have it; the motion passes.

2836
2837 Mr. Vanarsdall - Now, I move for approval of POD-19-09, Glen Allen Baptist
2838 Church Addition, with conditions 29 and 30 on the addendum, and annotations on the
2839 plan. Right in the middle it says, "In addition, staff recommends an all brick northern
2840 façade to match the existing building." I want to delete that. We won't require that. I
2841 received a call from one of the good members, Scott Brennan, asking to take that off.
2842 The collection plate was a little slower this year than last due to the downturn.

2843
2844 Mrs. Jones - We have a motion by Mr. Vanarsdall.

2845
2846 Mr. Branin - Second.

2847
2848 Mrs. Jones - We have a second by Mr. Branin. All in favor say aye. All
2849 opposed say no. The ayes have it; the motion passes.

2850
2851 The Planning Commission approved POD-19-09, Glen Allen Baptist Church Addition,
2852 subject to the annotations on the plans, the standard conditions attached to these
2853 minutes for developments of this type, and the following additional conditions:

2854
2855 29. **ADDED** - The right-of-way for widening of Mountain Road as shown on approved
2856 plans shall be dedicated to the County prior to any occupancy permits being
2857 issued. The right-of-way dedication plat and any other required information shall
2858 be submitted to the County Real Property Agent at least sixty (60) days prior to
2859 requesting occupancy permits.

2860 30. **ADDED** - The location of all existing and proposed utility and mechanical
2861 equipment (including HVAC units, electric meters, junctions and accessory
2862 boxes, transformers, and generators) shall be identified on the landscape plan.
2863 All building mounted equipment shall be painted to match the building, and all
2864 equipment shall be screened by such measures as determined appropriate by
2865 the Director of Planning or the Planning Commission at the time of plan
2866 approval.

2867

2868 **SUBDIVISION**

SUB-13-09
Forest Ridge
(June 2009 Plan) –
Resubdivision of Lot 5,
Block G – 8609
Seldondale Lane

Vanasse Hangen Brustlin, Inc. and McGuire Woods, LLP for Richmond Montessori School: The 0.326-acre site proposed for a subdivision of 1 single-family home is located along the south line of Seldondale Lane, approximately 200 feet west of its intersection with Ridgeley Lane, on parcel 752-737-3498. The zoning is R-3, One Family Residence District. County water and sewer. **(Tuckahoe) 1 Lot**

2869
2870 Mrs. Jones - Do we have anyone in the audience in opposition to SUB-
2871 13-09, Forest Ridge (June 2009 Plan)? All right. Hello, Mr. Greulich.

2872
2873 Mr. Greulich - Just about good afternoon, Madam Chair, Planning
2874 Commission members. When an existing lot in a subdivision is proposed to be re-
2875 subdivided to create one or more new lots, it is required to go before the Planning
2876 Commission for their review and action. The applicant is before you today requesting
2877 such a re-subdivision. They are requesting to re-subdivide the existing 0.326-acre
2878 parcel, 8609 Seldondale Lane, that is part of the existing Forest Ridge subdivision. Of
2879 this total, it is proposed that 0.26 acres will become a lot that includes the existing
2880 home. The configuration and setbacks for this proposed lot meet all Code requirements
2881 for a residential lot in R-3 zoning; therefore, it would be a legal lot. The remaining
2882 0.063-acre portion of the existing lot will also be a legal lot that is proposed to be
2883 consolidated with the existing Montessori parcel in the future.

2884
2885 As the proposed re-subdivision meets all Code requirements, staff can recommend
2886 approval subject to standard conditions for subdivisions of this type, and the additional
2887 conditions 13 and 14 as stated in the staff report. Staff and representatives of the
2888 applicant are present this morning to answer any questions you may have.

2889
2890 Mr. Branin - Thank you.

2891
2892 Mrs. Jones - Thank you, Mr. Greulich. We have learned about legal
2893 subdivisions—at least I have—through this process. Basically, your review has been
2894 that it meets the subdivision requirements.

2895
2896 Mr. Greulich - Yes, ma'am.

2897
2898 Mrs. Jones - Okay. I think it's an interesting combination of parcels. I'll let
2899 the applicant speak to that. I appreciate all the work that you've done for this and how
2900 you've tried to cross all of the various points that were brought up at a very well-
2901 attended community meeting. Thank you for your help so that I could understand this
2902 case. All right. I'd like Ms. Freye to come forward, please.

2903

2904 Ms. Freye - Good afternoon, Madam Chair, members of the
2905 Commission. My name is Gloria Freye. I'm an attorney from McGuireWoods here on
2906 behalf of Richmond Montessori School. The head of the school, Suzanne Gregory, is
2907 also here as well.

2908
2909 This request is a little unusual. Richmond Montessori School is located on one side of
2910 this property, and the Or Atid Synagogue property is on the other side. The Richmond
2911 Montessori School has a contract to purchase the synagogue property. Schools are
2912 permitted in A-1 if it is five acres. The synagogue property came in just under five acres.
2913 The Richmond Montessori School happens to own Lot 5, which would be that middle
2914 piece of property. By carving out this 0.063-acre portion, it will allow them to
2915 consolidate the three parcels, and use the synagogue property as an extension of their
2916 school. They've actually had a path going across the corner of Lot 5 for about four
2917 years. So the intent on the use of that primarily is for the consolidation to allow them to
2918 be able to legally use the property for a school but also to restrict it for pedestrian
2919 access, to have a path across the corner of that property for students and faculty to
2920 cross from one property to the other.

2921
2922 Mrs. Jones - We had a very interesting citizen meeting. I actually was
2923 very pleased to see the input, because I think it will guide this development very nicely
2924 as it moved forward. There were some good points raised. Would you just address, on
2925 record, a couple of the things that were mentioned so that as we consider this
2926 subdivision, we at least have the bigger picture in mind?

2927
2928 Ms. Freye - The bigger picture being that at some point, the school may
2929 be coming back to Henrico County with a plan of development showing site
2930 improvements to the synagogue property. Part of the discussion at the citizen meeting
2931 was to assure that when the plan of development comes forward that there is no
2932 vehicular access from the synagogue property, particularly through Seldondale Lane.
2933 Also that there are adequate buffers that are provided and barriers that would restrict
2934 vehicular traffic as well. Fencing was an issue that came up as well; that would be
2935 addressed.

2936
2937 Mrs. Jones - In my notes, I did want you to touch on the relocation of the
2938 existing path should this subdivision go through.

2939
2940 Ms. Freye - Yes.

2941
2942 Mrs. Jones - I think we have a conceptual plan of that.

2943
2944 Ms. Freye - Yes. It is a sketch. At this point, there is actually a shed on
2945 that property, on the tip of Lot 5. That shed is either going to be moved onto the new
2946 Lot 5, or just taken away altogether. The path winds around there at this point. We
2947 would be shifting the path more centrally through the area. The surveyors have already
2948 been out to the property to locate and stake the new property line. The fence contractor
2949 has already been there putting the new fence along the new property line. On this

2950 sketch, we're showing where the fence generally would be located and the landscaping
2951 that would be added on both sides of the fence and both sides of the path.

2952
2953 Mrs. Jones - I think it's helpful to know that there has been real
2954 consideration given to this because the safety of the students and the teachers, and the
2955 proximity to Parham Road, and the landscaping, and the visuals to the neighbors—
2956 they're all part of the consequence of having this subdivision approved. So, I think it's
2957 important that we talk about them here.

2958
2959 The traffic, the ingress/egress. There are existing ingresses/egresses on the Or Atid
2960 property, so we're not talking about anything new.

2961
2962 Ms. Freye - No.

2963
2964 Mrs. Jones - Relocation of the path. The residential parcel being a legal
2965 lot, athletic fields, is not a question at this point?

2966
2967 Ms. Freye - No, ma'am.

2968
2969 Mrs. Jones - And screening, buffers? A swing set has come up. We're
2970 simply going to have to tackle all of this at POD.

2971
2972 Ms. Freye - Yes, ma'am. We've made note of that so that all of those
2973 issues will be addressed when a plan of development is brought forward.

2974
2975 Mrs. Jones - All right. I will say I've had calls and discussions with some
2976 folks from Or Atid who are as enthused about this as the Montessori School is. I think
2977 it's a really nice opportunity for the Montessori School to obtain extra area. So, I
2978 certainly hope that all of this proceeds well for all parties concerned.

2979
2980 Ms. Freye - Yes, thank you.

2981
2982 Mrs. Jones - Are there any other questions before Ms. Freye leaves the
2983 podium? Okay, thank you.

2984
2985 Ms. Freye - Thank you.

2986
2987 Mrs. Jones - I keep thinking I have another question, and it's afternoon
2988 and I think my brain has stopped, so. At this point, then, I will make a motion that we
2989 approve SUB-13-09, Forest Ridge (June 2009 Plan). This would be subject to standard
2990 conditions for subdivisions served by public utilities, and the additional conditions 13
2991 and 14.

2992
2993 Mr. Vanarsdall - Second.

2994

2995 Mrs. Jones - Motion by Mrs. Jones, seconded by Mr. Vanarsdall. All in
2996 favor say aye. All opposed say no. The ayes have it; the motion passes.

2997
2998 The Planning Commission granted conditional approval to SUB-13-09, Forest Ridge
2999 (June 2009 Plan), subject to the standard conditions attached to these minutes for
3000 subdivisions served by public utilities, the annotations on the plans, and the following
3001 additional conditions:

- 3002
3003 13. Each lot shall contain at least 11,000 square feet.
3004 14. The final plat for recordation shall contain information showing The Chesapeake
3005 Bay Preservation areas, if any, in accordance with Chapter 19, Section 19-72 (18),
3006 of the Henrico County Code, as determined by the Director of Public Works.

3007
3008 **PLAN OF DEVELOPMENT**

3009
POD-75-05 **Bradley Gardner for Oakley Center, LLC and Lampe
Oakleys Center Phase II – Management Company:** Request for approval of
Reconsideration of architectural plans, as required by Chapter 24, Section 24-
Architecturals – 4190 106 of the Henrico County Code, to reconsider a condition
Oakleys Court relating to building materials. The 15.076-acre site is
located at the southwest corner of Oakley's Lane and
Oakley's Place, on part of parcel 816-721-1410. The
zoning is M-2C, General Industrial District (Conditional)
and ASO, Airport Safety Overlay District. County water
and sewer. **(Fairfield)**

3010
3011 Mrs. Jones - Do we have anyone with us this morning [inaudible; static]—
3012 Mr. Pambid, you have an electric personality.

3013
3014 Mr. Vanarsdall - You have so much electricity in you now.

3015
3016 Mrs. Jones - Is anyone here in opposition to POD-75-05, Oakleys Center
3017 Phase II – Reconsideration of Architecturals? All right.

3018
3019 Mr. Pambid - Good afternoon, members of the Commission. The applicant
3020 wishes to amend Condition #31 of POD-75-05 to not require brick on the east elevation
3021 of Building 2 only. The substitute color for the east elevation of Building 2 would be a
3022 dark red, and the material would be metal sheeting. The developer is also proposing to
3023 increase landscaping along Oakleys Place behind Building 2. Staff recommends that
3024 the condition be amended, and all other conditions will remain as approved originally.

3025
3026 This concludes my presentation, and I can now field any questions you may have
3027 regarding this. The developer's representative, Andrew Bowman with Balzer and
3028 Associates, is here to answer your questions as well.

3029
3030 Mr. Vanarsdall - I have no questions.

3031
3032 Mrs. Jones - I'm sure Mr. Archer has been over this case quite diligently
3033 and is content with the outcome.
3034
3035 Mr. Vanarsdall - I don't need to hear from the applicant, so, I'm ready for a
3036 motion. Thank you, Mr. Pambid.
3037
3038 Mr. Pambid - Thank you.
3039
3040 Mr. Vanarsdall - I move that POD-75-05, Oakleys Center Phase II –
3041 Reconsideration of Architecturals, be approved with Condition #31 (sections a, b, and
3042 c), and all other conditions will remain as approved originally.
3043
3044 Mr. Branin - Second.
3045
3046 Mrs. Jones - Motion by Mr. Vanarsdall, seconded by Mr. Branin. All in
3047 favor say aye. All opposed say no. The ayes have it; the motion passes.
3048
3049 The Planning Commission approved POD-75-05, Oakleys Center Phase II –
3050 Reconsideration of Architecturals, subject to the terms and conditions numbered 1
3051 through 30 of the original POD-75-05 approved December 14, 2005, and the following
3052 amendment to original condition number 31:
3053
3054 31. The building exteriors shall be provided with brick on the following elevations:
3055 a. Buildings 1 and 4 east and north elevations
3056 b. Buildings 5 through 11 all sides except rear
3057 c. Building 2 north elevation
3058
3059 Mr. Emerson - Madam Chair, that completes your public hearing agenda for
3060 today. The next item on your agenda is a work session. It is a presentation regarding
3061 potential amendments to the zoning and subdivision ordinances regarding street
3062 frontage requirements.
3063
3064 Mr. Branin - Thank you, sir.
3065
3066 Mrs. Jones - May I ask the Commission, do you feel you'd like to have a
3067 five-minute break, or shall we continue?
3068
3069 Mr. Branin - Push on.
3070
3071 Mrs. Jones - Okay? All right. Mr. Blankinship, you are up.
3072
3073 Mr. Blankinship - Good afternoon, Madam Chair, members of the
3074 Commission.
3075
3076 Mr. Vanarsdall - Good morning—afternoon.

3077

3078 Mrs. Jones - While Mr. Blankinship is looking for his PowerPoint, I'd like
3079 to say good morning—or good afternoon—to Ms. Dwyer, the Board of Zoning Appeals
3080 Chairman. Thank you. Nice to have you here.

3081

3082 Mr. Blankinship - Madam Chair, we have been working on this amendment for
3083 quite some time. The current requirement you see on the screen before you is that 50
3084 feet of public street frontage is required for any lot to be used for dwelling purposes.
3085 That provision has been in the County Code since 1960. From 1960 until about 2004,
3086 the relief from that requirement came through the Board of Zoning Appeals in the form
3087 of a variance. We went back to 1999 in our research, and from 1999 until 2004, they
3088 approved, on average, 22 cases per year—about 2 per month—of variances from the
3089 public street frontage requirement. In 2004 and 2005, there was a Virginia Supreme
3090 Court case that we refer to as the Cochran Decision. The Cochran Decision clarified,
3091 and in some ways narrowed, the Board of Zoning Appeals' authority to grant variances.
3092 Since 2005, it has been much more difficult for them to grant variances. They saw
3093 quite a few cases in 2005 and 2006 regarding requests to build on a lot that had no
3094 public street frontage, or in many cases to create a new lot for the purpose of building a
3095 dwelling that would have no public street frontage. There was some tension and
3096 concern on the Board of Zoning Appeals that they were no longer able to grant these
3097 variances, even in cases where they felt they were justified. So, the Chairman of the
3098 Board of Zoning Appeals wrote a letter to the Chairman of the Board of Supervisors,
3099 requesting that the Board take the matter under advisement and consider changing the
3100 Code in order to address this issue.

3101

3102 There are several good reasons why we require public street frontage for every
3103 dwelling; you can see some of them on the screen there before you: necessary
3104 access for fire and rescue and other public safety vehicles; access for school buses
3105 and mail delivery; and it gives you a location for sidewalks, storm drains, and other
3106 utilities. They ensure orderly development and the appropriate orientation of houses. It
3107 also makes it clear that the County is going to maintain the road so that everyone
3108 knows that their road is going to be maintained for them, whereas private streets, those
3109 all become matters of concern.

3110

3111 While we feel that it's reasonable to require in the general case that every residence
3112 front on a public street, there does seem to be some need, particularly in the case of
3113 family divisions, to allow for some relief from that requirement. As I mentioned, in the
3114 past that relief came in the form of a variance. That form of relief is no longer really
3115 available to the Board of Zoning Appeals.

3116

3117 So, there you see the history that I've described for you briefly already.

3118

3119 The direction that we received from the Board of Supervisors and from the
3120 administration was that this change should only apply to family divisions, and not
3121 everybody is happy about that. At least one member of the Board of Zoning Appeals

3122 was hoping that they would have a broader authority, but that was the consensus
3123 position that was arrived at.

3124
3125 Just to remind you how family divisions work, they are excluded from the definition of
3126 the term *subdivision*, in the Subdivision Ordinance. So, a family division does not have
3127 to come before the Planning Commission for review and approval. However, it must
3128 meet all the zoning requirements. They're exempt from Subdivision, but not from the
3129 Zoning Ordinance. So, they still have to provide the 50 feet of public street frontage,
3130 and that's what's causing this conflict, that they're exempt from one set of regulations
3131 but not from the other. The property owner can record a deed with or without a plat,
3132 conveying part of their property to a family member. Nobody in the Planning
3133 Department reviews it or approves it. So, these do sometimes create lots that are not
3134 buildable because we have no opportunity, in some cases, to review them and make
3135 sure that the lots are buildable. That normally comes up when they apply for a Building
3136 Permit. The Permit Center staff will check the plat that's submitted with the Building
3137 Permit against the land records, and if they find a discrepancy, then they have to figure
3138 out how that lot was created. So, we do sometimes run into situations where the lot was
3139 created many years ago and conveyed to a family member. They've held it for 10, 15,
3140 20 years. They come in for a building permit, and they're told that it has never met the
3141 zoning requirements. So, some of these are cases where it's a prospective division, but
3142 some of them are cases where the division took place some time in the past.

3143
3144 Some common problems that we have seen with some of these requests are the
3145 orientation of houses may reduce privacy. You have a long, narrow lot with a house at
3146 the front, and they want to cut off the back of the property and build a second house.
3147 That second house, in many cases, is facing toward the rear of the house on the front
3148 of the property. If that is all within the family, that's fine. If there are several houses
3149 along the road, and they put a new house in the rear, then that affects everyone's
3150 privacy.

3151
3152 In many cases, the access to the property is across an easement that has not been
3153 properly deeded or recorded. It may be an old prescriptive easement, or there may be
3154 no easement at all. It could simply be a matter of an old driveway that everyone
3155 thought was an easement. We have seen cases of private drives—and I'll show you a
3156 map in a moment—that are too long, or too steep, or too narrow, and in our judgment
3157 would not be passable to emergency vehicles. So we're very reluctant to approve the
3158 building of a dwelling where we know if they call an ambulance, it's not going to be able
3159 to get there in a timely manner. We have seen cases where poorly constructed private
3160 drives have not been maintained over the years and have fallen into disrepair, or where
3161 one person finds himself solely responsible for maintenance and nobody will help with
3162 that. Finally, where there are too many dwellings on a private drive, of course it
3163 exacerbates all these other issues.

3164
3165 These are some of the factors that we took into account in drafting the amendment that
3166 we're bringing before you today. I would like to show you four maps, just so you can
3167 really picture in your mind what these issues look like.

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The first case you see outlined in blue, several lots that were divided through family divisions. This one got right up to the point where the Board of Zoning Appeals denied the last request. In fact, I think they denied it twice. It was brought back after a couple years, and they denied it a second time. The third time was the charm. You can see that a private drive has been built running, I want to say, more than a quarter of a mile in length, and it's serving about five dwellings. All these are still within the family, so this is really not your worst-case scenario, but you can look at that and see if some of the houses in the middle of this were sold outside the family, you could really run into some conflicts.

Here is a case where the public street is way off the north end of the map, the top of the map. You have a road that actually makes a loop all the way around the lake. It's not all shown in grey on this map, but I've driven all the way around this. The Board of Zoning Appeals has approved variances for each of those houses around the lake. Now, it's a very nice setting. Right in the middle of all these subdivisions you have this almost rural-looking piece of property, but it's approached by a fairly narrow private drive that also happens to run over the impounding structure of this lake. So, there are some issues there that could one day be difficult for that family to contend with.

Here you see a case where—if you look at how close these driveways are together toward the center of the screen. When people create these family divisions that do not meet the public street frontage requirement, many times they will bring these 15- or 20-foot pipe stems out to the public street. The result is we have all these driveways much too close together. So that creates safety problems in addition to maintenance problems, and just the uncoordinated land use. If sometime in the distant future a developer wanted to consolidate some of these parcels and build a well-planned subdivision, he has a lot of work to do.

Finally, this is a case that I mentioned earlier, the problem of very long private roads. In this case, the public street ends right where the cursor is pointing now, but this drive continues all the way up here and is privately maintained. You can just see a house all the way at the north end of this. These three lots that are highlighted in blue here were created by family division. So there are three lots that meet the lot width, and meet the lot area. They will perk for septic systems. But they are a good half mile from the nearest public street. Now they don't meet the requirement for the public street frontage. When they came in for variances, it put the Board of Zoning Appeals in a very awkward position because new lots had been approved and had been held by these family members already. Now they were being told that they couldn't build on them.

So, these are all of the issues that we were wrestling with as we prepared the draft that's before you this morning. Let me walk you through that now.

The first paragraph, 24-9, has some strikeouts and some inserted text, but essentially, that paragraph is not changing that much. It retains the requirement for 50 feet of public street frontage for any lot to be used for a dwelling. It does clarify that it's a

3214 public street right-of-way that is required. That is found in the Definitions section of the
3215 ordinance, but restating it here we felt would make it more clear, and make the meaning
3216 of the paragraph a little bit more readily apparent. A lot that fronts on a public “paper
3217 street” where there is dedicated right-of-way but hasn’t been built, those have always
3218 been treated as buildable lots with public street frontage. A lot that fronts on a private
3219 street that is not in public right-of-way is not considered to have street frontage. Also,
3220 we added the last sentence there about interstate highways. There are some lots that
3221 the only street frontage they have is on an interstate highway, and, of course, you can’t
3222 gain access to the property off an interstate highway. We have a written interpretation
3223 that that doesn’t count, but since we’re opening up this paragraph, we wanted to insert
3224 that language there so that it’s more clear, and the public knows that, and we don’t
3225 have to debate that interpretation.

3226
3227 Then you see the first phrase there, where it says, “except for the following.” All those
3228 exceptions have now been moved to paragraphs A, B, C, and D. A, B, C, and D simply
3229 restate and clarify the exceptions that are there now. Then, when you get to paragraph
3230 E, we come to what is really the substance of this morning’s amendment.

3231
3232 The new paragraph would give the Board of Zoning Appeals the authority to grant a
3233 special exception—a term used interchangeably with *conditional use permit* in the
3234 County Code and the State Code. They would be allowed to approve a special
3235 exception to allow a one-family dwelling on a lot that does not abut a public street for at
3236 least 50 feet. The difference between doing it by variance and doing it by special
3237 exception doesn’t mean anything to the public or to the landowner, but to the Board of
3238 Zoning Appeals it is a very big difference because after the Cochran Decision, they
3239 really can’t grant these variances. By stating in the Code that they have the authority to
3240 grant a special exception, we work through that legal difficulty and give them clearly the
3241 authority to approve these.

3242
3243 Now, at the same time, we don’t want to just open the barn door and allow anything to
3244 come in and put the Board in the position of having to deny a lot of these requests
3245 because they’re bad requests. So, we have laid out six specific criteria. You received a
3246 draft in the mail that had eight criteria, and some of this language has been reworked,
3247 and conditions have been combined so it’s now a list of six criteria. I’ll go through these
3248 in whatever level of detail you want. I know the hour is late, and we’ve had a long
3249 morning. Essentially, the first paragraph limits them to family divisions.

3250
3251 The second paragraph requires that it remain in the family for a period of five years. In
3252 the past when granting variances, the BZA has done that by condition, but this would
3253 set it out in the Code.

3254
3255 The third is that the lot arrangement has to be orderly, functional, and efficient. You
3256 remember I described some cases of privacy being a concern or other issues where the
3257 orientation of lots is challenging. This would give the BZA the authority to deny a
3258 request based on a poor lot layout, or, in other words, to require the applicant to come
3259 back with a better lot layout.

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Number four requires that each lot be served by a private drive that connects to an existing public street so you can't have a chain of a private drive connecting to a private drive connecting to a private drive. No more than three dwellings on a private drive. It has to be located within a recorded easement, 20 feet wide, and unobstructed from the ground up. Those are the requirements from the Division of Fire to get their apparatus down a drive. They need 20 feet unobstructed or cleared on both sides. Finally, a requirement that in cases where we want to put a utility easement for water and sewer, that can be required as well.

Mr. Vanarsdall - Excuse me, Ben.

Mr. Blankinship - Yes, sir.

Mr. Vanarsdall - Go back to #2.

Mr. Blankinship - Yes, sir.

Mr. Vanarsdall - I remember we talked about the five years. What was the five years, too short, too long?

Mr. Blankinship - It's one of those issues where there isn't really a magic number. It's just a matter of judgment and of trying to keep it long enough that people are not buying lots, dividing them, and flipping them, but short enough that a family member who doesn't want to live there or whose job moves to California or something is not saddled with a piece of property that they can't really make any use of.

Mr. Vanarsdall - I don't have a problem with it, I just remembered something.

Mr. Blankinship - Paragraph five has to do with the standards for the private drive, which, again, is really the main concern here. If you're not on a public street, how are you going to get to the property? We've gone through the Department of Public Works' requirements for public streets and selected those that we feel should be applied to private streets. Now, by its nature, that's kind of a tricky proposition because the standards were not written for private streets, and we're using them for a different purpose than what they were drafted for. We've chosen four that we think are necessary: sight distance, horizontal curves, vertical curves or slopes, and points of access. In our experience looking at the cases that we have reviewed over the years, I think that the good cases can meet these requirements, and the bad ones cannot. The ones that don't meet these requirements probably shouldn't be approved anyway. The same is true of requiring seven inches of gravel, approved base material. There are different grades and sizes of gravel, and the dwellings all have to be within 800 feet of a public street so that we don't have cases where people are going a mile and a half off of a public street with a gravel road that is just going to lead to maintenance issues over the years.

3306 Finally, in specific cases, the BZA would have the power to modify or waive these
3307 requirements on the recommendation of the County Engineers. That is put in there
3308 because, as I said, these standards were not originally written for private streets. There
3309 will be issues down the road where somebody, just because of the way their lot lies,
3310 they have to be 850 feet, or the Public Works' standards require a curve radius of 50
3311 feet and they can only make a radius of 45 feet. In those cases, if Public Works is okay
3312 with it, if Fire and everybody else thinks the road will be passable, we want the BZA to
3313 have the necessary flexibility to approve what they think is a good case that just falls
3314 that short. Otherwise, these requirements would remain in place, and they would give
3315 the BZA the authority to require an applicant to do a better road design if he's trying to
3316 get by with a bad road design.

3317
3318 Finally, the owners of all the dwellings served by the private drive have to agree to a
3319 written maintenance agreement. There is another escape clause there, which is that if
3320 your property is already served by an easement over someone else's land, and you
3321 can't get that someone else's signature, we don't want that other party to be in a
3322 position of holding our applicant hostage. So, if our applicant is making a good-faith
3323 effort to get everyone's signature, but there is one party on the private drive who just
3324 refuses to sign, or who wants \$20,000 in exchange for signing, we want the BZA to
3325 have the authority to not let their applicant be held hostage by one of their neighbors.
3326 That's the reason for that final clause of paragraph six.

3327
3328 That is the end of my presentation, and I'd be happy to answer your questions.
3329

3330 Mr. Jernigan - Ben, I have a question. The 800 feet. So, the examples
3331 that you showed us earlier, some of those could not be approved where they were a
3332 quarter of a mile off the road.

3333
3334 Mr. Blankinship - That's correct. Particularly the one that is just way back
3335 here. That's correct. There's not a scale on here, but I would guess 800 feet is going to
3336 be somewhere in the vicinity of this dwelling. Again, this is the end of the public street
3337 right here where the cursor's pointing.

3338
3339 Mr. Jernigan - Let's say that's a 150-acre tract, but it's long and narrow.
3340 What happens then?

3341
3342 Mr. Blankinship - Eventually, somebody's going to have to build a public street
3343 for it to be developed for residential use.

3344
3345 Mr. Emerson - I think one of the issues regarding the length of the road, just
3346 so it's clear, is it's not necessarily within the family members; it's when the parcels are
3347 sold out of the family. Then, all of a sudden, someone wants to bring the road into the
3348 public system or approaches the Board of Supervisors with the argument, "I pay my
3349 taxes like everyone else. Why don't you bring my road into the system?" You get into
3350 that situation where you have a number of people served at, you know, they're not
3351 getting their mail delivered, can't get emergency vehicles up and down the road, they're

3352 not picking their kids up with the school buses. So, the distance requirement really is
3353 important, along with the other requirements of the aggregate, the road width, and
3354 things like that, to allow at the time that the parcels do pass out of a family unit or family
3355 compound situation where somebody may actually want to bring the streets into the
3356 public system that it can be done cost-effectively.
3357

3358 Mrs. Jones - I guess my question dovetails with what Mr. Jernigan just
3359 asked, and we had talked about this the other day. My biggest concern, as I've
3360 mentioned before, is the unintended consequences that we also have when we start
3361 changing a few things. This has been thought through I think very well, but I just want
3362 to double check. I don't want to devalue anyone's land by the fact that the descriptions
3363 now will make it impossible for them to do some things that they potentially could have
3364 done before, for instance, with no more than three lots being served by a private drive,
3365 or the 800 feet, or a number of those. It seems to me the four examples you gave us
3366 were really instructive, but I'm not sure—And they proceeded well, and I'm assuming
3367 there haven't been any huge problems with these particular issues, although we see the
3368 potential. I guess I want to make sure that this particular change doesn't have a
3369 detrimental effect on a lot of the big parcels that are still out there in family ownership.
3370 One person's protection is another person's restriction.
3371

3372 Mr. Blankinship - Yes, ma'am.
3373

3374 Mrs. Jones - And I'm concerned about that. So, put my mind at ease.
3375

3376 Mr. Blankinship - Well, it is a balancing act. On one hand, you have people
3377 who say, "No, we shouldn't approve any dwellings that are not on public streets. Every
3378 dwelling should be on a public street." There are good reasons behind that thinking.
3379 That's where we've been for the last three or four years. That's really where we are
3380 now, but it's almost impossible for the Board of Zoning Appeals to approve—I mean, if
3381 it's an old lot that was created prior to 1960, that's a different case. If somebody comes
3382 in today and says, "I want to cut off a lot that's not going to have any public street
3383 frontage," in most cases, today they just can't do it. So, we're trying to step back from
3384 that position, but we don't want to step so far back that we open ourselves up to
3385 creating situations that we know are not good planning practice and that are going to
3386 come back to haunt us in the future.
3387

3388 I guess I would say if you have enough land that you're going to be creating more than
3389 three lots, you're probably in a situation where you can put in more than one private
3390 drive. Then, you'd have two drives each serving three lots if you wanted to have six
3391 family members build right next to you. The case on the screen, they could have done
3392 that. As you see, there are two long private drives going back into this deep parcel.
3393 They could have created one with three lots on one side, and one with three lots on the
3394 other, and still had at least a couple hundred feet of separation on the road rather than
3395 having six driveways coming down to the road.
3396

3397 Mrs. Jones - Hindsight is great, but are these family subdivision requests
3398 normally coming in as a cohesive unit, or is it a little bit piecemeal, which therefore
3399 means that you're being faced with situations that already have decisions made about
3400 how it's going to be divvied up? It's really not that cut-and-dry of a situation.
3401

3402 Mr. Blankinship - No, it's not. It's some of each. We do get some that are fairly
3403 well thought-out, and we get others where people have clearly, you know, lived on the
3404 property a long time, and have thought this through in an informal way. "Oh, I'd like to
3405 have that spot over there. Well, I think they would like to have this one over here."
3406 They may have a picture in their minds, but they've never had a surveyor go out and
3407 draft it all up. Then there are a lot of them that are just a two-way—Well, I have an e-
3408 mail in my inbox right now from a guy who has a 2-1/4-acre parcel and wants to know if
3409 he can cut off an acre for a family member. So, an awful lot of them are smaller than
3410 what we're talking about.
3411

3412 Mrs. Jones - I was surprised when you told me the other day that you see
3413 this come up several times a month on average.
3414

3415 Mr. Blankinship - Yes, ma'am. From 1999 to 2004, it was averaging two a
3416 month.
3417

3418 Mrs. Jones - Which actually were a lot more than I expected. It is a
3419 pressing issue. I know you all have done a lot of thought and put a lot of time into this.
3420 Are there other questions?
3421

3422 Mr. Jernigan - I have some. Ben, we have this situation in the Varina
3423 District right off Darbytown Road. I'm trying to think of the name of the street they put
3424 back there. Of all things, it was a Cochran family. No relation to the Northern Virginia
3425 case. But they had six siblings back there, and they split that up into six lots. I've been
3426 through that road that they built back there. In that case, there were six. The father
3427 passed away, and it was split up that way. What do you do in a case like that?
3428

3429 Mr. Blankinship - Again, we'd try to find a way where they can put in two
3430 separate streets, each one serving three lots.
3431

3432 Mr. Jernigan - I don't think they would want to do that, but anyway.
3433

3434 Mr. Blankinship - In some cases it may work, and in some cases it may not.
3435 They may be able to put in a public street for part of the distance and then branch a
3436 private street off of it. They don't have to build two miles of public street, but they may
3437 put in a couple hundred feet of public street to make the whole thing work.
3438

3439 Mr. Jernigan - Thank you.
3440

3441 Mrs. Jones - The three lots makes sense based on the length of what
3442 would be needed to serve each.

3443
3444 Mr. Blankinship - Yes, ma'am.
3445
3446 Mrs. Jones - All right. So, we went from eight to six, so you consolidated
3447 some of the requirements. Well, you answered a lot of my questions yesterday, so I
3448 have no more. Anybody else?
3449
3450 Mr. Blankinship - I believe if the Board has no more problems, Mr. Emerson,
3451 we're going to ask to set a public hearing date.
3452
3453 Mr. Emerson - That was what I was just considering, whether or not we
3454 would request a hearing date on September the 23, 2009. We could give you an
3455 opportunity to read this some more—I know we've had a long meeting today—and then
3456 I could place on the August 13, 2009 agenda the discussion of setting this for public
3457 hearing on September 23, 2009.
3458
3459 Mr. Branin - That's what I would recommend.
3460
3461 Mr. Emerson - We can do that. It will give you an opportunity to read this
3462 over and think about it. We'll place it as a discussion item on the August 13, 2009
3463 agenda to set for public hearing possibly September 23, 2009.
3464
3465 Mrs. Jones - All right. So, do we need to make a motion to that effect?
3466
3467 Mr. Emerson - No, ma'am.
3468
3469 Mrs. Jones - All right. So, this will be an item on our August 13, 2009
3470 agenda. Thank you, Mr. Blankinship.
3471
3472 Mr. Blankinship - Thank you.
3473
3474 Mr. Emerson - Madam Chairman, that takes us to the next item on your
3475 agenda, which is the approval of the 2010 Planning Commission calendar.
3476
3477 Mrs. Jones - In reference to this, I do feel I need to make my annual
3478 statement, which is that part of me feels that there is a real need to be consistent
3479 between both sides of the planning process—the rezoning and the plans of
3480 development and subdivisions. I would prefer to see a calendar reflecting either two
3481 meetings in August or none. However, it's the traditional calendar, and fellow
3482 Commissioners have not seen fit do that in years past, and I have not pushed for it this
3483 year. I think this is an established tradition, and at some point when others feel that they
3484 might like to entertain the thought of changing that particular aspect of the calendar, I
3485 certainly would be open to that.
3486
3487 Do we have other points to mention about the calendar?
3488

3489 Mr. Emerson - I have nothing.
3490
3491 Mr. Vanarsdall - Christmas and Thanksgiving look good, and the APA
3492 Conference doesn't conflict.
3493
3494 Mr. Emerson - I believe all conflicts have been cleared.
3495
3496 Mr. Vanarsdall - I have no problem with not having an August meeting. I
3497 move that we approve the Henrico County Planning Commission 2010 meeting
3498 schedule.
3499
3500 Mr. Branin - Second.
3501
3502 Mrs. Jones - Motion has been presented by Mr. Vanarsdall for adoption,
3503 seconded by Mr. Branin. All in favor say aye. All opposed say no. The ayes have it; the
3504 motion passes.
3505
3506 Mr. Vanarsdall - By the way, the conference this year is in New Orleans
3507 again.
3508
3509 Mr. Emerson - Madam Chair, the next item on your agenda is the
3510 consideration of approval of your minutes from your June 24, 2009 meeting.
3511
3512 APPROVAL OF MINUTES: June 24, 2009
3513
3514 Mrs. Jones - Gentlemen, since I wasn't here, I have nothing to comment
3515 about the minutes; how about you?
3516
3517 Mr. Branin - Nothing on any of ours.
3518
3519 Mr. Jernigan - I'm good.
3520
3521 Mrs. Jones - All right. I'll entertain a motion for the minutes.
3522
3523 Mr. Branin - Move for approval.
3524
3525 Mr. Vanarsdall - Second.
3526
3527 Mrs. Jones - Mr. Branin has moved that the minutes be accepted as
3528 presented; Mr. Vanarsdall seconded. All in favor say aye. All opposed say no. The ayes
3529 have it; the motion passes.
3530
3531 The Planning Commission approved the June 24, 2009 minutes as presented.
3532
3533 Mr. Vanarsdall - Unless Mr. Secretary has something, I make a motion we
3534 adjourn.

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Mrs. Jones -

Mr. Secretary?

Mr. Emerson -

I have nothing else today.

Mrs. Jones -

Then at 12:41, we have a motion for adjournment.

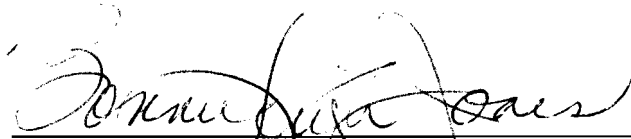
Mr. Branin -

Second.


Mrs. Jones -

say no. The ayes have it; the motion passes.

We are adjourned.



Bonnie-Leigh Jones, Chairperson



R. Joseph Emerson, Jr., Secretary

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PLANS OF DEVELOPMENT

A. Standard Conditions for all POD's:

1. The owner shall enter into the necessary contracts with the Department of Public Utilities for connections to public water and sewer. **(when the property is served by public utilities)**
- 1A. The owner shall enter into the necessary contracts with the Department of Public Utilities for connections to public water. The well location shall be approved by the County Health Department before a building permit is issued. Connection shall be made to the public water system when available within 300 feet of the site/building. **(when not served by public water)**
- 1B. The owner shall enter into the necessary contracts with the Department of Public Utilities for connections to public sewer. The septic tank location shall be approved by the County Health Department before a building permit is issued. Connection shall be made to the public sewer when available within 300 feet of the site/building. **(when not served by public sewer)**
2. The Director of the Department of Public Utilities shall approve the plan of development for construction of public water and sewer, prior to beginning any construction of these utilities. The Department of Public Utilities shall be notified at least **48** hours prior to the start of any County water or sewer construction.
3. The parking lot shall be subject to the requirements of Chapter 24, Section 24-98 of the Henrico County Code.
4. The parking spaces shall be marked on the pavement surface with four-inch-wide traffic painted lines. All lane lines and parking lines shall be white in color with the exception that those dividing traffic shall yellow.
5. Sufficient, effectively usable parking shall be provided. If experience indicates the need, additional parking shall be provided.
6. Curb and gutter and necessary storm sewer shall be constructed as shown on approved plans.
7. The plan of development plan shall be revised as annotated on the staff plan dated **July 22, 2009**, which shall be as much a part of this approval as if details were fully described herein. Eight (8) sets of revised plans, including the detailed drainage, erosion control and utility plans, shall be submitted by the design engineer who prepared the plans to the Department of Planning for final review. Upon notice from the Department of Planning to the Engineer that all comments have been addressed, twenty-one (21) sets of final plans for signature shall be submitted to the Department of Planning for approval signatures. Two (2) sets of the approved plan shall be attached to the building permit application. **(Revised January 2008)**
8. Two copies of an Erosion and Sediment Control Agreement with required escrow shall be submitted to the Department of Public Works. Approval is required prior to construction plan approval and beginning construction. The Department of Public Works shall be notified at least 24 hours prior to the start of any construction.
9. A detailed landscaping plan shall be submitted to the Department of Planning for review and approval prior to the issuance of any occupancy permits.

9. **AMENDED** - A detailed landscaping plan shall be submitted to the Department of Planning for review and Planning Commission approval prior to the issuance of any occupancy permits.
10. All groundcover and landscaping shall be properly maintained in a healthy condition at all times. Dead plant materials shall be removed within a reasonable time and replaced no later than the next planting season.
11. Prior to the approval of an electrical permit application and installation of the site lighting equipment, a plan including light spread and intensity diagrams, and fixture specifications and mounting height details shall be submitted for Department of Planning review and approval.
- 11A. **AMENDED** - Prior to the approval of an electrical permit application and installation of the site lighting equipment, a plan including depictions of light spread and intensity diagrams, and fixture specifications and mounting height details shall be submitted for Department of Planning review and Planning Commission approval.
- 11B. Prior to the approval of an electrical permit application and installation of the site lighting equipment, a plan including light spread and intensity diagrams, and fixture specifications and mounting heights details shall be revised as annotated on the staff plan and included with the construction plans for final signature. **(For POD which includes lighting plan approval)**
12. All exterior lighting shall be designed and arranged to direct the light and glare away from nearby residential property and streets.
13. The site, including the parking areas, shall be kept clean of litter and debris on a daily basis. Trash container units/litter receptacles and recycling containers shall be maintained with regular pickups scheduled and shall be screened properly on all four sides. The gate(s) shall remain closed except when the receptacle(s) are being filled or serviced and shall be repaired or replaced as necessary. Details shall be included with the final site plan or required landscape plan for review and approval.
14. Required fire lanes shall be marked and maintained in accordance with the Virginia Statewide Fire Prevention Code.
15. Traffic control signs shall be provided as indicated on the Department of Planning Staff plan. All signs shall be fabricated as shown in The National Manual on Uniform Traffic Control Devices for Streets and Highways and The Virginia Supplement to The Manual on Uniform Traffic Control Devices for Streets and Highways.
16. The assigned property number(s) shall be displayed so it is easily readable from the street. If assistance is needed with the address, please contact the Department of Planning at 501-4284. The Planning Department must assign all property addresses. **(Revised January 2008)**
17. The owner shall have a set of plans approved by the Director of Public Works, Public Utilities and Secretary of the Planning Commission available at the site at all times when work is being performed. A designated responsible employee shall be available for contact by County Inspectors.
18. The property shall be developed as shown on the plan filed with the case and no changes or additions to the layout shall be made without the approval of this Commission.

19. Upon completion of the improvements and prior to the certification of the permanent occupancy permit, the owner shall furnish a statement by the engineer or land surveyor who prepared the POD plan, to the effect that all construction including water and sewer is in conformance to the regulations and requirements of the POD.
20. The approved Plan of Development is granted by the Planning Commission only to the owners(s)/applicant(s) listed on the Plan of Development application on file for this project. Upon written notification to the Director of Planning, the Plan of Development approval may be transferred to subsequent owner(s) subject to approval by this Commission **(Revised July 2007)**.
21. Vehicles shall be parked only in approved and constructed parking spaces.
22. The name of this development, as designated in this approval, shall be the name used for marketing and public recognition purposes. A written request for a name change must be received and granted by the Department of Planning before such a change can be implemented.
23. The site, including paving, pavement markings, signage, curb and gutter, dumpster screens, walls, fences, lighting and other site improvements shall be properly maintained in good condition at all times. Any necessary repairs shall be made in a timely manner.
24. The developer shall provide fire hydrants as required by the Department of Public Utilities and Division of Fire.
25. Insurance Services Office (ISO) calculations shall be included on the final construction plans for approval by the Department of Public Utilities prior to issuance of a building permit.
26. Any necessary off-site drainage and/or water and sewer easements must be obtained in a form acceptable to the County Attorney prior to final approval of the construction plans.
27. The easements for drainage and utilities as shown on approved plans shall be granted to the County in a form acceptable to the County Attorney prior to any occupancy permits being issued. The easement plats and any other required information shall be submitted to the County Real Property Agent at least sixty (60) days prior to requesting occupancy permits.
28. Deviations from County standards for pavement, curb or curb and gutter design shall be approved by the County Engineer prior to final approval of the construction plans by the Department of Public Works.
29. **(Start of miscellaneous conditions)**

STANDARD CONDITIONS FOR LANDSCAPE /LIGHTING/FENCE PLANS

1. The plan shall be revised as shown in red on Staff plan dated **July 22, 2009**, which shall be as much a part of this approval as if all details were fully described herein. **Five (5)** sets of **prints** of the revised plan shall be submitted to the Department of Planning for approval stamps and distribution.
2. The property shall be developed as shown on the plan filed with the case and no changes or additions to the layout shall be made without the approval of this Commission.
3. The owner shall have a set of approved plans available at the site at all times when work is being performed. A designated responsible employee shall be available for contact by County Inspectors.
4. All groundcover and landscaping shall be properly maintained in a healthy condition at all times. Dead plant materials shall be removed within a reasonable time and replaced during the normal planting season. **(DELETE IF NO LANDSCAPING)**
5. All exterior lighting shall be shielded to direct lights away from adjacent residential property and streets. **(DELETE IF NO LIGHTING)**
6. All fences, walls, and screens, including gates and doors, shall be maintained in good repair by the owner. Trash and debris should not be allowed to accumulate along the fence or wall. **(DELETE IF NO FENCE, WALL, OR DUMPSTER SCREEN)**

B. In Addition to Item A, the Following Standard Conditions for Approval of All Zero Lot Line Developments shall apply:

29. Roof edge ornamental features that extend over the zero lot line, and which are permitted by Section 24-95(i)(1), must be authorized in the covenants.
30. Eight-foot easements for construction, drainage, and maintenance access for abutting lots shall be provided and shown on the POD plans.
31. Building permit request for individual dwellings shall each include two (2) copies of a layout plan sheet as approved with the plan of development. The developer may utilize alternate building types providing that each may be located within the building footprint shown on the approved plan. Any deviation in building footprint or infrastructure shall require submission and approval of an administrative site plan.
32. Windows on the zero lot line side of the dwelling can only be approved with an exception granted by the Building Official and the Director of Planning during the building permit application process.

C. Standard Conditions for Approval of All Dry Cleaners and Laundries in Addition to Item A:

29. The dry cleaning establishment shall use only non-inflammable cleaning solvents and have fully enclosed cleaning and solvent reclamation processes and fully enclosed pressing equipment with no outside steam exhaust.

D. In addition to Item A, the Following Conditions for Approval of All Shopping Centers Shall Apply:

29. Only retail business establishments permitted in a zone may be located in this center.
30. The ground area covered by all the buildings shall not exceed in the aggregate 25 percent of the total site area.
31. No merchandise shall be displayed or stored outside of the building(s) or on sidewalk(s).

E. In Addition to Item A, the Following Standard Conditions for Approval of All Multi-Family Shall Apply:

29. The unit house numbers shall be visible from the parking areas and drives.
30. The names of streets, drives, courts and parking areas shall be approved by the Richmond Regional Planning District Commission and **such names shall be included on the construction plans prior to their approval.** The standard street name signs shall be installed prior to any occupancy permit approval.

F. In addition to Item A, the Following Standard Conditions for Approval of All Service Station Developments Shall Apply:

29. This business shall not remain in operation after midnight and no exterior signs shall remain lighted after **(12:00 midnight - B-1) (1:00 o'clock a.m. - B-2) (no limit - B-3)**.
30. No merchandise shall be displayed outside of the building except that oil racks will be allowed on the pump islands.
31. This service station shall be used only for the sale of petroleum products and automobile accessories and parts. It shall not be used to sell or rent camping trailers, nor as a base of operation for truck fleets or fuel oil delivery or other such use that is not strictly a service station operation.
32. Only light repair work shall be allowed at this station, including motor tune-up, brake, generator, ignition, and exhaust repairs, and wheel balancing. The only work that can be performed outside the building is those services that are normally furnished at the pump island and the changing of tires.
33. No wrecked automobiles, nor automobiles incapable of being operated, shall be kept on the premises.
34. The prospective operator of this station shall come to the Department of Planning and sign the file copy of the special plan of development letter before he signs a lease with the oil company to operate this station.

**G. STANDARD CONDITIONS FOR CONVENIENCE STORES WITH FUEL PUMPS
IN A**

B-2 ZONE

29. Bulk storage of fuel shall be underground.
30. There shall be no exterior display of merchandise except on pump islands and on paved walkway areas within three (3) feet of building.
31. Lighting fixtures shall not exceed a height greater than twenty (20) feet.
32. No temporary storage of wrecked or inoperative vehicles or rental of vehicles, trailer campers, vans or similar equipment shall be permitted.
33. Not more than two (2) electronic amusement games shall be permitted.
34. Not more than two (2) vending machines for food and beverage and similar merchandise shall be permitted on the premises outside of an enclosed building.
35. The prospective operator of this facility shall come to the Department of Planning and sign the file copy of the special plan of development letter before he signs a lease with the oil company to operate this station.
36. The landscaping plan shall include details for screening of refuse containers and refuse storage facilities in accordance with Section 24-61(i).
37. Refuse containers or refuse storage facilities shall be serviced during business hours only.
38. The owner or manager on duty shall be responsible for temporarily closing the car wash facility when the on-site stacking space is inadequate to serve customer demand to prevent a backup of vehicles onto the public right-of-way.
39. The owner shall arrange with the Traffic Engineer to provide standard traffic control signs to notify customers that stopping or standing on the public right-of-way shall not be permitted near the entrances to the car wash facility. **(If Car Wash Is Proposed)**

**H. STANDARD CONDITIONS FOR CONVENIENCE STORES WITH FUEL PUMPS
IN A**

B-3 ZONE

29. Bulk storage of fuel shall be underground.
30. The owner or manager on duty shall be responsible for temporarily closing the car wash facility when the on-site stacking space is inadequate to serve customer demand to prevent a backup of vehicles onto the public right-of-way. **(If Car Wash Is Proposed)**
31. The owner shall arrange with the Traffic Engineer to provide standard traffic control signs to notify customers that stopping or standing on the public right-of-way shall not be permitted near the entrances to the car wash facility. **(If Car Wash Is Proposed)**

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SUBDIVISION - CONDITIONAL APPROVAL

Standard Conditions for Conventional Subdivisions Served By Public Utilities Public Water and/or Sewer (January 2008)

1. All requirements of Chapter 18, 19 and 24 of the Henrico County Code shall be met.
2. Construction plans, including proposed erosion and sediment controls, shall be submitted to the Department of Planning at least 30 days prior to final approval.
3. Construction shall not commence until the Director of Planning has granted final approval of the plat; and until the construction plans including the detailed drainage, erosion control, and utility plans have been approved by the Department of Planning, the Department of Public Utilities, and the Department of Public Works and a preconstruction meeting has been held with the Department of Public Works. Plans for Final Subdivision review shall be submitted to the Department of Planning in accordance with the requirements of the Final Subdivision application. Upon notice from the Department of Planning to the Engineer that all comments have been addressed, twenty-one (21) sets of final construction plans for signature shall be submitted to the Department of Planning for approval signatures. All erosion and sediment control plans, agreements, and bonds must be submitted to the Department of Public Works and approved prior to approval of the construction plans.
4. Clearing and grubbing shall not commence until a clearing and grubbing plan has been approved by the Department of Planning and the Department of Public Works. Upon notice from the Department of Planning to the Engineer that all comments have been addressed, eight (8) sets of clearing and grubbing plans shall be submitted to the Department of Planning for approval signatures. All appropriate bonds and agreements, authorizations from state and/or regulatory agencies for impacts to the Waters of the United States, and offsite easement plats must be submitted to the Department of Public Works and approved prior to approval of the clearing and grubbing plans. Approvals must be updated prior to recordation of the plat.
5. The owner shall enter into the necessary contracts with the Department of Public Utilities for water. **(Substitute condition 5A if well)**
- 5A. A detailed soil analysis shall be performed and other requirements of the Health Department met before final plats are recorded. The developer shall have the center lines of all streets and lot corners staked to facilitate the examination of lots by the Health Department Sanitarians prior to filing for final approval and shall notify the Department of Planning and Health Department in writing when the staking has been done.
6. The owner shall enter into the necessary contracts with the Department of Public Utilities for sewer. **(Substitute condition 6A if on site sewage disposal/septic)**
- 6A. A detailed soil analysis shall be performed and other requirements of the Health Department met before final plats are recorded. The developer shall have the center lines of all streets and lot corners staked to facilitate the examination of lots by the Health Department Sanitarians prior to filing for final approval and shall notify the Department of Planning and Health Department in writing when the staking has been done.
7. A copy of the letter from the Richmond Regional Planning District Commission giving approval to the street names in this subdivision shall be submitted to the Department of Planning before the recordation plat is submitted for review.
8. The plat shall be revised as shown in red on Staff plan dated July 22, 2009, which shall be as much a part of this approval as if all details were fully described herein.

9. This approval shall expire on **July 28, 2010**, unless an extension is requested in writing stating the reason such extension is necessary. The request shall include the fee and must be filed a minimum of two weeks prior to the expiration date.
10. The name of this development, as designated in this approval, shall be the name used for marketing and public recognition purposes. A written request for a name change must be received and granted by the Department of Planning before such a change can be implemented.
11. The conditional approval of this plat by the Planning Commission does not imply that all lots shown thereon will be granted final approval. Such approval is contingent on each lot meeting a number of requirements including but not limited to minimum zoning requirements, Health Department requirements as applicable, and design considerations.
12. Prior to a request for final approval, the developer shall provide a buildable area plan showing information for all lots within the subdivision. Such plan shall be a part of the construction plans submitted for review and for signature. The buildable area plan shall be a minimum of 1" to 50' scale or larger and shall show the buildable area for the principal structure, all setback dimensions, the minimum lot width (perpendicular to the center line of the lot at the front building line), and if applicable, any Special Flood Hazard Areas (floodplains) and the area of each lot exclusive of floodplain, wetlands, easements, buffers, Chesapeake Bay Act Areas, wells and primary/reserved drainfields.

Standard Conditions for Conventional Subdivisions Not Served By Public Utilities
(January 2008)

1. All requirements of Chapter 18, 19 and 24 of the Henrico County Code shall be met.
2. Construction plans, including proposed erosion and sediment controls, shall be submitted to the Department of Planning at least 30 days prior to final approval.
3. Construction shall not commence until the Director of Planning has granted final approval of the plat; and until the construction plans including the detailed drainage and erosion control plans have been approved by the Department of Planning, and the Department of Public Works and a preconstruction meeting has been held with the Department of Public Works. Plans for Final Subdivision review shall be submitted to the Department of Planning in accordance with the requirements of the Final Subdivision application. Upon notice from the Department of Planning to the Engineer that all comments have been addressed, fifteen (15) sets of final construction plans for signature shall be submitted to the Department of Planning for approval signatures. All erosion and sediment control plans, agreements, and bonds must be submitted to the Department of Public Works and approved prior to approval of the construction plans.
4. Clearing and grubbing shall not commence until a clearing and grubbing plan has been approved by the Department of Planning and the Department of Public Works, and a preconstruction meeting has been conducted with the Department of Public Works. Upon notice from the Department of Planning to the Engineer that all comments have been addressed, eight (8) sets of clearing and grubbing plans shall be submitted to the Department of Planning for approval signatures. All appropriate bonds and agreements, authorizations from state and/or regulatory agencies for impacts to the Waters of the United States, and offsite easement plats must be submitted to the Department of Public Works and approved prior to approval of the clearing and grubbing plans. Approvals must be updated prior to recordation of the plat.
5. A detailed soil analysis shall be performed and other requirements of the Health Department met before final plats are recorded. The developer shall have the center lines of all streets and lot corners staked to facilitate the examination of lots by the Health Department Sanitarians prior to filing for final approval and shall notify the Department of Planning and Health Department in writing when the staking has been done.
6. A copy of the letter from the Richmond Regional Planning District Commission giving approval to the street names in this subdivision shall be submitted to the Department of Planning before the recordation plat is submitted for review.
7. The plat shall be revised as shown in red on Staff plan dated **July 22, 2009**, which shall be as much a part of this approval as if all details were fully described herein.
8. This approval shall expire on **July 28, 2010**, unless an extension is requested in writing stating the reason such extension is necessary. The request shall include the fee and must be filed a minimum of two weeks prior to the expiration date.
9. The name of this development, as designated in this approval, shall be the name used for marketing and public recognition purposes. A written request for a name change must be received and granted by the Department of Planning before such a change can be implemented.
10. The conditional approval of this plat by the Planning Commission does not imply that all lots shown thereon will be granted final approval. Such approval is contingent on each lot meeting a number of requirements including but not limited to minimum zoning requirements, Health Department requirements and design considerations.

11. Prior to a request for final approval, the developer shall provide a buildable area plan showing information for all lots within the subdivision. Such plan shall be a part of the construction plans submitted for review and for signature. The buildable area plan shall be a minimum of 1" to 50' scale or larger and shall show the buildable area for the principal structure, all setback dimensions, the minimum lot width (perpendicular to the center line of the lot at the front building line), and if applicable, any Special Flood Hazard Areas (floodplains) and the area of each lot exclusive of floodplain, wetlands, easements, buffers, Chesapeake Bay Act Areas, wells and primary/reserved drainfields.

Standard Conditions for Residential Townhouse for Sale (RTH) Subdivisions
(January 2008)

1. All requirements of Chapter 18, 19 and 24 of the Henrico County Code shall be met.
2. Construction plans, including proposed erosion and sediment controls, shall be submitted to the Department of Planning at least 30 days prior to final approval.
3. Construction shall not commence until the Director of Planning has granted final approval of the plat; and until the construction plans including the detailed drainage, erosion control, and utility plans have been approved by the Department of Planning, the Department of Public Utilities, and the Department of Public Works and a preconstruction meeting has been held with the Department of Public Works. Plans for Plan of Development and Final Subdivision review shall be submitted to the Department of Planning in accordance with the requirements of the Plan of Development and Final Subdivision applications. Upon notice from the Department of Planning to the Engineer that all comments have been addressed, twenty-one (21) sets of final construction plans for signature shall be submitted to the Department of Planning for approval signatures. All erosion and sediment control plans, agreements, and bonds must be submitted to the Department of Public Works and approved prior to approval of the construction plans.
4. Clearing and grubbing shall not commence until a clearing and grubbing plan has been approved by the Department of Planning and the Department of Public Works, and a preconstruction meeting has been conducted with the Department of Public Works. Upon notice from the Department of Planning to the Engineer that all comments have been addressed, eight (8) sets of clearing and grubbing plans shall be submitted to the Department of Planning for approval signatures. All appropriate bonds and agreements, authorizations from state and/or regulatory agencies for impacts to the Waters of the United States, and offsite easement plats must be submitted to the Department of Public Works and approved prior to approval of the clearing and grubbing plans. Approvals must be updated prior to recordation of the plat.
5. The owner shall enter into the necessary contracts with the Department of Public Utilities for water.
6. The owner shall enter into the necessary contracts with the Department of Public Utilities for sewer.
7. A copy of the letter from the Richmond Regional Planning District Commission giving approval to the street names in this subdivision shall be submitted to the Department of Planning before the recordation plat is submitted for review.
8. The plat shall be revised as shown in red on Staff plan dated **July 22, 2009**, which shall be as much a part of this approval as if all details were fully described herein.
9. This approval shall expire on **July 28, 2010**, unless an extension is requested in writing stating the reason such extension is necessary. The request shall include the required fee and must be filed a minimum of two weeks prior to the expiration date.
10. The name of this development, as designated in this approval, shall be the name used for marketing and public recognition purposes. A written request for a name change must be received and granted by the Department of Planning before such a change can be implemented.
11. The conditional approval of this plat by the Planning Commission does not imply that all lots shown thereon will be granted final approval. Such approval is contingent on each lot meeting all requirements, including but not limited to, minimum zoning requirements, and design considerations.

12. A draft of the Declaration of Covenants, Conditions and Restrictions shall be submitted to the Department of Planning for review, prior to final approval. The proposed Homeowners Association for the project shall be responsible for the exterior maintenance of all buildings and grounds.
13. All block corners shall be monumented and referenced, where possible, to the exterior boundaries of the site
14. The record plat shall contain a statement that the common area is dedicated to the common use and enjoyment of the homeowners of **(name of subdivision)** and is not dedicated for use by the general public. This statement shall refer to the applicable article in the covenants recorded with the plat.

Standard Conditions for Zero Lot Line Subdivisions
(January 2008)

1. All requirements of Chapter 18, 19 and 24 of the Henrico County Code shall be met.
2. Construction plans, including proposed erosion and sediment controls, shall be submitted to the Department of Planning at least 30 days prior to final approval.
3. Construction shall not commence until the Director of Planning has granted final approval of the plat; and until the construction plans including the detailed drainage, erosion control, and utility plans have been approved by the Department of Planning, the Department of Public Utilities, and the Department of Public Works and a preconstruction meeting has been held with the Department of Public Works. Plans for Plan of Development and Final Subdivision review shall be submitted to the Department of Planning in accordance with the requirements of the Plan of Development and Final Subdivision applications. Upon notice from the Department of Planning to the Engineer that all comments have been addressed, twenty-one (21) sets of final construction plans for signature shall be submitted to the Department of Planning for approval signatures. All erosion and sediment control plans, agreements, and bonds must be submitted to the Department of Public Works and approved prior to approval of the construction plans.
4. Clearing and grubbing shall not commence until a clearing and grubbing plan has been approved by the Department of Planning and the Department of Public Works, and a preconstruction meeting has been conducted with the Department of Public Works. Upon notice from the Department of Planning to the Engineer that all comments have been addressed, eight (8) sets of clearing and grubbing plans shall be submitted to the Department of Planning for approval signatures. All appropriate bonds and agreements, authorizations from state and/or regulatory agencies for impacts to the Waters of the United States, and offsite easement plats must be submitted to the Department of Public Works and approved prior to approval of the clearing and grubbing plans. Approvals must be updated prior to recordation of the plat.
5. The owner shall enter into the necessary contracts with the Department of Public Utilities for water.
6. The owner shall enter into the necessary contracts with the Department of Public Utilities for sewer.
7. A copy of the letter from the Richmond Regional Planning District Commission giving approval to the street names in this subdivision shall be submitted to the Department of Planning before the recordation plat is submitted for review.
8. The plat shall be revised as shown in red on Staff plan dated **July 22, 2009**, which shall be as much a part of this approval as if all details were fully described herein.
9. This approval shall expire on **July 28, 2010**, unless an extension is requested in writing stating the reason such extension is necessary. The request shall include the required fee and must be filed a minimum of two weeks prior to the expiration date.
10. The name of this development, as designated in this approval, shall be the name used for marketing and public recognition purposes. A written request for a name change must be received and granted by the Department of Planning before such a change may be implemented.
11. The conditional approval of this plat by the Planning Commission does not imply that all lots shown thereon will be granted final approval. Such approval is contingent on each lot meeting all requirements, including but not limited to, minimum zoning requirements, and design considerations.

12. Prior to a request for final approval, the developer shall provide a buildable area plan showing information for all lots within the subdivision. Such plan shall be a part of the construction plans submitted for review and for signature. The buildable area plan shall be a minimum of 1" to 50' scale or larger and shall show the buildable area for the principal structure, all setback dimensions, the minimum lot width (perpendicular to the center line of the lot at the front building line), and if applicable, any Special Flood Hazard Areas (floodplains) and the area of each lot exclusive of floodplain, wetlands, easements, buffers and Chesapeake Bay Act Areas.

SUBDIVISION - CONDITIONAL APPROVAL

Standard Conditions for Conventional Subdivisions Served By Public Utilities Road Dedication (No Lots) (January 2008)

1. All requirements of Chapter 18, 19 and 24 of the Henrico County Code shall be met.
2. Construction plans, including proposed erosion and sediment controls, shall be submitted to the Department of Planning at least 30 days prior to final approval.
3. Construction shall not commence until the Director of Planning has granted final approval of the plat; and until the construction plans including the detailed drainage, erosion control, and utility plans have been approved by the Department of Planning, the Department of Public Utilities, and the Department of Public Works and a preconstruction meeting has been held with the Department of Public Works. Plans for Final Subdivision review shall be submitted to the Department of Planning in accordance with the requirements of the Final Subdivision application. Upon notice from the Department of Planning to the Engineer that all comments have been addressed, twenty-one (21) sets of final construction plans for signature shall be submitted to the Department of Planning for approval signatures. All erosion and sediment control plans, agreements, and bonds must be submitted to the Department of Public Works and approved prior to approval of the construction plans.
4. Clearing and grubbing shall not commence until a clearing and grubbing plan has been approved by the Department of Planning and the Department of Public Works. Upon notice from the Department of Planning to the Engineer that all comments have been addressed, eight (8) sets of clearing and grubbing plans shall be submitted to the Department of Planning for approval signatures. All appropriate bonds and agreements, authorizations from state and/or regulatory agencies for impacts to the Waters of the United States, and offsite easement plats must be submitted to the Department of Public Works and approved prior to approval of the clearing and grubbing plans. Approvals must be updated prior to recordation of the plat.
5. The owner shall enter into the necessary contracts with the Department of Public Utilities for water.
6. The owner shall enter into the necessary contracts with the Department of Public Utilities for sewer.
7. A copy of the letter from the Richmond Regional Planning District Commission giving approval to the street names in this subdivision shall be submitted to the Department of Planning before the recordation plat is submitted for review.
8. The plat shall be revised as shown in red on Staff plan dated July 22, 2009, which shall be as much a part of this approval as if all details were fully described herein.
9. This approval shall expire on July 28, 2010, unless an extension is requested in writing stating the reason such extension is necessary. The request shall include the fee and must be filed a minimum of two weeks prior to the expiration date.
10. The name of this development, as designated in this approval, shall be the name used for marketing and public recognition purposes. A written request for a name change must be received and granted by the Department of Planning before such a change can be implemented.

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