

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION**
3 **BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY**
4 **SPRING ROADS, ON THURSDAY AUGUST 24, 2017 AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH AUGUST**
6 **7, 2017 AND AUGUST 14, 2017.**

7
8
Members Present: William M. Mackey, Jr., Acting Chairman
Gentry Bell
Terone B. Green
Helen E. Harris
James W. Reid

Also Present: Jean M. Moore, Assistant Director of Planning
Benjamin Blankinship, Secretary
Paul M. Gidley, County Planner
R. Miguel Madrigal, County Planner

9
10 Mr. Mackey - Good morning and welcome to the August 24, 2017
11 meeting of the Henrico County Board of Zoning Appeals. For all those who can,
12 will you please stand and join us in our Pledge of Allegiance.

13
14 Thank you. Our Board secretary, Mr. Blankinship, will now give you the rules to
15 our meeting.

16
17 Mr. Blankinship - Good morning, Mr. Chair, members of the Board,
18 ladies and gentleman, let me begin by introducing the newest member of the
19 Board of Zoning Appeals, Mr. Terone Green, who now represents the Three Chopt
20 Magisterial District on the Board.

21
22 The rules for this meeting are as follows: Acting as secretary, I will announce each
23 case. As I'm speaking, the applicant is welcome to move down toward the podium.
24 We will then ask everyone who intends to speak to that case to stand and be sworn
25 in. There will be a slightly different procedure for the appeals than for the use
26 permits and variances. For the appeals, a representative of the County Attorney's
27 Office will present the County's position, and then the appellant will present their
28 position. Then anyone else who wishes to speak will be given an opportunity.

29
30 For the use permits and variances, a member of the County staff will introduce the
31 case, and then the applicant will speak. And then anyone else who wishes to speak
32 will be given the opportunity. After everyone has had a chance to speak, the
33 applicant will have an opportunity for rebuttal.

35 For all of the hearings—appeals, variances, and use permits—at the end of each
36 individual public hearing the Board will continue to the next public hearing on the
37 agenda. They will render all of their decisions at the end of the meeting. If you wish
38 to hear their decision, you can either stay until the end of the meeting, or you can
39 check the Planning Department website—we usually get it updated within an hour
40 of the end of the meeting—or you can call the Planning Department this afternoon.

41
42 This meeting is being recorded, so we'll ask everyone who speaks to speak directly
43 into the microphone on the podium and state your name. And please spell your
44 last name to make sure we get it correctly in the record.

45
46 Finally, Mr. Chair, there is one request for withdrawal this morning. CUP2017-
47 00029, Jerry Curtis. This case has been withdrawn, so it will not be heard this
48 morning.

49
50 **CUP2017-00029** **JERRI CURTIS** requests a conditional use permit
51 pursuant to Section 24-121(j)(2)b. of the County Code to allow a beauty shop in an
52 office building at 2211 E Parham Road (Parcel 775-758-5019) zoned General
53 Residence District (R-6C) (Fairfield).

54
55 Per the applicant's request, application **CUP2017-00029**, Jerri Curtis, has been
56 **withdrawn**.

57
58 Mr. Mackey - Thank you, Mr. Blankinship. Having taken care of all of
59 that, could we call our first request?

60
61 **APL2017-00007** **THE EAST END LANDFILL, LLC** appeals a decision
62 of the Director of Planning pursuant to Section 24-116(a) of the County Code
63 regarding the property at 1820 Darbytown Road (Parcels 808-706-6679, 808-707-
64 7024, 808-708-0513 and 809-707-1585) zoned Business District (B-3) and
65 General Industrial District (M-2) (Varina).

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

71
72 Mr. Tokarz - Good morning, members of the Board, my name is
73 Tom Tokarz. T-o-k-a-r-z. I am a member of the County Attorney's Office, and I'm
74 here representing Mr. Joseph Emerson who's the Director of Planning.
75 Unfortunately, Mr. Emerson could not be here today. He's on dad duty out of town,
76 so I'll be presenting his position.

77
78 As you know, members of the Board, there has been material provided by both the
79 director and by the appellate in this case in terms of written submissions to the
80 Board. Counsel and I conferred prior to this hearing. We agreed we're not going to
81 read all of those exhibits into the record, fortunately enough. But I do want to

82 summarize for you, if I could, Mr. Emerson's reasons for his determination so then
83 the Board will be able to consider fully the applicant's appeal.

84
85 This case, the first case, is an appeal of Mr. Emerson's May 19, 2017 letter
86 regarding CUP2013-00014 for expansion of the East End Landfill (TEEL). I have
87 a very short PowerPoint. It's just a couple of statutes and ordinance provisions that
88 I would like the Board to consider as part of the argument. Thank you.

89
90 As I said, this is an appeal of Mr. Emerson's May 19th letter. It's not real clear on
91 the screen here, but you have the hardcopy in the materials that I provided to you.
92 I direct your attention to the fifth paragraph, the paragraph at the very bottom of
93 page 1.

94
95 In that letter, Mr. Emerson makes three determinations. The first determination is
96 that TEEL—the East End Landfill LLC, I'll be referring to that as TEEL throughout
97 the course of my comments. TEEL has not satisfied condition #4 of CUP2013-
98 00014. I'll probably just be referring to that for the use permit. The second
99 determination he made is that TEEL has failed to diligently pursue all necessary
100 permits and approvals. The third determination is that the use permit is void, and
101 a new conditional use permit will be required before any expansion of the landfill.

102
103 At this point, I want to be clear. This letter was not an effort to revoke the use
104 permit. You'll see no reference to a revocation of the use permit. That is a BZA
105 determination, and that is the reason you have a second case on your agenda for
106 the actual request for revocation of the permit. What we're here on in the first case
107 is simply the determinations that he made in this letter on May 19th. As I will
108 explain, each one of those three separate determinations was correct.

109
110 The first determination was that TEEL has not satisfied condition #4 of the use
111 permit. Here is the language of condition 4. Is that showing on your screens in front
112 of you? Okay, good. Condition 4 says, "The applicant shall obtain and maintain all
113 applicable permits from the Virginia Department of Environmental Quality." Now
114 TEEL has submitted information in its appeal. And they admit in that appeal they
115 have not obtained all the applicable permits from the Department of Environmental
116 Quality. It gives reasons for its failure to do so. They blame the Virginia Department
117 of Environmental Quality, the County, and the Central Virginia Waste Management
118 Authority.

119
120 The difficulty with these reasons is that TEEL also admits in the written appeal it
121 has not submitted any information to DEQ, even though in March of 2016 the
122 Department of Environmental Quality issued technical review #1 of TEEL's
123 application for a Part A Permit. That was 17 months ago. No information in
124 response to a request for additional information from DEQ has been submitted.
125 Therefore, we submit that the BZA should determine that Mr. Emerson was correct
126 in his determination that TEEL has not satisfied condition #4 of the use permit.

128 As to the second determination that TEEL has failed to diligently pursue all
129 necessary permits and approvals, I want to make two points. The first point is that
130 Article 3 of the BZA rules has paragraph 12. I guess it's Article 3 not Title 3. But
131 Article 3, section 12 of the BZA procedures say that, "All permits necessary for the
132 prosecution of the work shall be taken out within two years from the date of
133 authorization by the Board; otherwise; such authorization shall be considered
134 void." This was in place in June 2013 when the BZA granted the use permit. It
135 remains in place now.

136
137 Please note the provision does not use the words, "diligently pursue." TEEL's
138 written appeal spends a lot of time explaining that TEEL claims it has diligently
139 pursued getting the necessary permits. But under the actual rule itself, the test is
140 whether the permits were in fact taken within two years of the date of the
141 authorization by the Board. TEEL's written appeal admits that that has not
142 occurred.

143
144 Now admittedly, the June 2013 letter of the BZA secretary did state at the bottom
145 of the letter: "You may comply with the requirement of getting the permits by
146 obtaining and diligently pursuing all necessary permits or approvals." I don't know
147 the origin of this language because it doesn't appear in the BZA rules or in the
148 Zoning Ordinance. However, even if the language was in the BZA rules, TEEL's
149 failure to even submit any information to DEQ since March 2016 proves that TEEL
150 has not diligently pursued permit approval.

151
152 The second point as to this determination is that the BZA rules state that the effect
153 of TEEL's failure to get the necessary permits is that the authorization shall be
154 considered void. Now TEEL argues that this rule is ultra vires, and that means it's
155 beyond the scope of the BZA's authority, but we disagree. Virginia Code 15.2-
156 2309(5) authorizes the BZA to impose such conditions related to the use for which
157 a permit is granted as it may deem necessary in the public interest.

158
159 In this particular case, the requirement on paragraph 12 of Article 3 of the BZA
160 rules is a requirement directly related to the use because it requires permits
161 necessary for the prosecution of the work. For these reasons, and even through
162 there is no "diligent pursuit" exception in the BZA rules, we submit that the BZA
163 should determine that Mr. Emerson was correct in his second determination that
164 TEEL has failed to diligently pursue all necessary permits and approvals.

165
166 As to the third determination in Mr. Emerson's letter that the use permit is void and
167 TEEL will need a new conditional use permit, Mr. Emerson's conclusion was
168 correct for two reasons. First, TEEL failed to comply with paragraph 12 of Article 3
169 of the BZA rules that I just quoted. Second, TEEL failed to comply with condition 1
170 of the use permit in Section 24-116 of the Henrico County Code.

171
172 Here's what condition 1 of the use permit provided: "The use permit is subject to
173 all requirements of the County Code." The reason that's important is because

174 Section 24-116, which I'll now put up, has the following provisions. And this is the
175 language in Chapter 24 which authorizes the BZA to grant use permits in the first
176 place. So this is part and parcel of your BZA authority. It states that the Board shall
177 have the following powers and duties. And when it comes to conditional use
178 permits, to hear and decide applications for use permits authorized by the
179 chapter—key words “authorized by the chapter.” And then as part of the authority
180 granted to the BZA it says that construction or operation shall be commenced
181 within one year of the date of the issuance or permit, or it shall become void.

182

183 So when you read condition 1 and Section 24-116(c) together, you see that there's
184 a second reason that the use permit is void. That is the second reason for the
185 determination being correct.

186

187 Although TEEL has its reasons, which are explained in its materials to you, for not
188 having the permits at this point, there are no exceptions in the language of the
189 County ordinance. There is no dispute that TEEL did not commence construction
190 or operation of the landfill expansion within one year of June 27, 2013. For these
191 reasons, the BZA should determine that Mr. Emerson was correct in his third
192 determination that the use permit is void and that TEEL will need a new conditional
193 use permit to expand the landfill.

194

195 As I said in the very beginning, Mr. Emerson's letter did not state, did not purport
196 to state, that Mr. Emerson was revoking the use permit. That is a power reserved
197 to the BZA by state law and in the County ordinance. The next case on your
198 agenda asks you to take the formal step of revoking the use permit for failure to
199 comply with the conditions of the use permit. But at this point, I would simply ask
200 the BZA to consider the evidence and the information that we've provided both in
201 this argument and in the written submission, as well as the information that the
202 applicant will provide, and at the conclusion of your review of all this information,
203 conclude that Mr. Emerson's three separate determinations were correct and to
204 reject the appeal.

205

206 Are there any questions from members of the Board?

207

208 Ms. Harris - Is it okay that we call you back after?

209

210 Mr. Tokarz - It's certainly within the discretion of the Board to do
211 whatever you'd like to do.

212

213 Ms. Harris - Okay. Look at Mr. Emerson's letter on page 6,
214 Mr. Mackey. It's the County of Henrico's Office of the County Attorney letter dated
215 August 15th. On page 6, the third paragraph, the end of that sentence says, “by
216 submitting its own suggested conditions and agreeing to the adopted conditions in
217 2003 TEEL has waived any right to challenge the condition,” and so forth. Do we
218 have a record of the conditions that they submitted?

219

220 Mr. Tokarz - Yes. That is attachment O to what I submitted. What
221 happened was, during the process of considering and preparing the case for the
222 conditional use permit, the applicant submitted suggested conditions which it
223 agreed would be appropriate for the use permit. In attachment #O, this is their
224 application for a use permit. And on page 1 of the suggested conditions, which is
225 about five pages in, you see that their suggested condition says, "The applicant
226 shall obtain and maintain a permit or permits from the Virginia Department of
227 Environmental Quality." But then it goes on to say something else, which is more
228 stringent than condition #4 in this case. TEEL agreed that an appropriate condition
229 for this case would be if this condition is not satisfied within one year of approval,
230 the use permit shall be void.

231
232 Ms. Harris - I'm familiar with that because I think that's all through
233 the report. But the mere fact that TEEL gave us input as to the adopted conditions,
234 do we have a record of their suggestions for the conditions.

235
236 Mr. Tokarz - Yes. In the transcript—and I refer to this in my
237 submission. I have to find the page number. I think it's page 43 or 44. Let me just
238 pull it up to be sure. This is exhibit B, the transcript that we submitted. I believe
239 there was a discussion at the very end of the applicant's case in which Mr. Wright
240 was discussing with Ms. Freye. This is attachment B, page 42. Mr. Wright says at
241 line 1912: "One other thing before we finish here. I want to understand which
242 conditions we really are going to consider. It looks like there's some difference
243 between the last thing the applicant submitted and what the staff has submitted.
244 Can we get some clarification?" And then he says, "Are you satisfied with that, Ms.
245 Harris?" Then there's discussion back and forth with the applicant. And in line 1921
246 on page 43 Mr. Wright says: "So the County ones would be the ones we would
247 consider." Ms. Freye responds: "Yes sir, the applicant has reviewed them and is in
248 agreement with those."

249
250 So, given the fact that the applicant agreed at the hearing to the conditions that
251 were actually adopted by the BZA in the case, we think they have waived any right
252 to claim that they are now outside the authority of the BZA to impose in that
253 situation.

254
255 Ms. Harris - Okay. I was there, so I'm familiar with this. But when
256 you say they submitted their own suggested conditions—I knew they agreed to the
257 conditions. But the part of the statement that said they submitted their own
258 conditions, I was trying to find a record of that. Thank you.

259
260 Mr. Tokarz - Once again, Ms. Harris, that is—when you look at
261 attachment O, the first page of attachment O is the Application for Conditional Use
262 Permit. This is what they used to apply for the use permit in the first place. As part
263 of that package, the condition—and you'll see. If you look, it's page 1, 2, 3, 4, 5—
264 the fifth page of that is headed "Suggested Conditions." Those are the suggested
265 conditions TEEL suggested to the Board of Zoning Appeals.

266

267

Ms. Harris - Thank you.

268

269

Mr. Tokarz - That's what I'm referring to. Any other questions?

270

271

Mr. Mackey - Thank you, Mr. Tokarz. Yes, Mr. Bell has a question.

272

273

Mr. Bell - Throughout the appeal evidence they refer to, several organizations, the Central Waste Management group and the County, etcetera, and through all of them DEQ appears. Obviously, it seems to be a turning point. What is our relationship with DEQ and the landfill versus the Central Waste Management lawsuit that they have? I don't think there's any, but I'd like to hear it.

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Mr. Tokarz - All right. You're correct. There was no involvement or role of the County with respect to the lawsuit between TEEL and the Department of Environmental Quality. Let me step back and give you the framework, if I could.

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283

In order to get a landfill expansion permit, TEEL had to satisfy local zoning requirements, which they did by coming to the Board of Zoning Appeals and getting a use permit. Then they had to go to the Department of Environmental Quality and get a permit to do the landfill expansion in compliance with state law. One of the criteria for getting the state permit was having a review of whether the requested landfill expansion was consistent with the regional waste management plan that covers the Central Virginia waste management area service area, including Henrico County.

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291

There was a hearing on January 24, 2014, in which the Central Virginia Waste Management Authority considered TEEL's request that the landfill expansion be added to the Regional Waste Management Plan. The debate at that hearing was whether the additional landfill capacity was necessary or not. The County of Henrico opposed that amendment of the Regional Waste Management Plan. You have in the record the December 10, 2013 resolution of the Board of Supervisors opposing the amendment of the regional plan. County representatives, including me, appeared before the Central Virginia Waste Management Authority and opposed the addition to the plan. TEEL presented its information. At the conclusion of the proceedings, CVWMA Board unanimously agreed that they would not amend the plan. It would be consistent with the Regional Waste Management Plan to go forward with the landfill expansion.

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That information was then submitted to DEQ, because that was one of the considerations DEQ had to take into account in considering whether it would grant its permit – its Part A permit. DEQ concluded—as I understand it because we were not directly involved—that there was no basis for DEQ to continue to process the application of TEEL for the landfill expansion because CVWMA had determined it was not consistent with the Regional Waste Management Plan. So they said, "We're going to stop processing this."

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311

312
313 TEEL challenged their decision not to go forward with the processing of the permit.
314 It went to court. Ultimately, the Virginia Court of Appeals agreed with TEEL that
315 DEQ should continue to process the permit application. Did not order them to
316 approve the permit application, but to continue to process the permit application
317 and to take into account what the CVWMA action had been.

318
319 The County, as I said, was not involved in any way after we went before the
320 CVWMA and requested that the CVWMA deny the addition of the landfill
321 expansion to the regional plan.

322
323 The story picks up from there. When the Court of Appeals decided that in October
324 2015, DEQ then said, "Okay, we've been ordered by the court to process this
325 application. We will do so." So they issued this Technical Review #1, which is in
326 the record, which said, "We reviewed the TEEL application. It appears to be
327 inadequate. We need 12 additional points of information to continue to process the
328 application." That was in March 2016. So DEQ said if you want a permit, you need
329 to give us this information. TEEL has not done so. Even if you put aside everything
330 that happened prior to March 2016, the fact that TEEL has not responded to the
331 Technical Review #1 to DEQ since that time, in our view establishes that Mr.
332 Emerson was correct in determining they have not diligently pursued the
333 acquisition of the permit they need from DEQ.

334
335 That's a long way of answering. I hope it answers your question.

336
337 Mr. Bell - It did, and it also gave me a date that I was looking for.
338 Thank you.

339
340 Mr. Mackey - Thank you, Mr. Tokarz. Are there any other questions?

341
342 Ms. Harris - Yes, Mr. Mackey. Mr. Tokarz, are you aware we
343 received additional information this morning?

344
345 Mr. Tokarz - I was told. I've not seen the information.

346
347 Ms. Harris - I think that's the response to the application we've been
348 waiting for since March of 2013. I think those questions were answered. The book
349 that we received today.

350
351 Mr. Tokarz - If that's the case, my response would be it's about 17
352 months late.

353
354 Ms. Harris - Yes. Thank you.

355

356 Mr. Mackey - All right. Thank you. If there are no more questions,
357 could we hear from the applicant? Please approach the microphone and spell and
358 state your name.
359

360 Mr. Plumlee - Bryan Plumlee. P-l-u-m-l-e-e. Bryan is B-r-y-a-n. I'm
361 with the law firm of Poole Brooke Plumlee in Virginia Beach, Virginia, 4705
362 Columbus Street, Virginia Beach. I represent the East End Landfill in this matter,
363 as well as my partner, David Oakley, who's here as well. We have four witnesses
364 to speak on this matter, including the owner of the East End Landfill, two of the
365 engineers who have been working on the permit modification with the DEQ, and
366 then an employee of the East End Landfill to talk about its operations.
367

368 I've appeared before many boards over my career. I've never appeared before
369 your board before, and I want to say thank you for hearing us. I'd say Mr. Tokarz
370 makes a very compelling case. It's such a good case it may tend to lead one to
371 close their mind about what you're about to hear. So I'm going to ask you to open
372 your mind from what you heard and give me the fairness that you would give
373 anyone coming before you. And I anticipate that will happen because it's important.
374

375 There's a fundamental misunderstanding about what you're hearing today, a
376 fundamental misunderstanding. And it's extremely important and did not occur to
377 my office until two days ago. It did not occur to us how fundamental the
378 misunderstanding was. And so I raise this at the outset. And I'm going to place
379 some objections on the record to protect my client's rights.
380

381 But I want to start by saying what you're considering is not the revocation of an
382 expansion. You're considering the revocation of the permit to operate period. What
383 you have before you, the conditional use permit, 2013-00014, is the only
384 conditional use permit for the operation of this landfill. This doesn't have anything
385 to do with just an expansion. What was considered in 2013 was both amending
386 the conditional use permit that existed to include the expansion but to also
387 supersede all prior conditional use permits. So it's the only existing conditional use
388 permit.
389

390 Now think about that. If this is not about getting a permit for an expansion and are
391 we late in getting the permit for an expansion, condition 4 says do we have all
392 applicable permits. The word *applicable*, as you see, was not our word. It was not
393 the East End Landfill's word in their suggested conditions. It is the word of the
394 County. The County added the word *applicable*. It's very important. We're not
395 ready to expand. We have years of capacity at this landfill. It will be years before
396 we call upon the expansion. And therefore, we have years to modify the permit
397 that we have to include the expansion. That is a fundamental change in what
398 you've just heard.
399

400 What Mr. Emerson suggested with his determination letter was that we needed to
401 obtain the modification for the expansion years before we actually needed to

402 operate on the expanded area. Look at that conditional use permit. It's set forth in
403 a letter dated June 28, 2013, from your secretary, Mr. Blankinship. And it says it
404 includes parcels 808-707-7024, 808-706-6679, and 809-707-1585. Those are
405 three parcels. The first one is the expansion parcel, the new 21 acres,
406 approximately. The other two parcels are our existing parcels. These are
407 conditions now, 32 of them, that were to go on the entire site for the entire
408 operation.

409
410 What you have before you, the additional documents that we provided, Ms. Harris,
411 this morning, were not documents pertaining to the permit modification with the
412 DEQ. What we added this morning were all the inspection reports from this County
413 going all the way through to the present. And what you find is before the permit
414 was issued June 27, 2013, the inspection was just sort of a narrative. They seem
415 to operating fine. They actually are pretty—they're praising the operation. But the
416 next month, July, after the permit is issued, they're going down each of those 32
417 conditions. Every month they're coming out and looking at the entire site to see
418 we're complying with all 32 new conditions on the entire site.

419
420 It was interesting that Mr. Tokarz pointed out the section—let's see—of the Code.
421 It's Section 24-116(c). It says you have to construct or operate within one year or
422 you violate, you're void. We began immediately. We were operating. We could not
423 violate that ordinance. That's why the conditions are drafted this way. Applicable.
424 That's why at the end of Mr. Blankinship's letter he says all necessary permits for
425 the operation. The phrase from the other section that was quoted, Article 3,
426 Paragraph 12, what is required for the prosecution of the work. What is required
427 for the prosecution of the work? The permits necessary to continue our operation.

428
429 Now, just to give you an idea, the projected cost from Golder and Associates was
430 about \$248,000 to complete the permit modification process. We're an ongoing
431 business. As we incur the expenses, we pay them. We don't rush out to get permits
432 for cells we're not going to build for three or four years down the road.

433
434 So to say now you need to have your permit to expand even though you're not
435 operating on that parcel because you don't need it for your operation begs the
436 question: Do we then have to fill it up within one year to get the permit to close? Is
437 that now a necessary permit, an applicable permit? Of course it's not. The
438 applicable permit is to continue our operation. We're operating.

439
440 Your records that we've handed up to you from your County that's come out and
441 inspected us shows we're in continuous operation all the way up to today. And
442 we're going to have testimony about that.

443
444 Now I do want to make an objection, a general objection to the way this matter's
445 been handled at all. We have the County Administrator—excuse me—the Director
446 of Planning, Mr. Emerson, asserting that we're void, our conditional use permit is
447 void. But to revoke a special use permit, only the BZA can do that. Now this is

448 important, because if he makes that determination and we have to appeal it, which
449 we did—Mr. Tokarz pointed out in his letter. We come before you under the burden
450 of a presumption that he's correct that we have to overcome legally. That's not
451 appropriate. Because you can only revoke a permit under Section 15.2-2309(7).
452 You can only revoke a permit. Your Board is the only one authorized to do it. So
453 the petition was the appropriate means to bring this before you, not the letter of
454 determination. That's why after we pointed out the error in our initial response,
455 Mr. Emerson then filed a petition. But his petition is defective.

456

457 I included a whole host of exhibits, in fact 77 exhibits have been submitted to the
458 Board for this record. Exhibit 31 is his petition. He states we failed in that we
459 violated condition 4. And then he writes, "The applicant shall obtain and maintain
460 a permit or permits from the Virginia DEQ." That's not even condition 4, because
461 he leaves out the word "applicable." That's what's in the letter from Mr. Blankinship,
462 which is our exhibit 3. Number 4, "The applicant shall obtain and maintain all
463 applicable permits from the Virginia Department of Environmental Quality (DEQ)."
464

465 This was a fundamental misunderstanding, I believe, of now this conditional use
466 permit is to operate. This is not a conditional use permit for the simple expansion
467 of the landfill. It's for its operation in its entirety. That's why all these conditions
468 were added. It was for the benefit of the County. There was an exchange
469 happening. The exchange was we'd like you to consider favorably our extension
470 of this landfill that gives us more time to work out there. And in exchange, we will
471 subject our entire site to these other conditions to make sure that we don't offend
472 your residents, make sure our trucks are driving in the right place, that they're
473 cleaned off, that there's no odor emanating from our facility. That's why the
474 conditions were adopted the way they were, to bind us not just for when we got to
475 the expansion, but immediately.

476

477 So what you're considering is ending our operation. And you're doing it under
478 improper due process. This is unconstitutional. We are here on an appeal of
479 Mr. Emerson's determination, which he had no authority to make, which places us
480 under an additional legal burden. And we shouldn't have to go forward under that.
481 So I'm making that objection because it's very important.

482

483 We have an operation that is involving investment of millions of dollars, lots of
484 employees, and a lot happening. If you revoke the permit for the operation of this
485 landfill in its entirety, we will file additional suits seeking the losses that we will
486 sustain. I have to say that. I have to put that on the record before you.

487

488 So here we are. We're both on an appeal and a petition to revoke. Two different
489 legal standards for us to comply with. I have to then ask you, what kind of notice
490 were we given to prepare for this hearing. It's sort of like a shell game. Here it is.
491 We didn't mean that standard; we're going to change that on you. That's very—
492 that is a flat out violation of due process. We should be told the proper standard
493 that we're appearing here on and what it's about. And to state in his letter and his

494 revocation petition that this involves just the expansion is further—it's incorrect.
495 And it doesn't put us on proper warning that what we're actually asking to revoke
496 is the permit for your entire site.

497
498 I want to tell you, about 12 lawyers fainted in my office when they figured that out.
499 Okay? They just about fainted. When they discovered that this was not just about
500 an expansion, but threatened the entire operation of the landfill, it was all hands
501 on deck, okay, trying to figure this one out or what's going on. I don't want to be
502 overly dramatic, but I want to present to you the heart attack I had a couple of days
503 ago in realizing what this is really about. But it also further explained why things
504 are being handled this way.

505
506 And one thing that's not been shared with you, we built a whole other cell at this
507 landfill. From the time that the landfill was purchased in September—and you'll
508 learn it was purchased in September of 2016 by a new buyer—they built cell 3D.
509 Cell 3D was built on those other two parcels. Not the expansion parcels, but the
510 other two parcels. This was put in with a very expensive synthetic liner. It cost
511 \$750,000 to build this cell. What the owner believed was it was best to proceed
512 with the technical review process after the construction of that cell had been
513 completed. There's a reason for that. This landfill goes back into the '80s. you have
514 old cells there that are clay lined. They're going to feed the leachate eventually into
515 this cell 3D with the synthetic liner. That cell 3D is going to eventually then be
516 folded into the expansion cell, which is cell 7.

517
518 That is a very intricate, technical issue. so what the new owner decided was I'm
519 bringing in a new engineering firm to review all the plans that were done by the
520 prior owner of this business to make sure this is done properly. And we're going to
521 complete the technical review after we finish this cell 3D.

522
523 Cell 3D didn't get finished until June of this year. We have two engineers here to
524 talk about the work they've been doing to try to complete the technical review of
525 part A. But again I come back. Part A is not an applicable permit for our operation.
526 We are operating.

527
528 So we're sort of being asked to respond to whether we were diligent to get a permit
529 we didn't yet need. So that's very important to consider. We're only up here for
530 violating condition 4. That's what this is all about. Do we have all applicable
531 permits? So what does the word *applicable* mean? I will say if you look into the
532 case law of Virginia—in fact, it happened in Henrico County. I don't know who the
533 attorney was representing the County at that point. But if you look, you'll see in
534 McClung versus County of Henrico, it says when you look at the meaning of words
535 in conditions, the interpretation has to be the ordinary sense or plain use of the
536 word. In fact, in that particular case, they looked to *Webster's Dictionary* for the
537 definition. So I have *Webster's*. And *Webster's Dictionary* defined *applicable*, and
538 is says "relevant." The relevant permit.

539

540 So the word *applicable* is directing you in your consideration of whether we violated
541 condition 4. And I think Mr. Bell's question about how the DEQ relates to the BZA,
542 I think that's a very important question. The DEQ is going to shut us down if we
543 don't operate under the appropriate permits. They're not going to hesitate. So
544 they're checking us all the time to see if we have that applicable permit. And so
545 what you'll find—if you look at an actual DEQ permit, you think it's like a couple
546 sheets of paper, it's not. It's hundreds of sheets of paper. All these little
547 modifications that are happening over and over as the landfill operator is operating
548 and says I need this, I need to switch this, change that. They're working in tandem
549 with the DEQ through this entire process building the permit.

550
551 So for this expansion, it's not just a minor modification; it's a major modification of
552 the permit. So we're going through a process well in advance to make sure that
553 we get to this major modification successfully when we're prepared to expand with
554 this new cell, cell 7.

555
556 I know that's entirely different than the material you've read. You've read a lot about
557 a fight that the DEQ had with TEEL over the amendment to the Central Virginia
558 Waste Management Authority's plan, their waste management plan. The DEQ said
559 well since you were denied by the CVWMA, they're not going to expand the service
560 area to include your expansion cell, we're not going to process your permit. But
561 then the both the Richmond judge and the Court of Appeals ordered the DEQ to
562 continue the processing of the permit. All that's done not because the permit has
563 yet become applicable to us. But it's an advance because these are extremely
564 expensive operations where you have to plan years in advance for these
565 expenses, and you're plodding your way through them. To conduct in this country
566 with a landfill, you're dealing with many, many agencies, state and federal and
567 local. And you're doing many things, so you have to anticipate these moves. It
568 doesn't make them applicable at the moment for your operation, though.

569
570 When the technical review letter came in March of 2016, what I think the County
571 fails to tell you is there is no deadline. There's nothing in that letter, that technical
572 review, saying you've got a month, a week, two years. There's no limit. The reason
573 is—you know what they're number one criteria is in responding? It's get it right
574 because too much depends on it. Be sure you're right. And so when the new owner
575 came in and said, "I want to be right," and the best way to do that is to finish out
576 this cell construction and see how it's going to work with this new one before we
577 answer all the technical questions, he's being a rational business owner trying to
578 make the right decision.

579
580 That's all this is about. It's a misunderstanding. This was not—this one-year
581 discussion, two-year discussion was not about getting the expansion permit. And
582 if you read these 32 conditions and the ending part of Mr. Blankinship's letter
583 about—what he says was, it's interesting. He says the rules of the Board provide
584 that the approval must be acted upon by June 27, 2014. We acted upon everything
585 immediately. We were operating immediately. By September of 2013, we'd

586 submitted our application to the DEQ. We had appeared before the CVWMA by
587 November of that same year, again in January of the following year. So we had
588 acted upon this. There was no question we were acting upon it.

589
590 Then it goes on to say you may comply with this requirement by obtaining and
591 diligently pursuing all necessary permits. So again, it comes back to *necessary*.
592 The simple fact is the modification to the DEQ permit was not necessary for our
593 operation and still is not necessary for our operation. You'll hear testimony that it
594 won't be necessary for several years.

595
596 That's the presentation that I have for both my argument and suggestions to
597 deny—or overrule the determination and deny the request to revoke. I'm sort of
598 dovetailing these together. I'm here to answer any questions. We have Yvette
599 Ohree to talk. She's been an employee with the landfill since 2010.

600
601 Mr. Mackey - Hold on for one second, Mr. Plumlee. I want to give the
602 Board a chance to ask some questions of you before we go too much further. Does
603 anyone have any questions of Mr. Plumlee now?

604
605 Ms. Harris - Mr. Plumlee, are you familiar with the letter from Golder
606 Associates?

607
608 Mr. Plumlee- Which date, if you don't mind. I'm sorry.

609
610 Ms. Harris - It has March 31, 2016.

611
612 Mr. Plumlee- Yes ma'am. Golder is giving a scope of work to TEEL
613 at that time of \$55,000 to conduct the technical review. I believe that's the letter
614 you're referring to?

615
616 Ms. Harris - Right. And it says in reference to—or it's the response
617 to DEQ technical review comments on part A permit application for that cell, cell 7.
618 So you're saying—I guess you need to see the letter.

619
620 Mr. Plumlee- I know the letter.

621
622 Ms. Harris - Okay. Well, you're saying that these responses here
623 do not relate to your particular—the thing that we've been waiting for, the response
624 that we've been waiting for since last March, you're saying that the response here
625 does not relate to that?

626
627 Mr. Plumlee- Yes. What I'm saying is twofold. I'll answer your
628 question quickly. What that is is an estimate scope of work given to TEEL under
629 its old ownership in March 2016. TEEL was sold to new ownership in September
630 2016, and they brought in their own engineers who have now done a considerable
631 amount of work going to that same goal. I hope that answers your question with

632 regards to that particular letter. That was sent to Mike Monroe, if you look, of TEEL.
633 Mike Monroe was the former owner and his group was the former owner of the
634 landfill. That group sold its ownership in the landfill to a separate group in
635 September. That group has hired Draper Aden as its engineering firm. Those
636 engineers are here.

637

638 I go a little further with what I'm saying to you, Ms. Harris. I'm saying you weren't
639 waiting on a response to the technical review because that modification was not
640 applicable to the continued operation of the landfill. It only becomes applicable
641 when expansion occurs. And the expansion is years out because the capacity of
642 the current landfill is three or four years down the road. So you don't have—that's
643 not an applicable permit and therefore—in other words, if you were to ask DEQ
644 right now are we operating with all necessary permits, DEQ would say yes. They'd
645 say we are. And if you look at the parcels over which this conditional use permit
646 controls, it's our entire site, our entire operation. So if you revoke it, you're revoking
647 our entire operation, not the expansion.

648

649 Ms. Harris - I think you've said that about three times, so I think we
650 got that.

651

652 Mr. Plumlee- Okay.

653

654 Ms. Harris - Okay. But I was just wondering were these responses
655 the ones we were waiting for, that DEQ asked.

656

657 Mr. Plumlee- What those were were the engineering firm's estimate
658 of cost. They're saying we can respond to these. This is what we're going to have
659 to do. And they go through the list of each item. At the very end, they total up a
660 cost of what it will cost for them to go off to do that work. It doesn't mean it's ready
661 to be submitted. It doesn't mean that letter is a response. It's not a response to the
662 DEQ. That's a letter to the internal management of TEEL at that time. What we're
663 trying to show by providing the Board that information is that TEEL was diligent.
664 TEEL received the March 4th request from the DEQ. They didn't sit on it; they
665 already sent it to their engineering firm and got back from the engineering firm an
666 estimate of cost to do that work. Okay.

667

668 They then proceeded and sold the entire operation. You'll hear that a new
669 engineering firm came in, took over the engineering work, and have been working
670 that out. And we've said that it was very important to our owner that cell 3D be
671 completed for that technical work to go forward to make sure everything's safe and
672 appropriate. Then you have differing opinions, but in essence that letter is simply
673 to demonstrate to you that the TEEL ownership did not sit on this. They sent it to
674 their engineering firm, their engineering firm responded back that same month with
675 this is what it's going to cost.

676

677 Mr. Mackey - Any other questions? I have a few questions
678 Mr. Plumlee.
679
680 Mr. Plumlee - Yes sir.
681
682 Mr. Mackey - Cell 3D, is that part of the requested expansion area?
683
684 Mr. Plumlee - It is not.
685
686 Mr. Mackey - It is not. Okay. And you say that was decided by the
687 new ownership, which purchased it in 2016, to complete that?
688
689 Mr. Plumlee - That was—yes. It was purchased in September 2016,
690 and the cell construction went forward almost immediately. They spent \$750,000
691 constructing that cell.
692
693 Mr. Mackey - All right. Prior to 2013, did the owner—did TEEL have
694 all the appropriate applications and permits in order to operate the business prior
695 to 2013?
696
697 Mr. Plumlee - Yes.
698
699 Mr. Mackey - They did?
700
701 Mr. Plumlee - They did.
702
703 Mr. Mackey - Okay. And the 2013 request was basically only an
704 expansion, correct?
705
706 Mr. Plumlee - No it was not. If you look at the application, I'll read the
707 language with you. It's in our exhibits, exhibit 1, TEEL, page 10. It gives you the
708 application language, and it's important to note this. It says the request—and this
709 is what was granted. "The request for permits under Section 116(c)(3) of Chapter
710 24, in order to amend the conditions of UP-025-07 and add the Simmons
711 Contracting Yard to the East End Landfill with the effect of replacing and
712 superseding proper conditional use permits."
713
714 Mr. Mackey - Right, okay. So my question would be if it was turned
715 down then these conditions would not supersede what you previously had?
716
717 Mr. Plumlee - That's correct.
718
719 Mr. Mackey - Okay.
720
721 Mr. Blankinship - But if the BZA had denied that application in 2013, is it
722 your position that TEEL would have had to close the next day?

723

724

Mr. Plumlee - No, because it would not have superseded the prior permit.

725

726

727

Mr. Blankinship - So if the BZA finds that this permit has expired or, alternatively, if the BZA revokes this permit, TEEL will still be able to operate under UP-25-07.

728

729

730

731

Mr. Plumlee - No. Our position is if it revokes this permit—since this permit superseded all prior permits, the only permit we have for our operation is this permit. If it's revoked, we can't operate. According to your rules of this County. Now we may challenge that with other challenges before the Court of Appeals, which I'm not waiving here. But I'm saying to you that that would be the effect.

732

733

734

735

736

737

Mr. Blankinship - This is the first time I've heard that argument, and I haven't conferred with our attorneys about, but I disagree just on the face of it.

738

739

740

Mr. Plumlee - I understand—

741

742

Mr. Blankinship - I think if either the Board finds this permit has expired or the Board revokes this permit, that would leave TEEL operating under UP-25-07 is my position, without having yet consulted with the County Attorney.

743

744

745

746

Mr. Plumlee - Again, going back to the actual permit of June 28, 2013, you see that it affects all three parcels. As I said are operating. So it is clear that when you say "applicable permits," you're talking about those necessary permits, those needed permits. To operate. To perform the work. Okay, to perform the work. So we're performing immediately. We're not there to the expansion. So obviously we're diligent in pursuing the modification because it wasn't even required. So we're out there spending money trying to obtain this modification anyway and going forward with it.

747

748

749

750

751

752

753

754

Now here's another interesting thing, and I do think it's worth noting. It took us 2-1/2 years to litigate with the DEQ to open this process up again. Spent thousands upon thousands of dollars doing that. The Richmond City court issues an order saying, "No, DEQ, you have to process, and you have to pay the attorney fees."

755

756

757

758

759

Well what happened then is DEQ appealed that to the Court of Appeals, and the Court of Appeals said, "Well, we think it was reasonable to consider it this way, so you don't have to pay the attorney fees, but you do have to go forward with processing." It took several months then. The Richmond court then issued an order vacating the attorney fees. So all that delays the process. Then it somehow ends up back at DEQ, and by March they send their technical review.

760

761

762

763

764

765

766

767

Well, the technical review, again, does not have a deadline from the DEQ. None. And there appears to be no duration limitation in the permit itself granted by the

768

769 BZA in 2013. There is no limitation on the duration of the permit. At all. On the
770 duration. It's an unlimited time permit. It says you have to comply with these
771 conditions. So we looked to the conditions. The conditions say "all applicable
772 permits."

773

774 I have to tell you, when we initially addressed this issue and we saw the expansion,
775 we looked at it the same way. We said, "Okay, we're talking about the expansion."
776 We focused on the permit for the expansion. But that's not what these conditions
777 were there to do. They were there to serve the entire site with all of the operation
778 in mind. That's why it talks about applicable permits. And that's why we did
779 everything we needed to have the needed or necessary permits.

780

781 I know I sound like I'm beating a dead horse over and over and over, but it's of
782 very high significance that I change the focus and the mindset that you all came in
783 with today reading all the material. My very office didn't submit this idea to you
784 because, like I said, we had our heart attacks a couple of days ago when we
785 realized this was the effect.

786

787 Anyway, I appreciate that. We have Yvette Ohree from our operation. We have Bill
788 Solomon and Tom Laughlin from Draper Aden to talk about the permitting process
789 and what they've done. Again, we've submitted 77 exhibits. A good number of the
790 new set, almost 30 of them or so, are just your inspectors going through and going
791 and checking the list that we're following all the conditions. So you see we have
792 this continuous operation. We're continuing to comply with all of the permitted
793 items and the conditions.

794

795 I'm here to answer any questions. My partners there to bat cleanup for us. I
796 suppose we'll be talking again when it comes to the revocation part of the hearing.
797 I appreciate very much the generous time that you gave me.

798

799 Mr. Mackey - Thank you, Mr. Plumlee. We have one more question.

800

801 Mr. Bell - One quick question.

802

803 Mr. Plumlee - Yes sir.

804

805 Mr. Bell - With the permit, in essence what you're saying is that
806 if we revoke that, you're out of business, based on what you said that other
807 considerations were not considered that puts us in operation as we are today. So
808 we're here pretty much to look at the permit. That's our job right now. And we have
809 to look at it, I would think, wouldn't we, under the current conditions because a lot
810 of what you say, even though we might agree with it and you might even be talking
811 directly to how it's going to affect you on it, does not apply as to the way we operate
812 and are using this permit. Is that reasonable?

813

814 Mr. Plumlee - Well, this first section, as Mr. Tokarz put it, is to
815 consider three determinations made by Mr. Emerson. First, that we violated
816 condition 4. So that goes back to all applicable permits. All applicable permits. So
817 you have to read the condition and make sure that the alleged violation meets with
818 that condition, that it's not—that we're not being accused of violating a condition
819 that doesn't exist. He didn't revoke our permit because we failed—excuse me. He
820 didn't say that we're revoked from our conditional use permit because we failed to
821 get a DEQ permit. He's saying that we failed to meet condition 4. So you must read
822 condition 4 in that context and ask yourself did we violate it. Was this an applicable
823 permit? And I'm saying it was not. I hope that answers your question.
824

825 Mr. Bell - It does. Thank you.

826

827 Mr. Plumlee - Thank you.

828

829 Ms. Harris - Mr. Plumlee, one quick question, I hope. This landfill
830 operates under which conditional use permit? I know we're dealing with—they've
831 been in operation for years and years and years. Do we know what conditional use
832 permit they've been operating under? And then we're dealing with the one today
833 on the expansion. So you're saying if the expansion permit is revoked that the
834 company can't operate.
835

836 Mr. Plumlee - Yes. We keep referring to it as the expansion permit,
837 but it's not the expansion permit. As I read, the application was to supersede all
838 prior permits. That was granted. And so the only one that we're operating under is
839 CUP2013-00014. That's the only permit we hold as a business. It's not the
840 expansion permit; it is our permit. And so if it is revoked, you shut us down. And
841 that creates millions of dollars in losses.
842

843 Ms. Harris - Was that on the application?

844

845 Mr. Blankinship - Let me say again, Ms. Harris, that that is not the
846 County's position. That is Mr. Plumlee's argument, but that is not the County's
847 position.
848

849 Mr. Plumlee - And I understand the County disputes that but it—if you
850 issue a permit to me and you say on these three parcels you have to operate under
851 these conditions, okay. You have to operate, perform your work. We're doing that
852 all along. You wouldn't say to a landfill go out and build an unnecessary cell, go
853 out and get permits you don't need, waste your time business spending \$250,000
854 on something you don't need at this moment. That's not what you tell businesses.
855 You're saying in exchange for this extension, you're going to operate under these
856 32 conditions, and we immediately began to operate under them for our entire
857 operation. So that's why it's all at issue.
858

859 Mr. Blankinship - I don't think that's factually accurate. I think there are
860 other improvements shown on the plans for 2013-14 that have not been
861 implemented at this time. And the reason they haven't been implemented is
862 because the expansion hasn't been approved —.

863

864 Mr. Plumlee - Can you point those out to me, because I don't know
865 of any?

866

867 Mr. Blankinship - Yes. The buffering along the front of 808-706-6679.
868 The western end of that cell is to be drawn back and some additional buffering and
869 landscaping is to be installed. We expected that would be done at the time that the
870 expansion was undertaken.

871

872 Mr. Plumlee - Okay.

873

874 Mr. Blankinship - But because the expansion has not been undertaken,
875 those additional improvements have not been done. You made a very strong point
876 that there were tradeoffs for the County. And as I recall, Ms. Freye very clearly
877 presented the case in that light in 2013, that in approving the expansion, the
878 County was also getting some improvements to the existing operation at a landfill.
879 And if the expansion was not approved, then the County would not get those
880 additional improvements. I think that goes for the position that I had tentatively put
881 forward that if this permit was never approved, UP-25-07 would have remained in
882 place. And if this permit has expired, UP-25-07 remains in place. And if this permit
883 is revoked, UP-25-07 remains in place.

884

885 Mr. Plumlee - Well here's the issue. To amend and supersede for the
886 purpose of adding conditions upon the current operation—you don't disagree that
887 that was done.

888

889 Mr. Blankinship - I agree that's what was done.

890

891 Mr. Plumlee - That was done. And we operated under those
892 conditions, which were applicable in our operation at that time.

893

894 Mr. Blankinship - In some ways yes, and in some ways no. I dispute the
895 factual basis.

896

897 Mr. Plumlee - And I will say Ms. Ohree here to show you—I think she
898 may have the receipts, she may have to do it from memory because I had her
899 rushing around for receipts yesterday. The \$29,900 was paid to James River
900 Nursery for buffer improvements already. Years ago. So there a lot of conditions
901 fulfilled immediately upon the submission of the new permit.

902

903 Mr. Blankinship - Some of the conditions have been fulfilled, yes.

904

905 Mr. Plumlee - Yes. And so again—so let's say hypothetically you're
906 correct, that you revoke this and it only then prevents the expansion because the
907 old conditional permit is still in existence. That may be the effect that we could
908 debate in terms of your action. But it doesn't change my argument.

909

910 Mr. Blankinship - Okay.

911

912 Mr. Plumlee - It doesn't change my argument that we were operating
913 under the conditions we were set to operate under. And that condition said "all
914 applicable permits." So the meaning doesn't change—right?—because it's all
915 three parcels affected, it's our entire operation. The effect of your ruling you may
916 dispute with me. But I don't think you dispute necessarily that we were under all
917 those conditions, and the intent was to make us work for all applicable permits.
918 And there was no reference. If you read the conditional use permit, there's no
919 differentiating between the parcels. It just says property at some point. Okay. So
920 there's no differentiation about an expansion. It doesn't say anything about, "Oh,
921 you need to go get that DEQ expansion permit within one year." It doesn't say
922 anything like that. It's more broad because it deals with all of our conditions of
923 operation for our entire site. The applicable permits had to be obtained.

924

925 So anyway. I just wanted to make that distinction. If you're correct that your effect
926 is not to revoke our entire operation, which I would say "yay", it doesn't change the
927 point I'm trying to make, which is condition 4 meant all applicable permits. So,
928 thank you.

929

930 Mr. Mackey - Thank you, Mr. Plumlee. Do we have anyone here that
931 would like to speak in—oh, I'm sorry. Yes

932

933 Mr. Green - The other day I received this booklet 1 through 31, and
934 then this morning on the desk was 32 through 77.

935

936 Mr. Plumlee - Yes sir.

937

938 Mr. Green - This new information, why was this not provided?

939

940 Mr. Plumlee - In advance?

941

942 Mr. Green - Yes. If you're asking me to make a decision, I need to
943 have all of the facts presented before me so I can review it. I looked through this.

944

945 Mr. Plumlee - I would love for you to read every single exhibit
946 carefully. Let me tell you why this came in late, and I'll try to explain it the best I
947 can.

948

949 Mr. Green - The second question I have is, if you're making the
950 assumption, an allegation that your permit will be pulled, how do we verify that?

951 Can the County attorney—is that legitimate, will that happen, or is that just his
952 opinion?

953
954 Mr. Tokarz - Members of the Board, I'm literally just hearing this
955 argument this morning. I don't believe it was ever the intent of the County to say
956 that current operations have to continue. If you look at—

957
958 Mr. Plumlee - Have to continue or should not continue?

959
960 Mr. Tokarz: Let me just tell you. If you look at exhibits D, F, G, H, I,
961 J, K, N, O, all those exhibits refer to the expansion of the landfill. I think we both
962 have been operating under the assumption that what we're here to talk about is
963 whether the use permit applicable to the expansion of the landfill should be
964 revoked and whether it's void. The reason I say that is under exhibit O, attachment
965 O to our exhibits, the application that was submitted was to add the Simon
966 Contracting Yard to the East End Landfill. The description of the use permit case
967 in exhibit D was to expand the landfill operations at the facility. The application to
968 CVWMA was to expand the landfill application [sic]. The application to DEQ has
969 been to expand the landfill application [sic]. All of this is a long way of saying I think
970 we both have been operating under the assumption all we're here about today is
971 to talk about - the landfill expansion.

972
973 My suggestion to the Board is this. Given the fact that this is first time I've heard of
974 this, this is the first time you've heard of this, and since I don't believe it was the
975 intention of the Board—of the Director of Planning to say that the entire use permit
976 means everything has to stop today if you grant my request for revocation, is to
977 continue this case for 60 days. Let us confer, counsel confer, and limit this case in
978 an appropriate way. My proposal to my client would be that we focus on the portion
979 of the use permit that allowed the expansion of the landfill, because that really was
980 what I think everybody in 2013 thought this case was about—and what DEQ thinks
981 this case is about, and what CVWMA thinks this case is about. And let us come
982 back, submit written information, both sides, to you.

983
984 I'm sorry I gave a heart attack to my colleagues here thinking that we were trying
985 to shut down the entire landfill. I don't believe that's the intent. Mr. Blankinship has
986 worked with Mr. Emerson. Am I understanding that correctly?

987
988 Mr. Blankinship - Yes sir.

989
990 Mr. Tokarz - Yes. That would be my proposal to you. Let us come
991 back in 60 days, two meetings from now in October, and submit to you written
992 materials just on the landfill expansion. And we can take the other questions
993 they're concerned about shutting down the rest of the operations off the table. That
994 would be my proposal to you.

995

996 Ms. Harris - Mr. Tokarz, I'm looking at the original application for a
997 conditional permit.

998
999 Mr. Tokarz - Yes ma'am.

1000

1001 Ms. Harris - And then the request stated they want to amend the
1002 conditions of the original CUP application. But to me if we don't amend it, wouldn't
1003 go back to the way it was?

1004

1005 Mr. Tokarz - If the application had been denied in 2013, then UP-
1006 025-07 would have continued in effect. Now what I need to do—because I'm
1007 hearing this for the first time—is go back and look at the records, see exactly what
1008 was applied for, what was told to the Commission about the effect on the other
1009 operations. Frankly, I'm not prepared to address that today. Then submit
1010 information to you, have Mr. Plumlee submit information you, and we come back
1011 and talk about what Mr. Emerson's determination was intended to address, and
1012 what the intent of the revocation was intended to address. I believe we can narrow
1013 this case significantly if we simply focus on what is focused on exhibits D, F, G, H,
1014 I, J, K, N, O, all of which refer to the landfill expansion. That's all I thought we were
1015 coming here to talk about today. That's all I had seen in their materials prior to
1016 today. I believe that would be a proper focus for the Board two months from now.

1017

1018 Mr. Mackey - All right, Mr. Plumlee, will you approach, please?

1019

1020 Mr. Plumlee - Yes sir.

1021

1022 Mr. Mackey - I think at this time it probably would be wise if we make
1023 a motion to defer for 60 days. I do have a statement from the Board. I think in all
1024 fairness if you do have any additional information that you do a better job of getting
1025 it to us. That's a lot of information to—

1026

1027 Mr. Plumlee - I think that's a fair comment. I will take that and run with
1028 that.

1029

1030 Mr. Mackey - Okay. At this time, I believe we would need a motion.

1031

1032 Mr. Green - So moved.

1033

1034 Ms. Harris - Second.

1035

1036 Mr. Blankinship - Before you vote, Mr. Chair, I just have one question for
1037 both of the attorneys. There are many cases where the Board hears all of the
1038 testimony and then defers its decision on some specific point of fact. This does not
1039 strike me as a case like that. I think we're going to need to set for public hearing
1040 on October 26.

1041

1042 Mr. Tokarz - I think the attorneys agree.
1043
1044 Mr. Plumlee - Yes sir.
1045
1046 Mr. Blankinship - Okay. All right. The public hearing will be continued,
1047 then, to October 26th.
1048
1049 Mr. Mackey - Just for the record, this is just deferment of the case
1050 not the decision. It's been motioned and properly seconded. All in favor say aye.
1051
1052 Ms. Harris - Before we—
1053
1054 Mr. Mackey - Oh.
1055
1056 Ms. Harris - Question. Will we have to rehear?
1057
1058 Mr. Blankinship - Yes ma'am.
1059
1060 Ms. Harris - Okay, thank you.
1061
1062 Mr. Mackey - Okay. All in favor say aye. Those opposed say no. The
1063 ayes have it 5 to 0.
1064
1065 After an advertised public hearing and on a motion by Mr. Green seconded by Ms.
1066 Harris, **APL2017-00007, THE EAST END LANDFILL, LLC** has been **deferred**
1067 until the October 26, 2017 meeting.
1068
1069
1070 Affirmative: Bell, Green, Harris, Mackey, Reid 5
1071 Negative: 0
1072 Absent: 0
1073
1074
1075 Mr. Plumlee - Does that apply also to the next item, the revocation on
1076 the agenda?
1077
1078 Mr. Mackey - I believe so.
1079
1080 Mr. Blankinship - Good question. It should take a separate motion and
1081 action.
1082
1083 Mr. Mackey - Okay. All right.
1084
1085 Mr. Tokarz - Members of the Board. Once again, Mr. Tokarz. For
1086 the record, we would agree that the revocation permit case should also be
1087 continued for 60 days.

1088

1089 Mr. Blankinship - October 26th.

1090

1091 **CUP2013-00014 THE EAST END LANDFILL:** The Director of Planning
1092 requests revocation of a conditional use permit to expand an existing landfill at
1093 1820 Darbytown Road (Parcels 808-706-6679, 808-707-7024 and 809-707-1585)
1094 zoned Business District (B-3) and General Industrial District (M-2) (Varina).

1095

1096 Mr. Mackey - Do we have a motion for CUP2013-00014?

1097

1098 Mr. Bell - So moved.

1099

1100 Mr. Green - Second.

1101

1102 Ms. Harris - Did you say October 26th?

1103

1104 Mr. Blankinship - Yes ma'am.

1105

1106 Ms. Harris - Sixty days, okay.

1107

1108 Mr. Mackey - All in favor say aye. Those opposed say no. The ayes
1109 have it 5 to 0. So moved.

1110

1111 After an advertised public hearing and on a motion by Mr. Bell seconded by
1112 Mr. Green, **CUP2013-00014, THE EAST END LANDFILL**, has been **deferred** until
1113 the October 26, 2017 meeting.

1114

1115

1116 Affirmative: Bell, Green, Harris, Mackey, Reid 5

1117 Negative: 0

1118 Absent: 0

1119

1120

1121 Mr. Plumlee - Thank you very much. Nice to meet you all. May I ask—
1122 my assistant is reminding me that I have a mediation that took heaven and earth
1123 to set on October 26th. Is there any way that you all would consider moving it to
1124 November?

1125

1126 Mr. Blankinship - November 16th?

1127

1128 Mr. Mackey - Do we need to amend that?

1129

1130 Mr. Blankinship - Yes, we would need a new—

1131

1132 Mr. Mackey - All right.

1133

1134 Mr. Plumlee - My apologies. My apologies.
1135
1136 Mr. Mackey - All right, do we have a motion to defer to the November
1137 the 16th meeting APL2017-00007?
1138
1139 Mr. Green - So moved.
1140
1141 Ms. Harris - Second.
1142
1143 Mr. Mackey - Properly moved and seconded. All in favor say aye.
1144 Those opposed say no. The ayes have it 5 to 0.
1145
1146 After an advertised public hearing and on a motion by Mr. Green seconded by Ms.
1147 Harris, **APL2017-00007, THE EAST END LANDFILL, LLC** has been **deferred**
1148 until the November 16, 2017 meeting.
1149
1150
1151 Affirmative: Bell, Green, Harris, Mackey, Reid 5
1152 Negative: 0
1153 Absent: 0
1154
1155
1156 Mr. Mackey - Now do we have a motion to defer until November 16th
1157 CUP2013-00014?
1158
1159 Mr. Green - So moved.
1160
1161 Mr. Reid - Second.
1162
1163 Mr. Mackey - Moved by Mr. Green, seconded by Mr. Reid. All in favor
1164 say aye. Those opposed say no. There is no opposition. The ayes have it 5 to 0.
1165
1166 After an advertised public hearing and on a motion by Mr. Green seconded by Mr.
1167 Reid, **CUP2013-00014, THE EAST END LANDFILL**, has been **deferred** until the
1168 November 16, 2017 meeting.
1169
1170
1171 Affirmative: Bell, Green, Harris, Mackey, Reid 5
1172 Negative: 0
1173 Absent: 0
1174
1175
1176 **APL2017-00009** **DAVID ELLIOTT** appeals a decision of the Director of
1177 Planning pursuant to Section 24-116(a) of the County Code regarding the property
1178 at 7642 Phillips Woods Drive (PHILLIPS WOODS) (Parcel 831-691-9529) zoned
1179 Agricultural District (A-1) (Varina).

1180

1181 Mr. Blankinship - As the applicant comes forward, members of the
1182 Board, we received an email last night that needs to be entered into the record. It
1183 was passed out to you. Ms. Anderson, there's a copy on the table. Were you given
1184 a copy of the email? We received an email last night that is being entered into the
1185 record now, so we need to get everyone a copy.

1186

1187 Would everyone who intends to speak to this case please stand and be sworn in.
1188 Raise your right hands, please. Do you swear the testimony you're about to give
1189 is the truth, the whole truth, and nothing but the truth so help you God? Thank you.
1190 Ms. Anderson.

1191

1192 Ms. Anderson - Good morning, members of the Board, my name is Lee
1193 Ann Anderson. Last name is spelled A-n-d-e-r-s-o-n. "Lee Ann" is L-e-e- A-n-n, two
1194 words. I'm not going to make any promises that this case will be simpler than the
1195 one we just heard. But I will say that it has few exhibits and a shorter chronology.

1196

1197 I represent the Director of Planning. And this appeal is brought by David Elliott
1198 appealing the Director of Planning's determination about a request for an
1199 accessory use. This came about as part of a business license application that was
1200 submitted by Mr. Elliott on March 3rd, 2017, which is attached as exhibit A to my
1201 response.

1202

1203 The business license application requested a home office for his business, Ring of
1204 Fire Manufacturing LLC, which is located—his home is located at 7642 Phillips
1205 Woods Drive, a property that is zoned A-1 Agricultural District. The business, as I
1206 understand it from the website and from the materials submitted is a firearm
1207 cartridge conversion and ammunition manufacturing business.

1208

1209 Now, in the supplemental business license questionnaire, which is page 2 of
1210 exhibit A that you see on the screen before you, it shows there that this is for a
1211 home office. It states that the folks would come there by appointment only, that no
1212 machinery or equipment that's not customary for household purposes would be
1213 used, no stock and trade would be kept at the home, and no products would be
1214 sold from the home. In addition, on the third page of the business license
1215 application, Mr. Elliott submitted a statement that says expressly that the office
1216 would be used for taking orders for products kept off site and that the items that
1217 would be kept offsite—and he gives you a long list—would be all of the ammunition,
1218 the conversation casings, projectiles, primers, and powder. Okay?

1219

1220 In response to the business license application, Mr. Blankinship sent a letter on
1221 March 20, 2017, approving the business license application. The license
1222 application was for a home office. It was approved for a home office. Now
1223 Mr. Blankinship's letter says that, "You may use your dwelling for office activities
1224 related to the purchasing and resale of conversation kits, ammunition, and

1225 ammunition components. He also allowed Mr. Elliott to store firearms and
1226 ammunition for his own person use. Okay?

1227
1228 The letter from Mr. Blankinship, however, stated that you could not—Mr. Elliott
1229 could not assemble, manufacture ammunition at his home for the distribution and
1230 sale to others. So the business license application was granted, but with an
1231 important caveat and restriction, no manufacturing ammunition at your home.

1232
1233 On May 9th, 2017, Mr. Elliott submitted a business intent letter. This business
1234 intent letter to the Director of Planning. This business intent letter contradicted what
1235 he had said in his license application. This was exhibit E attached to the
1236 submission. In this submission, he said, “I now intend to manufacture ammunition
1237 in my garage, and I have applied from the Bureau of Alcohol, Tobacco, and
1238 Firearms for an ATF7, a federal firearms license that would allow me to
1239 manufacture ammunition.”

1240
1241 In response, after having received this letter of business intent, the Director of
1242 Planning responded on June 15, 2017—this letter is attached as exhibit F to your
1243 materials—stating that Section 24-13(d) of the County Code permits an accessory
1244 use of Mr. Elliott’s dwelling as a home office for his business. However, it does not
1245 permit Mr. Elliott to engage in the manufacture of ammunition for sale and
1246 distribution to the public because that is not a customary home occupation. On
1247 July 10, 2017, Mr. Elliott timely filed his appeal.

1248
1249 The standard for review of this case is similar to the one that you had in the prior
1250 case. It is the BZA’s judgment as to whether the Director of Planning’s
1251 determination was correct. The decision by the Director of Planning is presumed
1252 to be correct. The burden is on Mr. Elliott to rebut that presumption with evidence.

1253
1254 I’ll submit to you that the Director of Planning’s decision was correct for several
1255 reasons. The first one is if you look at the Code, ammunition manufacturing and
1256 firearm conversion is not an expressly permitted principal or accessory use in our
1257 code. In an A-1 District, it doesn’t list manufacturing ammunition or firearm
1258 conversion under the list of principal uses in Section 24-51. Or in 24-53,
1259 accessory uses.

1260
1261 Now, the A-1 district does allow as an accessory use, any accessory uses
1262 permitted in an R-0 District. But in the Code in Section 24-11 and 24-13 in an R-0
1263 District, manufacturing ammunition and firearm conversion is not a permitted
1264 principal or accessory use in an R-0 District. So this is not a permitted or accessory
1265 use under the Code.

1266
1267 Secondly, in Section 24-13(d) in an A-1 or an R-0 District the owner of a lot in a
1268 residential district may engage as a permitted accessory use in a customary
1269 incidental home occupation. So although that term is not expressly defined, what
1270 is a home occupation, ammunition manufacturing is not a customary incidental

1271 home occupation. It is not listed amongst the examples in 24-13(d). Section 24-
1272 13(d) sets out a number of stipulations that exclude certain things from being a
1273 home occupation. For example, it excludes any occupations using machinery or
1274 equipment not customary for domestic purposes. And it excludes any use where
1275 stock-in-trade shall be kept in the home or products sold from the home.
1276

1277 The decision is correct because the Code does not explicitly allow for
1278 manufacturing ammunition or firearms conversation in an A-1 or an R-0 District as
1279 a principal or accessory use. In his letter, the Director of Planning's letter to Mr.
1280 Elliott, he also noted that not only was he using the ordinary meaning of home
1281 occupation as it was defined by the Code, but he was also relying on the
1282 department's longstanding practice that the department has never allowed an
1283 accessory use for the one that Mr. Elliott is seeking. So Mr. Elliott's not being
1284 treated differently than others here. Mr. Emerson also noted that the requirement
1285 of a federal firearms license was indicative that this is not a traditional home
1286 occupation and therefore was not one that the department would allow as an
1287 accessory use.
1288

1289 In looking at the overall purpose of this Zoning Ordinance promoting the health,
1290 safety, and general welfare of the public, the Director of Planning is relying on the
1291 notion that in a residential unit, on an acre lot, in a residential subdivision that
1292 manufacturing of ammunition and firearm sales is not what is contemplated by our
1293 Zoning Ordinance.
1294

1295 Now, the appellant in his appeal does not provide any basis to disrupt the
1296 presumption of correctness of the Director of Planning. You'll have an opportunity
1297 to hear from him today, but he lists on his appeal sheet the point that I want to
1298 bring to your attention. He says that he is unable to conduct business, that the
1299 decision on the business license renders him unable to conduct business. I want
1300 to point out that that's not true. It renders him unable to manufacture ammunition
1301 in his garage, but it doesn't render him unable under an appropriately submitted
1302 business license application in an appropriate district that would be zoned
1303 appropriately for such behavior to continue his business.
1304

1305 With that said, I would submit the BZA should deny the appeal and uphold the
1306 Director of Planning's decision. Thank you. Are there any questions?
1307

1308 Mr. Mackey - Are there any questions for Ms. Anderson from the
1309 Board or the staff? Okay, thank you, Ms. Anderson.
1310

1311 Ms. Anderson - This is going to be a different hearing.
1312

1313 Mr. Mackey - Can we hear from the applicant, please?
1314

1315 Mr. Elliott - Good morning, ladies and gentleman. My name is
1316 Dave Elliott. E-I-I-o-t-t. I'm here to appeal this decision. There seems to be a lot

1317 of confusion with this. The intent that this was done has been overlooked or maybe
1318 the information has been passed from one person to the other.

1319
1320 When I first started to get the permit to build ammunition for a new pistol cartridge
1321 I have invented was to make sure that the conversion units could also be sold.
1322 Who's going to buy a conversion unit they can't get ammunition for? That caused
1323 me to need to go to the ATF and get at least an ATF6, but that didn't allow me to
1324 do the conversions. So I was looking at having to do the ATF7 after discussing the
1325 information with some of the guys over at the ATF.

1326
1327 So we decided that I was going to have to go with the ATF7 form, which would
1328 allow me to purchase firearms and components and so forth directly from other
1329 manufacturers and cut down on my costs on doing that. Doing the conversions
1330 and finding out exactly what it's going to take to convert what different pistols that
1331 can be converted.

1332
1333 The permit also would allow me—since it allows me to make ammunition for this
1334 specialized cartridge, I'm sitting there, okay, why don't go ahead and make
1335 ammunition for other cartridges that are hard for people to locate. Sometimes it's
1336 hard to find 357. Sometimes it's hard to find 45 Colt. I don't know. I just looked
1337 around and said well I can do this too. And in addition to this with that particular
1338 ATF7, I would be allowed to go, again, to the manufacturers and buy components
1339 directly, to get components that our local vendors here can't get a hold of because
1340 they have to go through a distributor with their ATF3. I was going to try to help out
1341 with that as well.

1342
1343 When I went down to the County board—well the County place over in the East
1344 End to file for a business license, I talked to the guys there, and I told them
1345 everything that was in my business intent, the original business intent. They told
1346 me that well, they don't think it was going to go through, that they needed to speak
1347 with—I think it was Mr. Blankinship to find out what I needed to do to get a business
1348 permit. At that point, I was more or less directed verbatim what I put on the original
1349 business permit.

1350
1351 I was thinking all right, well let me get the business permit so I can see if I can get
1352 something started. And then after I get the business permit, I can discuss with them
1353 what's their concern about allowing me to make ammunition there, to do this thing,
1354 the same thing that homeowners are already allowed to do. I'm not asking to have
1355 a thousand pounds of powder or a million primers. I'm asking to do the same thing
1356 that the fire marshal or the assistant fire marshal I spoke with told me that
1357 homeowners are already allowed to do. A hundred thousand primers, a hundred
1358 pounds of powder. I could not store that amount of stuff at my home as it is.

1359
1360 And I had no intention of doing that initially. If it ever gets to a point where demand
1361 for this increases to where I'm going to have that kind of powder and primers and
1362 stuff, I'm definitely going to have to have a facility. I'm going to have to go out and

1363 find a store or a shop or build something to do it. And I'll have the money to do it
1364 at that time. At this point, I do not. And that's why I was asking to do the business
1365 on a small scale, micro business, out of my garage. Simply one pistol conversation
1366 at a time. If somebody orders a thousand rounds or ten thousand rounds of
1367 ammunition or whatever, I would manufacture that ammunition and ship it out to
1368 them. Or delivery personally or what have you.

1369
1370 I'm not asking to do anything that the homeowner is not already customarily
1371 allowed to do in their home. They're already allowed to have all that powder and
1372 all that stuff in their home already. I just don't understand why it's being looked at
1373 in the way it is. There seems to be a lot of confusion on this. I've seen some
1374 contradictions and I guess it's basically a misunderstanding.

1375
1376 On one hand they say that I can make ammunition at my home and store
1377 ammunition and components and so forth for person use. On the other hand,
1378 they're saying but you can't do it for business, you can't do it to earn income. I
1379 don't understand why that would be restricted to benefit myself and the County. It
1380 would help me get to a point where I could build and could generate the income I
1381 need to actually open up a gun shop.

1382
1383 I'd love to open up a gun shop out in Varina, down there around Route 5 or
1384 somewhere. I'd love to have a gun shop down there. We had one. We had one
1385 down there, and I was told to go down there and discuss with them the possibility
1386 of adding my name or their address to my ATF7 form so I could get the permit and
1387 do business there. Well, I went down there looking for Richmond Arsenal across
1388 from Varina Elementary School. Couldn't find it. So I asked around. Come to find
1389 out the people I was directed to find, the man had passed away two years before
1390 that, and the business was no longer there. So I was given incorrect information. I
1391 was trying to find someone that wasn't there.

1392
1393 That caused me to pull back, say all right, well let me see what I can do in my
1394 home. So I called up Mr. Blankinship, and I spoke with him about what can we do,
1395 whats the possibility of me being able to do this in my home under the same
1396 restrictions and guidelines that a normal homeowner is already allowed to do. We
1397 discussed everything. He told me to go ahead write this down and send it to me. I
1398 think we can do something with this. Well I sent it in to him, and it comes back
1399 saying can't do it, it wouldn't allow me to do it.

1400
1401 So I said well what's going on with that? He said well the director, Mr. Emerson,
1402 may not agree with it—or doesn't agree with it. So I decided well okay, let me go
1403 talk to Mr. Emerson and find out what I can do to ease his mind about what I'm
1404 trying to do. I talked to him on the phone. I explained to him what I intended to do,
1405 what I'd like to do. And he said, "Okay, well it sounds like we can work with this.
1406 Why don't you write it down, what we talked about, and send it to me, and I'll see
1407 what we can do." So again I wrote it down again, and it's identical to this intent
1408 that's in here. And again he came back like he didn't—like he and I had never

1409 talked. He just said, "No, you can't do it because it's not explicitly allowed, not a
1410 customary business."

1411

1412 I don't understand how something that's allowed by a homeowner to do is not
1413 already customary, it's not considered customary. Some things that were really
1414 confusing to me is that the phone call he and I had, it wasn't even mentioned.
1415 Some of these things about the business intent, about me coming back later, like
1416 as if I hadn't originally tried to do this business intent, like I was trying to sneak
1417 around and do something, I don't know, illegal or what have you. It was taken out
1418 of context about my business intent being different than what I originally tried to
1419 do. The original application was what I was directed to put on there to get a
1420 business for the home business. So that's what I decided to do. And after the fact,
1421 I decided to try to find out what can I do to talk to these folks and let them
1422 understand that what I'm trying to do at home is not dangerous. It's no more
1423 different than any other homeowner is already allowed to do in their homes. Things
1424 seemed to get a little bit out of skew.

1425

1426 Let me see here. There's one thing, too, that is really a total misstatement. If not,
1427 it's a misunderstanding big time. It says that, "Mr. Elliott wishes to engage in a
1428 business that manufacturers explosive devices on an acre." That is absolutely a
1429 fabrication. The license that I applied for was a \$30 license or whatever, 300. It
1430 was a minimal license for manufacturing ammunition and assembling firearms. It
1431 is not for the \$3,000 license or the nine thous—I forget how much it costs—to
1432 manufacture explosive devices like exploding bullets or hand grenades or
1433 whatever. That is a complete misunderstanding of my intent and capabilities of
1434 doing this business here. That'll never happen at this particular place for multiple
1435 reasons. Community safety is the main one. I am responsible about what I'm trying
1436 to do. I've been reloading ammunition since 1978, and I've never had an issue.
1437 Not one time. I've only had two primers that failed to detonate in that entire period
1438 of time. But that wasn't mine; that was a manufacturing malfunction from someone
1439 else.

1440

1441 The reason I stated there was no known ordinances, I was basing all this on state
1442 and federal law, which I understood that the County has to support state law, and
1443 state law has to support federal law. The reason the ATF7 is even brought to the
1444 attention of the County is because there's a federal law about not giving an ATF
1445 license to supply someone with personal firearms. In other words, you can't go out
1446 and get an ATF form to buy firearms for your own personal use only. This is not
1447 what the intent was. That's why they want to get the permission of the County to
1448 make sure the County's okay with it. I had one of these before, an ATF3, when I
1449 lived out in New Kent County. I spoke with the County about it, asked the sheriff if
1450 he had any concerns about it. He told me, "No, the County doesn't care as all long
1451 as you do what the federal government and state government require." And I did
1452 at that point. Since then moving one place to another, I haven't been able to do
1453 this.

1454

1455 Coming back to the County, I understand why they are concerned about it. At first
1456 when I did this and I was getting the kickback, I was thinking man, these guys are
1457 really on top of it. They're looking out for the community. They're trying to make
1458 sure I'm not some joker just trying to get a permit so I can buy a bunch of cheap
1459 guns and keep them in my home. Or doing something nefarious or what have you.
1460 That's not the case.

1461

1462 Mr. Mackey - Mr. Elliott, unless you have something new to add to it,
1463 I think everybody on the Board fully understands the problem that you have
1464 between the ammunition that you were going to fill for personal use and then
1465 wanting to do it for a business license—to do it as a business. I think at this time
1466 we should allow the Board members to ask you a few questions, if you don't mine.

1467

1468 Mr. Elliott - Yes sir, that'll be fine.

1469

1470 Ms. Harris - Mr. Elliott, you say you've been doing this for quite
1471 some time? You have experience. I noticed on your application for a business
1472 license you put your gross receipts \$100,000. I was wondering that's a bit
1473 inconsistent with not being able to afford another location other than your home for
1474 your business.

1475

1476 Mr. Elliott - Yes ma'am. I'd like to explain what that means. When
1477 I asked about the business license at the County place over on East End, they told
1478 me that well a minimum one is like \$100,000. It doesn't cost anything. I said well,
1479 okay. I'm looking at it like that's the maximum amount I can earn under that permit.

1480

1481 Ms. Harris - Okay.

1482

1483 Mr. Elliott - So that's why I put \$100,000 on there. And no, I haven't
1484 earned anything with this yet.

1485

1486 Ms. Harris - Thank you.

1487

1488 Mr. Elliott - I haven't been able to sell anything. I've obliged [sic]
1489 but the County's directive, and I haven't done anything with it. I haven't been able
1490 to.

1491

1492 Ms. Harris - But in the past you have established yourself as a
1493 business person doing this type of work, right?

1494

1495 Mr. Elliott - Well, decades ago back in the '80s.

1496

1497 Ms. Harris - Okay. Thank you.

1498

1499 Mr. Elliott - I had a gun shop out in New Kent. We needed one out
1500 there.

1501
1502 Ms. Harris - Okay, thank you.
1503
1504 Mr. Mackey - Are there any other questions for Mr. Elliott? I have a
1505 question. When you first received the approval with your first letter that you
1506 forwarded to the County, you stated that you were going to store casings,
1507 ammuniton, projectiles and everything off site. And that was required if you—
1508
1509 Mr. Elliott - I was directed to put that on the permit in order to get
1510 the permit.
1511
1512 Mr. Mackey - Okay. All right. So then you changed later and decided
1513 that you did not want to do it for personal use and you wanted to do it as a business.
1514 And you were told that your residence is zoned A-1—your residence isn't zoned to
1515 allow that.
1516
1517 Mr. Elliott - Yes sir. As I understand it, it wasn't explicitly allowed,
1518 but it wasn't explicitly denied either. That's why I was—
1519
1520 Mr. Mackey - I believe if it's not zoned to allow it, it is explicitly denied.
1521 If it's not zoned to allow that, then it is explicitly denied.
1522
1523 Mr. Elliott - So a homeowner can but—
1524
1525 Mr. Mackey - A homeowner can do it for personal use, but not for
1526 business purposes.
1527
1528 Mr. Elliott - And it's based one? I mean what is it—
1529
1530 Mr. Mackey - County code.
1531
1532 Mr. Elliott - County code as per, what, customary or?
1533
1534 Mr. Mackey - Yes, I would say that's customary.
1535
1536 Mr. Elliott - Okay. So what is customary, things that you're
1537 normally allowed to do?
1538
1539 Mr. Mackey - Yes.
1540
1541 Mr. Elliott - So if a homeowner is already normally allowed to
1542 manufacture ammuniton for themselves, wouldn't that make it customary?
1543
1544 Mr. Blankinship - There is a list in that section of the ordinance of
1545 customary home occupations to use as an example to guide that.
1546

1547 Mr. Elliott - It's an example, but it's not exclusive, yes?
1548
1549 Mr. Blankinship - If I can interrupt you, the following are considered
1550 customary such as attorney at law, physician, dentist, musician, or artist. Those
1551 are some of them. Dressmaking, laundering, preserving or home cooking,
1552 occasional personal service of beauty culture. Those are the things that are
1553 customary home occupations.
1554
1555 Mr. Elliott - Is that list inclusive or exclusive?
1556
1557 Mr. Blankinship - It's not intended to be exclusive, but those are
1558 examples of uses that are customary as home occupations.
1559
1560 Mr. Elliott - Okay. So it's basically a decision on someone whether
1561 what is customary and what is not. Is that right?
1562
1563 Mr. Blankinship - Yes.
1564
1565 Mr. Elliott - So judgment's not based on any fact or law or anything
1566 else.
1567
1568 Mr. Blankinship - Well it's based on a number of factors. It's not an
1569 arbitrary decision. It's a decision. But it is an interpretation.
1570
1571 Mr. Elliott - Interpretation, but it's not based on federal law or state
1572 law. I mean as far as the item itself. I'm not saying you don't have the state
1573 authorization to make decisions on this. What I'm saying is the direction in which
1574 this has gone should be based on some kind of law as far as—for example.
1575 Electrical work is based on a national electrical code. And your building codes are
1576 going to be based on that national electrical code. It seems to me that a decision
1577 like this should also be based on another law as far as something to back it up, a
1578 federal law or state law. These things I'm trying to do or would like to do are
1579 authorized by the state and authorized by the County—I mean not the County.
1580 Authorized by the state and authorized by the federal government. I talked to the
1581 guys over at the AFT about would they have a problem with me doing this. And
1582 they said no, there would be no problem with me doing this under the certain
1583 guidelines that the fire marshal had and the restrictions the County might have.
1584 That's when I started to try to find out what kind of restrictions the County might
1585 have.
1586
1587 It seems the decision is basically arbitrary as far as oh, well, you can't do this. The
1588 homeowner can, but you can't for a business. It doesn't make much logic to me. I
1589 don't get the logic on it. I'm asking for an appeal, to repeal it because I'm not doing
1590 anything different than any other homeowner is allowed to do already in the County
1591 of Henrico. Or anywhere else, as far as that goes. That's all I'm asking. If this thing
1592 ever progresses past that, I'll be happy to go out and get us a business and do

1593 things more professional like. But I need to do this in order to generate the income
1594 in order to take that next step.

1595
1596 Mr. Blankinship - All right.

1597
1598 Mr. Mackey - All right. Thank you, Mr. Elliott. Were there any other
1599 questions or comments?

1600
1601 Ms. Harris - We probably need to mention that we did get one letter
1602 from a neighbor who was objecting to having a home office that manufactured and
1603 sold ammunition. We did get an objection from a neighbor.

1604
1605 Mr. Elliott - Yes ma'am. I just got that this morning. It's the first I've
1606 seen of it, first I've known of it. I'm thinking if they made the phone call and spoke
1607 with the County folks about it, I could see where they may be misunderstanding
1608 what's being done here. There is nothing that they should be concerned about. It's
1609 been a quiet neighborhood. I've been living there for quite some time. I've been
1610 loading ammunition for quite some time there for my personal use and for R&D
1611 testing on these pistols I've been developing. If she hasn't noticed anything, she's
1612 not going to notice anything in the future. There's not going to be any change. The
1613 only change is I'm going to be able to start generating some income to go ahead
1614 and get a real business shop somewhere.

1615
1616 Mr. Mackey - Okay. All right. We just wanted to make you aware of
1617 it. Appreciate everything.

1618
1619 Mr. Green - So it is not a gun repair business.

1620
1621 Mr. Elliott - No sir. I'm having a company's—Bar-Sto is out in South
1622 Dakota. I'm working out some details with Kart barrels to manufacture the barrels.
1623 Basically what I want to do is store some barrels at the home, some components
1624 at the home, just like a homeowner would be allowed to do. Somebody calls and
1625 orders one, ship it out to them and have it on hand. I'm not manufacturing the
1626 barrels. The recoil springs are coming from Wolff springs. All these other things
1627 are being made by other companies and brought in. The only thing I'm doing is
1628 just, like I say, sending them the barrel. They have to be gunsmith fit, most of them.
1629 I haven't been able to find somebody to do a drop-in yet for it, but I'm looking for
1630 that. So the barrels need to be gunsmith-fit anyway. They get their gun and go out
1631 to their local gunsmith to fit it up and make it work right.

1632
1633 Mr. Green - So there's no noise associated with this.

1634
1635 Mr. Elliott - No, there's no noise. There's no noise, there are no
1636 chemicals, there are no odors, there's no nothing. Just me sitting in the garage,
1637 *ka-ching, ka-ching*, making ammo.

1638

1639 Mr. Mackey - All right. Thank you, Mr. Elliott.
1640
1641 Mr. Elliott - Thank you.
1642
1643 Mr. Mackey - Is there anyone here who would like to speak in
1644 support of this application? Excuse me. Can you come down to the microphone,
1645 please? Would you state your name and spell it for the record, please?
1646
1647 Mr. Blankinship - Well let's go ahead and swear you in if you weren't
1648 before. Would you raise your right hand, please. Do you swear the testimony you're
1649 about to give is the truth, the whole truth, and nothing but the truth so help you
1650 God?
1651
1652 Ms. Hackett - Yes I do.
1653
1654 Mr. Blankinship - Thank you.
1655
1656 Ms. Hackett - My name is Elaine Hackett. H-a-c-k-e-t-t. I did receive
1657 this notice in the mail. My address is 7648. I am next door to Mr. Elliott. I came
1658 today to hear exactly what was going to be discussed. It was disturbing to me to
1659 know that this was actually taking place next door. I'm not saying that he is using
1660 firearms as far as shooting, but I have heard a couple of times rounds being shot
1661 in our area. But we have a police officer that's in the cul-de-sac as well. So I didn't
1662 know if there was anything that he was probably using his gun to scare off
1663 something. But there are children. I have grandchildren and children that are in
1664 that area. It really concerns me to know that somebody is in the area wanting to
1665 manufacture ammunition.
1666
1667 Mr. Mackey - All right. Thank you, Ms. Hackett. Hold on one second,
1668 please. Did we have anyone that wanted to speak in favor of it? No one in favor?
1669 Okay. You would like to speak against it. Were you sworn in?
1670
1671 Mr. Blankinship - No. We'll go ahead and take care of that. Raise your
1672 right hand, please. Do you swear the testimony you're about to give is the truth,
1673 the whole truth, and nothing but the truth so help you God?
1674
1675 Ms. Wheeler-Diggs - My name is Josephine Wheeler-Diggs. W-h-e-e-l-e-r,
1676 hyphen, D-i-g-g-s. I also live in the neighborhood at 7613 Phillips Woods Drive. A
1677 couple houses down. I actually have not met that neighbor. I know he lives in the
1678 area. I may have seen him once. My husband is the one that is the friendlier person
1679 and sees everyone in our neighborhood. But I was a little concerned about
1680 manufacturing of ammunition. I, too, have children.
1681
1682 And it's not that we are not a gun family. My father has permits, my husband. My
1683 daughter is about to. She's ten, and she's loving the air rifle, and so does my
1684 nephew. I'm seriously looking into getting them licenses. I don't personally have

1685 one. But the idea of the ammo manufacturing, which is do know that you can have
1686 ammo in your house, because my father does lock all his things up. And he locks
1687 up his guns and those types of things.

1688
1689 But the ammunition making, it did concern me a bit. And I wasn't really sure about
1690 how this works. I guess it's one thing to be a reseller. You collect things, and you
1691 put them together, and you send them out to someone. But looking at the
1692 information that I saw it was taking appointments, people coming maybe into our
1693 neighborhood that we really didn't know, about seeing this gentleman. From what
1694 I saw, it wasn't just I'm buying these carts and I'm selling them to someone else.
1695 I'm literally manufacturing, putting them together. That concerned me as well.

1696
1697 So I am not in favor. I'm not against him—anyone making a living and doing what
1698 they enjoy and what they know. I'm not against that, but just not in my
1699 neighborhood. That's all. Thank you.

1700
1701 Mr. Mackey - All right. Thank you, Ms. Wheeler-Diggs. Is there
1702 anyone else who'd like to speak in opposition?

1703
1704 Mr. Rosenbaum - Good morning. I, too, did not get sworn in.

1705
1706 Mr. Blankinship - Okay. We know you.

1707
1708 Mr. Rosenbaum - Yes sir.

1709
1710 Mr. Blankinship - Do you swear the testimony you're about to give is the
1711 truth, the whole truth, and nothing but the truth so help you God?

1712
1713 Mr. Rosenbaum - I do, yes sir. And Board members, thank you for letting
1714 me speak. Henry Rosenbaum. R-o-s-e-n-b-a-u-m. I serve as the fire marshal for
1715 the County.

1716
1717 I was not aware of any conversations that any of the staff and the fire marshals
1718 may have had with Mr. Elliott. But I just want to make some understanding clear
1719 with the Board as you move forward.

1720
1721 The state fire code, which is adopted by the County, would support your action that
1722 you were talking about as far as your own codes and standards. And that is the
1723 sale, use, and production of explosives are not allowed in residential sections. And
1724 that is specifically called out in the statewide Fire Prevention Code in Chapter 56,
1725 which is under Explosives. There is an exception in there, and that is for personal
1726 use for personal consumption. That is where it does call out 20 pounds of
1727 smokeless powder and 15 pounds of black powder in any number or any quantity
1728 of cartridges. So as a resident, they could have that for their personal consumption.
1729 But once they go into a commercial or into a business standpoint, it would not be
1730 allowed, and we would be involved.

1731
1732 Mr. Mackey - All right. Thank you, Mr. Rosenbaum. Mr. Elliott left, so.
1733 All right.
1734
1735 Mr. Blankinship - Let's see if Ms. Anderson has any closing remarks.
1736
1737 Mr. Mackey - Yes. Ms. Anderson, would you like to rebut anything?
1738
1739 Ms. Anderson - Thank you. The only point that I would make is that an
1740 activity that you can perform at your home is very different than an occupation in
1741 one's home. I've never done this, but you could change your oil on your own car
1742 at your home. But that does not allow you to open up a car dealership or a lube
1743 shop in your home.
1744
1745 Mr. Mackey - All right. Thank you, Ms. Anderson. All right. I think right
1746 now would be a good time to take a quick little 15-minute recess. If everybody
1747 could be back at 10 after 11, we'll continue on.
1748
1749 [Board takes a 15 minute break.]
1750
1751 **[After the conclusion of the public hearings, the Board discussed the case**
1752 **and made its decision. This portion of the transcript is included here for**
1753 **convenience of reference.]**
1754
1755 Mr. Mackey - Do I hear a motion? Okay, being in the Varina
1756 Magistrate, after hearing everything from the applicant and hearing from the
1757 County, I clearly do not believe that the residence is zoned to allow what Mr. Elliott
1758 is attempting to do as a business. For that reason, I make the motion that we
1759 accept and reject the application.
1760
1761 Mr. Blankinship - By rejecting the appeal, you mean affirming the
1762 decision of the director?
1763
1764 Mr. Mackey - Affirming the director's decision. I apologize.
1765
1766 Mr. Blankinship - Thank you.
1767
1768 Mr. Mackey - Is there a second?
1769
1770 Mr. Reid - Second.
1771
1772 Mr. Mackey - Okay, seconded by Mr. Reid. All in favor say aye.
1773 Those opposed say no. There is no opposition.
1774
1775 After an advertised public hearing and on a motion by Mr. Mackey seconded by
1776 Mr. Reid, the Board **affirmed** the decision of the Director of Planning and **denied**

1777 application **APL2017-00009, DAVID ELLIOTT's** appeal of a decision of the
1778 Director of Planning pursuant to Section 24-116(a) of the County Code regarding
1779 the property at 7642 Phillips Woods Drive (PHILLIPS WOODS) (Parcel 831-691-
1780 9529) zoned Agricultural District (A-1) (Varina).

1781

1782

1783 Affirmative: Bell, Green, Harris, Mackey, Reid 5

1784 Negative: 0

1785 Absent: 0

1786

1787

1788 **[At this point, the transcript continues with the public hearing on the next**
1789 **case.]**

1790

1791 **CUP2017-00027 DTLR INC.** requests a conditional use permit pursuant
1792 to Section 24-116(d)(1) of the County Code to hold a special event at 3121
1793 Mechanicsville Turnpike (Parcel 801-732-6533) zoned Business District
1794 (Conditional) (B-3C) (Fairfield).

1795

1796 Mr. Blankinship - Would everyone who intends to speak to this case
1797 please stand and be sworn in. Raise your right hands, please. Do you swear the
1798 testimony you're about to give is the truth, the whole truth, and nothing but the truth
1799 so help you God? Thank you. Mr. Madrigal?

1800

1801 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, members of the
1802 Board, good morning. I'll try to be brief.

1803

1804 Before you is a request for a one-day temporary event at an existing shopping
1805 center. The applicant is a clothing retailer of street-inspired footwear, apparel, and
1806 accessories. They lease a 56,000-square-foot storefront at the Oak Hill Plaza
1807 Shopping Center. The proposed event is part of their community outreach efforts.
1808 The theme of this year's event is back to school and will focus on youth and
1809 families. They plan to host a variety of community organizations that cater to the
1810 local community and highlight local businesses. They intend to provide catered
1811 foods, crafts, games, and entertainment during the event, which will consist of four
1812 large tents, bounce houses, and musical entertain by way of DJ.

1813

1814 The event will be situated in the shopping center parking lot adjacent to the auto
1815 parts store near the intersection of Mechanicsville Turnpike and Harvey Road.
1816 That's in this area here. This will be the second outdoor event to be held at the
1817 shopping center by the applicant. Their first event was held in June 2015 and was
1818 also approved by way of a conditional use permit.

1819

1820 The shopping center sits on 14-1/2 acres that are conditionally zoned B-3, and
1821 have a Comprehensive Plan designation of Commercial Concentration. Site
1822 improvements total 113,920 square feet of gross floor area, which is served by 634

1823 at-grade parking stall. And 476 of those stalls are required by code. The centered
1824 is anchored by a Food Lion grocery store and Youfit Health Club.

1825
1826 The proposed event is consistent with the underlying zoning and Comprehensive
1827 Plan designations. The zoning on either side of Mechanicsville Turnpike is
1828 primarily commercial in nature with some sections of medium to light industrial
1829 south of the center. Residential districts are to the east and the west of the center.
1830 They can be seen here and here. The closest residences are to the northeast of
1831 the event area and are approximately 180 feet distant. That would be this area
1832 over here.

1833
1834 Because of the limited duration of the event, excess parking at the shopping
1835 center, and the commercial nature of Mechanicsville Turnpike, staff does not
1836 anticipate any significant or lasting impacts on adjoining businesses or property
1837 owners from the one-day event. Conditions of approval have been prepared to
1838 mitigate to any negative impacts and to ensure safety.

1839
1840 In conclusion, this will be a one-day temporary event at an existing shopping
1841 center. It will be the second similar outdoor event to be held at the property since
1842 2015. This request is consistent with both the underlying zoning and
1843 Comprehensive Plan designations for the property. Although the event will
1844 temporarily displace approximately 105 parking stalls, there is enough excess
1845 parking in the shopping center so that the impact will be negligible.

1846
1847 Staff is not aware of any complaints or issues resulting from their last events. Due
1848 to lack of any anticipated detrimental impacts to adjacent of nearby property, staff
1849 recommends approval subject to conditions.

1850
1851 This concludes my presentation. I'll be happy to answer any questions.

1852
1853 Mr. Mackey - Thank you, Mr. Madrigal. Any questions?

1854
1855 Mr. Bell - Real quick question. Is this the same group that put it
1856 on last year?

1857
1858 Mr. Madrigal - Yes sir, it is the same exact group, DTLR.

1859
1860 Ms. Harris - Mr. Madrigal, are any building permits necessary?

1861
1862 Mr. Madrigal - Not that I'm aware of. We have a threshold of 900
1863 square feet for tents, if there were bleachers, if there were any large structures, a
1864 structure that would contain a lot of people, then at those points the building permit
1865 would be required. But since they're not exceeding those thresholds, I don't believe
1866 there will be any permits required. If they do have a bounce house, I think at that
1867 point a building permit might be required. Any kind of generators or electrical

1868 connections to provide electricity for that bounce house would also require a
1869 building permit.

1870
1871 Ms. Harris - Okay, thank you.

1872
1873 Mr. Mackey - All right, thank you, Mr. Madrigal.

1874
1875 Mr. Madrigal - Thank you.

1876
1877 Mr. Mackey - Can we hear from the applicant, please?

1878
1879 Mr. Davis - Good morning. My name is Jordan Davis. D-a-v-i-s.
1880 Virginia Marketing representative for the company. I handle all marking business
1881 and sports coordinating and youth activities for the company.

1882
1883 As he said, this is our second time doing this event. We had no issues. Just
1884 something that we wanted to give back to the community which we serve and who
1885 are our main customers within that area.

1886
1887 If there are any questions, I could answer the questions.

1888
1889 Mr. Mackey - All right, thank you, Mr. Davis.

1890
1891 Ms. Harris - Hi, Mr. Davis. I have a few questions. I noticed that in
1892 the narrative you said that your company, DTLR, has street teams for promotion.
1893 What's that?

1894
1895 Mr. Davis - I'm the Virginia marketing rep. Street team is more the
1896 urban name that we use. What normally happens is at different high schools and
1897 colleges we give an opportunity where I'll mentor some of the younger kids. Or we
1898 will call it a—well it's an internship. So pretty much kids and youth is our street
1899 team, and I'm kind of the street team coordinator.

1900
1901 Ms. Harris - So there's no competition in that?

1902
1903 Mr. Davis - There's some competition, definitely.

1904
1905 Ms. Harris - Okay. On the layout plan, we see seven notations. Who
1906 will be in these areas? I don't know if we can pull them up or not. Yes, those seven
1907 areas. What are they for?

1908
1909 Mr. Davis - This great artwork was drawn by me. What we will have
1910 here is tents and bounce houses also. Six on this picture should be a small stage
1911 that comes up about one foot off of the ground. I believe it's about a 5-by-5 stage.
1912 Just where the DJ will be at or we'll doing some presentations of some gift cards
1913 for the kids for the current sets that we have in front of that. One will be where we

1914 have the food. Two is where the grill will be. We have something called an
1915 Airstream, which is a mobile DTLR radio unit. It won't be working, but it will be
1916 there for representation because I partner with Digger Brown, is called Puma
1917 footwear. So it's wrapped with their logo, so we just wanted that there. And we'll
1918 have a DTLR truck. That's what the sevens are. Both are just for the looks.

1919

1920 We'll have a face painter at three. At four we'll be giving away the book bags and
1921 the school supplies. Puma has given me about \$15,000, and we spent that money
1922 on book bags and school supplies that I'll be giving away to all the kids for the
1923 duration of the day. And five is where we'll be having free haircuts for the kids.

1924

1925 Ms. Harris - And you said seven would be some type of—

1926

1927 Mr. Davis - It'll be my DTLR truck. We have wrapped vehicles, so
1928 we use wrapped vehicles for moving billboards at all times. So we will have one of
1929 those trucks on location. And we'll also have a mobile Airstream. It looks like an
1930 older RV unit. They kind of look like eggs, and you would attach them to a truck as
1931 a trailer. Then you will un-attach it when you get to where you want to go. It will
1932 just sit there, and the kids will be able to go inside and see what a mobile radio
1933 station looks like.

1934

1935 Ms. Harris - Okay. You heard Mr. Madrigal say for the bounce
1936 house you might need a permit.

1937

1938 Mr. Davis - Yes.

1939

1940 Ms. Harris - And I was wondering about the stage too. You might
1941 need a permit. You might check on those two things. It's this weekend, right?

1942

1943 Mr. Davis - Yes ma'am.

1944

1945 Ms. Harris - Okay. I have a few more questions, and then I'll be
1946 done. If I can find them. Congratulations on what you're doing for the community.
1947 I think it's a winner. We need more of that in this community. I'll let some other
1948 people ask questions until I find my few.

1949

1950 Mr. Mackey - Anyone else have a question?

1951

1952 Mr. Blankinship - I would like to know if you have a count from your
1953 previous event in 2015. Do you know about how many people attended?

1954

1955 Mr. Davis - I would say a little more than 350 people.

1956

1957 Mr. Blankinship - Do you expect this to be comparable or larger or?

1958

1959 Mr. Davis - I will hope that it's more kids than that with the things
1960 we have to give away. We're hoping to get around 450 to 500 kids.

1961

1962 Mr. Blankinship - Okay.

1963

1964 Mr. Mackey - Mr. Davis, I had a couple of questions. In your previous
1965 event, were you aware of any problems or incidents that you had?
1966

1967 Mr. Davis - We had no issues. We did have on site, I believe, two
1968 security officers and two police officers also. But we had no problems.
1969

1970 Mr. Mackey - Okay. All right. And also if the application is approved,
1971 have you seen all the conditions of approval?
1972

1973 Mr. Davis - Yes.

1974

1975 Mr. Mackey - And you agree with all 14 of them?
1976

1977 Mr. Davis - Yes.
1978

1979 Mr. Mackey - Okay. Thank you, Mr. Davis. Are you ready,
1980 Ms. Harris?
1981

1982 Ms. Harris - Yes. You said you will have traffic barriers. What are
1983 you going to use for the barriers for the traffic?
1984

1985 Mr. Davis - The actual name of them I'm not sure. I feel like they're
1986 called bike racks. They're metal and they are just bars in them. That will just
1987 separate the street from where everything will be so no cars could come in while
1988 the event is going on. So we'll get there at about 8 to 8:30 a.m. to set that up and
1989 set everything else up, and then we'll be ready to roll by the time the kids get in.
1990

1991 Ms. Harris - Okay. Do you know how many parking stalls you're
1992 going to use for the events?
1993

1994 Mr. Davis - I think it's approximately 100 because we'll be taking
1995 about—we're not really taking up that much space. We're just taking the area right behind
1996 the AutoZone spot. And that's about probably 25 more slots over. So they're kind of all in
1997 the same area.
1998

1999 Ms. Harris - Okay. I notice in one report it said Big Lots and Food Lion
2000 were the anchor stores. But is Big Lots there anymore?
2001

2002 Mr. Davis - No. It's a Youfit now with Food Lion.
2003

2004 Ms. Harris - That's what I thought. Okay. We talked about debris during
2005 the event. What about debris after the event. You know you're going to have receptacles
2006 for the trash and all.

2007

2008 Mr. Davis - Yes. I was there until about 9 or 10 p.m. last time picking up
2009 all the trash, making sure that we didn't leave anything behind so we could move forward
2010 and do this event more often.

2011

2012 Ms. Harris - Okay. I believe I have one more question. You said
2013 something about perimeter landscaping. Will you need that since it's a one-day event?
2014 Are you going to have landscaping for that?

2015

2016 Mr. Davis - I don't think we will have any special landscaping other than
2017 what we're going to have as far as the tents.

2018

2019 Mr. Blankinship - We just don't want him in existing landscape.

2020

2021 Mr. Mackey - Yes, condition 8.

2022

2023 Ms. Harris - Okay.

2024

2025 Mr. Mackey - I think the first line where it states, "I will keep all equipment
2026 and displays free and clear of the landscaping."

2027

2028 Ms. Harris - Of the existing landscaping.

2029

2030 Mr. Davis - All the trees in the area.

2031

2032 Ms. Harris - Okay. Thank you.

2033

2034 Mr. Mackey - All right, thank you, Mr. Davis.

2035

2036 Mr. Davis - Thank you very much.

2037

2038 Mr. Mackey - Is there anyone here who would like to speak in support of
2039 this request? Please come down.

2040

2041 Ms. Alexander - My name is Del Alexander. Last name is A-l-e-x-a-n-d-e-r. I
2042 live right behind or next to on Duron Lane, which is right behind the Food Lion. I did attend
2043 this last year, myself and my grandkids. They enjoyed it. I didn't know the date. I didn't
2044 know they were having it this weekend. I don't know what time. I need to know what time.
2045 Where I live, I just moved there, and it was a path through my yard, and people
2046 kind of cut through that path. I have a huge dog, so I want to make sure people
2047 don't cut through my yard. I have "beware" signs and stuff around.

2048

2049 The event was very—it was huge. It was a lot of people. The kids enjoyed it.
2050 Anything that's going to benefit the kids. I have a nonprofit as well, and we service
2051 that area as well. So anything that's going to benefit the kids I don't have a problem
2052 with it. The problem that I have is the traffic that's going to be cutting through my
2053 yard. That's the only thing. Because it's right there in the back of the Food Lion.

2054

2055 I didn't know until I got this information that it was DTLR because it said DLRT.

2056
2057 Mr. Blankinship - I apologize for that.
2058
2059 Ms. Alexander - I was like, "What company is this?"
2060
2061 Mr. Blankinship - I had it right in like four places and wrong in one.
2062
2063 Ms. Alexander - Like I said, I didn't know what time it starts. And then I
2064 know they did have live music. And we were talking about the papers that they're
2065 going to need to have for that. But the moon bounce they had wasn't really huge.
2066 So it was beneficial to some of the kids. Not too many kids got on it. They were
2067 more so excited about the gifts that they were giving, more so excited about
2068 dancing to the music and the free giveaway stuff.
2069
2070 I'm all for it. If I said no, my grandkids are going to be mad. Especially the one
2071 that's in high school. So I'm going to let her know this is what I came in here for.
2072 But I do want to thank them for taking care of the Fairfield District area because
2073 we do that with my nonprofit as well. If I can be of help to you all over the weekend
2074 just let us know as well.
2075
2076 Mr. Blankinship - And the hours of the event are 2 p.m. to 6 p.m. I believe
2077 you heard Mr. Davis say they intend to start setup at 8 or 8:30 a.m.
2078
2079 Ms. Alexander - I heard him say 3:00 they have face painting and 4 p.m.
2080 it's the school supplies. But I didn't hear what time he said it started.
2081
2082 Mr. Blankinship - They have 2 p.m. on the application.
2083
2084 Ms. Alexander - All right. Thank you.
2085
2086 Mr. Mackey - All right. Thank you, Ms. Alexander.
2087
2088 Ms. Alexander - Thank you. Appreciate it.
2089
2090 Mr. Mackey - Is there anyone else who would like to speak in favor
2091 of the application? Is there anyone who would like to speak in opposition of the
2092 application? All right. Hearing none, we'll move on to our next case.
2093
2094 **[After the conclusion of the public hearings, the Board discussed the case**
2095 **and made its decision. This portion of the transcript is included here for**
2096 **convenience of reference.]**
2097
2098 Mr. Mackey - Do I hear a motion?
2099

2100 Ms. Harris - I move that we approve this conditional use permit. I
2101 feel that this will add greatly to the health, safety, and welfare of the community. I
2102 believe these types of programs should be copied and used in other areas.
2103

2104 Mr. Mackey - All right. We have a motion by Ms. Harris. Is there a
2105 second?

2106
2107 Mr. Bell - Second.

2108
2109 Mr. Mackey - Seconded by Mr. Bell. It's been properly moved and
2110 seconded All in favor say aye. Those opposed say no. There is no opposition; that
2111 motion passes.
2112

2113 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.
2114 Bell, the Board **approved** application **CUP2017-00027, DTLR INC.**'s request for a
2115 conditional use permit pursuant to Section 24-116(d)(1) of the County Code to hold
2116 a special event at 3121 Mechanicsville Turnpike (Parcel 801-732-6533) zoned
2117 Business District (B-3C) (Fairfield). The Board approved the temporary conditional
2118 use permit subject to the following conditions:
2119

2120 1. This conditional use permit is for the approval of a one-day temporary outdoor
2121 event to be held on Saturday, August 26, 2017.
2122

2123 2. The timing for the outdoor event shall be limited to 8:00 am to 8:00 pm which
2124 includes set-up, the event, and breakdown periods.
2125

2126 3. Only the temporary improvements shown on the layout plan filed with the
2127 application may be erected pursuant to this approval. Any additional
2128 improvements shall comply with the applicable regulations of the County Code or
2129 as specified in the conditions of approval.
2130

2131 4. The applicant shall clearly delineate the perimeter of the event area with traffic
2132 cones and shall install traffic barriers at affected parking drive aisles entrances to
2133 block vehicular traffic from entering the event area. Main traffic drive aisles
2134 (providing internal traffic circulation) leading in or out of the shopping center shall
2135 be kept free and clear of equipment, vehicles, and obstacles associated with the
2136 event. Fire lanes shall be maintained in accordance with the Fire Prevention Code.
2137 Access to on-site fire hydrants and fire department connections shall not be
2138 impaired.
2139

2140 5. Temporary tents shall maintain a 10 foot setback from property lines, buildings,
2141 and other tents (unless attached). The tents shall not be enclosed (with tarps or
2142 fabric) and generators used for the event shall maintain a 10' setback from tents
2143 and fuel containers.
2144

2145 6. The applicant shall obtain all necessary building permits for items including but
2146 not limited to tents (in excess of 900 square feet), elevated stages, mechanical
2147 amusement devices, electrical generators and electrical connections to be used
2148 during the event. The applicant shall request building permits (if necessary) no
2149 later than one week prior to the event and shall schedule required inspections no
2150 later than 10:00 am on the day of the event.

2151
2152 7. The applicant shall provide adequate restroom facilities and hand wash stations
2153 as required by the Building Inspections Department or Department of Health.

2154
2155 8. Perimeter landscaping planters shall be kept free and clear of equipment and
2156 displays. All approved landscaping shall be maintained in a healthy condition at
2157 all times. Dead plant materials shall be removed within a reasonable time and
2158 replaced during the normal planting season.

2159
2160 9. The applicant shall maintain the property so that debris is controlled during the
2161 event. Adequate trash receptacles shall be provided throughout the site during the
2162 event.

2163
2164 10. On-site security measures shall satisfy the Division of Police written
2165 requirements.

2166
2167 11. The sale of alcoholic beverages shall be prohibited at the event.

2168
2169 12. The applicant shall prohibit loitering on the property.

2170
2171 13. Speakers for amplified sound and music shall be directed toward the shopping
2172 center in order to limit its impact on adjoining businesses and/or residential
2173 neighborhoods and shall not exceed 65 dB at the property line.

2174
2175 14. The applicant shall place the proposed bounce houses to the interior of the
2176 parking lot, not adjacent to Mechanicsville Turnpike.

2177
2178
2179 Affirmative: Bell, Green, Harris, Mackey, Reid 5
2180 Negative: 0
2181 Absent: 0

2182
2183
2184 **[At this point, the transcript continues with the public hearing on the next**
2185 **case.]**

2186
2187 **CUP2017-00028 ROBERT AND JENNIFER WAFFLE** request a
2188 conditional use permit pursuant to Section 24-95(i)(4) of the County Code to allow
2189 an accessory structure in the side yard at 3804 Bluefield Swamp Drive (TURNER
2190 FOREST) (Parcel 829-686-4787) zoned Agricultural District (A-1) (Varina).

2191

2192 Mr. Blankinship - Would everyone who intends to speak to this case
2193 please stand and be sworn in. Raise your right hands, please. Do you swear the
2194 testimony you're about to give is the truth, the whole truth, and nothing but the truth
2195 so help you God? Mr. Gidley?

2196

2197 Mr. Gidley - Thank you, Mr. Secretary. Good morning, Mr.
2198 Chairman, members of the Board.

2199

2200 The property subject to this request is located off a temporary cul-de-sac in the
2201 Turner Forest subdivision. As you can see here, the property slopes downhill
2202 slightly from the street towards the rear yard. And it contains an existing 3,882-
2203 square-foot brick and vinyl dwelling. That includes a two-car garage. This is the
2204 site plan.

2205

2206 The applicants would like to construct an additional garage. This one would be
2207 detached and located in the side yard off the back corner of the driveway, as shown
2208 here. The proposed garage would be approximately 40 feet wide and 30 feet deep.
2209 In addition, it would contain a 12-foot-wide carport on the interior side. I can show
2210 you that here. Here's the main garage, and here's the 12-foot carport coming off
2211 the side. The total would therefore be 52 feet in width. It would have a height of
2212 17-1/2 feet and would be constructed with steel siding.

2213

2214 Is the request consistent with the Comprehensive Plan and the Zoning Ordinance?
2215 The property is zoned A-1 Agricultural District and is designated Suburban
2216 Residential on the 2026 Land Use Plan. A one-family dwelling is consistent with
2217 these designations. A detached garage is supposed to be placed in the rear yard.
2218 However, if the Board of Zoning Appeals issues a conditional use permit,
2219 permission may be granted to place it in the side yard. In this case, you can see a
2220 septic drain field in the backyard here. Despite that, there appears to be adequate
2221 room to place the structure in the rear yard without having to place it in the side
2222 yard.

2223

2224 As far as detrimental impact on nearby property, the main dwelling itself is 57 feet
2225 in width. The proposed garage and carport would be almost as wide, at 52 feet in
2226 width. This is much larger than the typical detached garage or other accessory
2227 structures. It also would appear even large if located in the side yard closer to
2228 Bluefield Swamp Drive.

2229

2230 The surrounding homes are two-story suburban style dwellings with brick and/or
2231 vinyl construction. Several other properties along Turner Forest Road also have
2232 accessory buildings, and these are more modest in size and constructed with brick,
2233 vinyl, or wood siding that matches the existing dwelling.

2234

2235 Although located on a temporary cul-de-sac, plans do call for Boot Hill Swamp
2236 Drive to be extended in the future as more development occurs in the area. This
2237 would make the building more visible to people.

2238
2239 The installation of such a large steel structure would be detrimental to nearby
2240 property, especially when you have more visibility by placing it in the side yard
2241 rather than the rear yard as required by code.

2242
2243 In conclusion, it's not unusual for the Board to receive request for a garage in the
2244 side yard. These garages, however, are typically much smaller in size and are
2245 constructed with a material that is either the same as the existing structure or at
2246 least consistent with it. In this case, however, the size of the garage and carport at
2247 52 feet is almost as wide as the existing dwelling. The design, which includes steel
2248 siding, would contrast sharply not only with the applicant's dwelling, but the
2249 surrounding homes as well. The applicant can legally construct the proposed
2250 structure in the rear yard. Because of this, it should not be made more visible by
2251 placing it in the side yard. Given its excessive size, incompatible design, and clear
2252 visibility from the road, staff recommends denial of this request.

2253
2254 If you have any questions, I'll be happy to answer those. Thank you.

2255
2256 Mr. Mackey - Thank you. Mr. Gidley. Any questions for Mr. Gidley?
2257 All right, thank you. Can we hear from the applicant?

2258
2259 Mr. Waffle - Good morning to the members of the Board. My name
2260 is Robert Waffle. W-a-f-f-l-e. I also have with me Steve Graber. G-r-a-b-e-r. He
2261 represents Superior Buildings, who is the contractor that I've hired.

2262
2263 Everything that's been said so far is correct. The reason why Steve and I both feel
2264 it's best to put the garage in the side yard as opposed to the rear yard is because
2265 of the big elevation difference. The septic drain field is in the back yard, which
2266 precludes putting the structure all the way in the back. There is perhaps enough
2267 area to the rear of the house between the house and the drain field to make a
2268 narrower structure. But there is a significant grade. And I have some pictures here.
2269 I don't know how to get them up to you.

2270
2271 The pictures that I took there show my four vehicles, which I park in the driveway.
2272 That's the whole reason for the garage. It's a two-car garage that's attached to the
2273 house. I'd like to add parking for more vehicles and get them out of the hail. I'm
2274 new to Virginia, and the hail's getting to me.

2275
2276 The grading in the rear of the yard is shown pretty well in the pictures. In one of
2277 them I placed my 4-1/2-foot-tall garbage can in the lowest part. You can see just
2278 how low it is compared to the driveway. It would be a significantly higher cost to
2279 put the structure in the backyard, and it would also be more difficult to access.

2280

2281 Steven also has pictures of similar units that they've built around here in Virginia.
2282 It's not just a steel shed. It's built to look like the house. The vinyl color is going to
2283 be the main color, so it's going to match almost perfectly to the main color of the
2284 house. We're going to do wainscoting along the bottom. So it will look applicable
2285 to the house. It won't look like an additional shed that's to the side of the house.
2286 It's going to look very nice. It'll be color coordinating to the house. It's important to
2287 me to make it look good.

2288

2289 I will say that I specifically purchased here even after putting in a bid in Chesterfield
2290 County because the HOA there would not allow a structure larger than 24 by 24. I
2291 specifically purchased in Varina. There is no HOA. I didn't realize that the County
2292 of Henrico would act as an HOA. I cleared that up. Four or five times we went over
2293 that. I don't pay dues to anybody. Nobody's ever contacted me. I cleared it up four
2294 or five times during the purchase of the home with the title company, with the
2295 selling and the purchasing realtor. There is no HOA.

2296

2297 Mr. Graber - The only concern I have with moving it back, as he
2298 suggested, putting it in the lower spot in the yard, there's a lot of land area around
2299 that that drains right through the back side in that low section. When it rains hard,
2300 there's a lot of water that runs through there, so you'd have to divert the water. If
2301 you divert the water around the back, you're infringing on the septic system, which
2302 could potentially cause a problem. If you come around the front, that's a problem,
2303 too, because it's a driveway. So the water issue is another reason why we decided
2304 to pull the building forward a little bit.

2305

2306 As you can see on the plot plan where the proposed building would be, some of
2307 the building would be behind the house. But it also sits back about 24 feet from the
2308 front edge of the house to the front edge of the garage. So in my view, it's kind of
2309 the back yard.

2310

2311 And the building itself, like he said, is only 30 by 40. So it's really only 40 feet wide.
2312 You add the 12-foot lean-to. So the building is 52. But as far as the front structure,
2313 you're only seeing 40 feet of that.

2314

2315 Mr. Waffle - The lean-to is to protect a trailer, which is shown in one
2316 of those pictures. In my opinion, between having the cars in the garage and the
2317 trailer in front of the house, it would look much better and improve the community
2318 to put in a professionally built structure that would contain all of that, and none
2319 would be seen from the road. And by the way, I didn't know it was a temporary cul-
2320 de-sac.

2321

2322 Mr. Blankinship - That's shown on the plat, 50-foot radius, temporary
2323 turnaround easement. It's right there on the survey plat that you submitted.

2324

2325 Mr. Waffle - Okay. Actually, my contractor submitted that. That's
2326 really all we have, unless there are any questions.

2327
2328 Mr. Mackey - Does anyone have any questions?
2329
2330 Mr. Bell - Did you read the conditions if it was approved?
2331
2332 Mr. Waffle - I did. You would agree with condition #3?
2333
2334 Mr. Blankinship - No, he'd need a modification for three.
2335
2336 Mr. Waffle - Okay. Can you read #3 again, please?
2337
2338 Mr. Blankinship - The new construction shall match the existing dwelling
2339 as nearly as practical in materials and color. Exposed metal walls shall not be
2340 visible from the public right-of-way or neighboring property.
2341
2342 Mr. Waffle - Okay, then you're right. I don't agree with #3.
2343
2344 Mr. Blankinship - You'd need to change that.
2345
2346 Mr. Waffle - I will make it look like the existing building. The vinyl
2347 color on the house will be the same color as the shop. There will be black
2348 wainscoting four feet down, which will match the shutter color and the accent colors
2349 of the house.
2350
2351 Mr. Blankinship - And is that a standing seam metal roof that's shown in
2352 the photos submitted?
2353
2354 Mr. Graber - The garage has a metal roof. It's not standing seam.
2355 It's just a screw-down metal roof. It'll be color coordinated to match the shingles
2356 on the house as well.
2357
2358 Mr. Mackey - Mr. Waffle, could you point out which one of these
2359 pictures will pretty much look exactly like what you propose to build?
2360
2361 Mr. Graber - [Off microphone] Those are all similar. That one would
2362 be about the closest. Or that one. Just a different color.
2363
2364 Mr. Waffle - [Off microphone] So the main structure would—
2365
2366 Mr. Mackey - Could you go back to the microphone? I need it for the
2367 record.
2368
2369 Mr. Waffle - The main structure would look like this building here.
2370
2371 Mr. Mackey - With the lean-to added.
2372

2373 Mr. Waffle - Correct. This one shows a lean-to.
2374
2375 Mr. Mackey - Okay.
2376
2377 Mr. Waffle - But the main part would contain two garage doors. And
2378 instead of a window, this would be a door.
2379
2380 Mr. Mackey - Okay. And that one right there, that's about 40 feet
2381 wide?
2382
2383 Mr. Graber - Yes.
2384
2385 Mr. Blankinship - And what kind of roof is that?
2386
2387 Mr. Graber - That's a metal roof. As all these pictures were metal
2388 siding, metal roofing.
2389
2390 Mr. Mackey - That one doesn't appear to be as tall as what we show
2391 up on the monitor right now.
2392
2393 Mr. Graber - It'll be the same height, yes. This red one will be the
2394 same height.
2395
2396 Mr. Blankinship - What would be the height of the structure you're
2397 proposing?
2398
2399 Mr. Garber - It's 12 feet to the eave and then about 4-1/2 feet, so
2400 16-1/2 to 17 feet—
2401
2402 Mr. Mackey - Almost 17 feet.
2403
2404 Mr. Graber - —from the grade level to the peak.
2405
2406 Mr. Blankinship - To the ridge. Okay.
2407
2408 Mr. Graber - Yes.
2409
2410 Mr. Green - Is that custom built or prefabricated?
2411
2412 Mr. Graber - It's custom built.
2413
2414 Mr. Waffle - I understand it looks like a big brick right here. But if
2415 you go to some of the other pictures, you can see it looks like a traditional. It's just
2416 this view makes it look—see right there.
2417

2418 Mr. Mackey - All right. Any other questions for Mr. Waffle or
2419 Mr. Graber?
2420
2421 Ms. Harris - Mr. Waffle, why are you not building a brick garage? Is
2422 it because of the cost?
2423
2424 Mr. Waffle - Yes ma'am.
2425
2426 Ms. Harris - Or at least semi-brick. Is it because of the cost?
2427
2428 Mr. Waffle - I'd be open to the face of the garage being brick. It
2429 would add about \$3,000 cost.
2430
2431 Ms. Harris - So you have a two-car garage, but you really need a
2432 five-car garage? Is that what you're telling us?
2433
2434 Mr. Waffle - Yes ma'am.
2435
2436 Ms. Harris - Okay. Thank you.
2437
2438 Mr. Blankinship - I need those illustrations back, please.
2439
2440 Mr. Mackey - Are there any other questions? All right, thank you.
2441 Thank you both.
2442
2443 Mr. Waffle - Thank you for your time this morning.
2444
2445 Mr. Mackey - Thank you. Is there anyone here that would like to
2446 speak in favor of the applicant? Anyone in opposition? Hearing none, we'll move
2447 to the next case.
2448
2449 **[After the conclusion of the public hearings, the Board discussed the case**
2450 **and made its decision. This portion of the transcript is included here for**
2451 **convenience of reference.]**
2452
2453 Mr. Mackey - What is the pleasure of the Board?
2454
2455 Mr. Green - This is the garage?
2456
2457 Mr. Blankinship - Yes sir.
2458
2459 Mr. Mackey - Is there a motion? Being the Varina magistrate, I do not
2460 think that they have addressed the issue of putting the accessory building structure
2461 fully in the rear of the yard. I make a motion that we deny the request to allow it in
2462 the side yard.
2463

2464 Mr. Green - Second.

2465

2466 Mr. Mackey - Being properly moved and seconded, all in favor say
2467 aye. Those opposed say no. There is no opposition; that motion passes 5 to 0. The
2468 request is denied.

2469

2470 After an advertised public hearing and on a motion by Mr. Mackey seconded by
2471 Mr. Green, the Board **denied** application **CUP2017-00028, ROBERT AND**
2472 **JENNIFER WAFFLE's** request for a conditional use permit pursuant to Section
2473 24-95(i)(4) of the County Code to allow an accessory structure in the side yard at
2474 3804 Bluefield Swamp Drive (TURNER FOREST) (Parcel 829-686-4787) zoned
2475 Agricultural District (A-1) (Varina).

2476

2477

2478 Affirmative: Bell, Green, Harris, Mackey, Reid 5

2479 Negative: 0

2480 Absent: 0

2481

2482

2483 **[At this point, the transcript continues with the public hearing on the next**
2484 **case.]**

2485

2486 Mr. Blankinship - CUP2017-000029 was withdrawn. I hope nobody was
2487 waiting for that. That ends the conditional use permit portion of the agenda. We
2488 will now move on to variances. There are two variances this morning.

2489

2490 **VAR2017-00015 THE STEWARD SCHOOL** requests a variance from
2491 Section 24-94 of the County Code to install protective netting at 11600 Gayton
2492 Road (Parcel 736-747-8260) zoned Agricultural District (A-1) (Tuckahoe). The
2493 height requirement is not met. The applicant proposes 60 feet in height, where the
2494 Code requires 45 feet in height. The applicant requests a variance of 15 feet in
2495 height.

2496

2497 Mr. Blankinship - Would everyone who intends to speak to this case
2498 please stand and be sworn in. Raise your right hands, please. Do you swear the
2499 testimony you're about to give is the truth, the whole truth, and nothing but the truth
2500 so help you God? Thank you. Mr. Madrigal, if you would begin.

2501

2502 Mr. Madrigal - Thank you. Mr. Secretary. Mr. Chair, members of the
2503 Board. Before you is a request for the installation of a 60-foot-tall protective netting
2504 at a baseball field instead of no higher than 45 feet. The request is from The
2505 Steward School, which was founded in 1972 and is comprised of 37 acres.

2506

2507 The school campus includes classroom buildings, labs, a performing arts center
2508 and theater, administrative offices, support buildings, and recreation facilities.
2509 Among the recreation facilities at the campus are a baseball field and eight tennis

2510 courts. You can see that here, a baseball field on the aerial and then these are the
2511 tennis courts adjacent to it.

2512
2513 The tennis courts are located, as seen here, adjacent to the first baseline of the
2514 ball field. In order to protect the tennis players from foul balls, the ball field is
2515 outlined with protective netting that is approximately 24 feet in height. That's visible
2516 here. School administration is concerned that the existing netting is not high
2517 enough and intends to replace it with netting 60 feet in height. The Zoning
2518 Ordinance limits buildings and structures for a school to 45 feet in height.

2519
2520 With respect to the threshold question, the 45-foot height limit was part of the 1960
2521 Zoning Ordinance, so it was already in effect when the school was founded. The
2522 regulation appears to be reasonable and is applied equally to every school in the
2523 County, both public and private. The applicant wants to erect protective netting in
2524 excess of the 45-foot height standard. Staff is not aware of any hardship related to
2525 the property to justify the request.

2526
2527 With respect to the five subtests, item #1, the property appears to have been
2528 acquired in good faith.

2529
2530 Item #2, the nearest dwellings are located approximately 240 feet from the
2531 proposed netting. Additionally, a substantial wooded buffer divides the school from
2532 neighbors. That's essentially in this area here. Staff would not anticipate any
2533 substantial detrimental impacts if the variance were approved due to the buffering
2534 there.

2535
2536 Item #3, all the County high schools have baseball fields. In at least two cases, the
2537 tennis courts are adjacent to the baselines. Additionally, all the fields have
2538 protective netting or fences that range in height from 20 to 30 feet. The baseball
2539 field at U of R has protective netting approximately 24 feet in height. Staff is not
2540 aware of any condition or situation relative to this request that is unique to the
2541 property when comparing it to the other fields or other schools in the County.

2542
2543 Item #4, the proposed use is accessory to the school, which is a permitted use in
2544 the A-1 District.

2545
2546 And then finally item #5, no special exception or modification is available to remedy
2547 this request.

2548
2549 In conclusion, the 45-foot height limit in the A-1 District appears to be reasonable
2550 and is applied equally to every school in the County. Staff is not aware of any
2551 hardship related to the subject property. Based on the facts of the case, staff
2552 recommends denial.

2553
2554 This concludes my presentation. I'll attempt to answer any questions you may
2555 have.

2556

2557 Mr. Mackey - All right. Thank you, Mr. Madrigal. Any questions for
2558 Mr. Madrigal? Thank you. Can we hear from the applicant, please?

2559

2560 Mr. Steeber - Good morning, ladies and gentlemen. My name is
2561 Donald Steeber. S-t-e-e, b as in boy, e-r. I am currently a member of the Board of
2562 Trustees of The Steward School. I taught there back in the late '70s and early '80s.

2563

2564 There's no question that the area located at 11600 Gayton Road is zoned and
2565 allows the Steward School to be there. Needless to say that in allowing school
2566 usage that usual and normal school activities are also approved. By this I mean
2567 the existence of playing areas and athletic fields. As you can see from the plat, our
2568 35-or-so acres, we have been aware and protective of our neighbors to our west
2569 and to our north.

2570

2571 Several years ago, we added a playing field, four tennis courts, and a baseball
2572 diamond. At that time, we engaged a well-known professional sports facility design
2573 firm for expert guidance. We did—as you can see from the plat and pictures C and
2574 D in your packet—maintain a 45-to-50-foot buffer area, which is heavily wooded,
2575 for our neighbors' protection. In neither of these pictures can you see our abutters,
2576 houses, and more importantly, if we cannot see them, they cannot see us. Now, is
2577 there occasional noise? Yes. But that goes with the territory.

2578

2579 I've also included pictures A and B, which I took at curbside at both Gayton Road
2580 and Ryandale Road. Again, you can barely see—that's not one of my pictures.

2581

2582 Mr. Blankinship - I don't know if it's in the slideshow. They're in the
2583 package, though.

2584

2585 Mr. Steeber - Okay. You can barely see the scoreboard. And in one
2586 picture, you can barely see the American flag hanging next to the scoreboard.

2587

2588 The existing poles and netting are not visible as they are black and blend with the
2589 foliage in the background and are below the height of the adjacent trees. The
2590 proposed new poles and netting, shown in picture E—make no mistake, we have
2591 no intent of putting lighting up there; that just happened to be in that picture—will
2592 be no more visible, and probably less, since the netting that we're proposing is of
2593 a finer nature. The top of the poles will still be below the tree line.

2594

2595 We, the school and the entire educational system, have not created this problem.
2596 Now, if that's true, then what did? Well, over a period of time there have been many
2597 advances in the design and manufacture of equipment. Not only that, but our
2598 young people are getting bigger. Would you have guessed that there's a 17-year-
2599 old, six-foot eight-inch tall high school basketball player in Virginia today? I
2600 wouldn't have. These boys are throwing the ball 90 miles an hour plus. Therein is

2601 the problem. We are getting more and more foul balls, and we are getting more
2602 and more concerned. Let me get back to my notes here.

2603
2604 With all this came more foul balls, and therefore more potential danger to people
2605 in the area of the baseball field. We have over the years tried to deal with the
2606 potential danger. We have added an additional net system. We put up warning
2607 signs. And we talk about awareness all the time. We have also been extra careful
2608 about scheduling when possible. All of our efforts have helped, but we have now
2609 come to the conclusion that the best answer is a taller net as recommended by our
2610 sports facility designers. We believe that without this added protection, it is not a
2611 matter of if, it's a matter of when.

2612
2613 I'll tell you a little story. When I was playing baseball in high school myself, I
2614 remember a commuter, briefcase in hand, walking behind the backstop. Our
2615 catcher threw his mask off and hollered, "Head up!" When he did. And do you want
2616 to guess? Right on the nose. So. I mean it happens.

2617
2618 I'd like to answer a couple of questions that you might have. Did we create the
2619 problem? No. I think, as I saw, the equipment and the size of our people today is
2620 where it comes from.

2621
2622 Can the problem be alleviated or reduced by some other reasonable solution?
2623 We've tried, and we've studied. And as I say, we're aware and we put signs up.
2624 But we're just very, very concerned about the potential.

2625
2626 Would granting the variance adversely affect the abutters to the property? I don't
2627 think so. They really can't see our fields. They hear them sometimes, yes. But they
2628 really can't see them.

2629
2630 Would this variance, if granted, essentially negate the original intent of the zoning
2631 restrictions? I don't think so. It's zoned for a school and for normal activities.

2632
2633 So, I sincerely hope that you'll find in our favor, and I thank you for your time.

2634
2635 Mr. Mackey - Thank you, Mr. Steeber. Does anyone have any
2636 questions for Mr. Steeber?

2637
2638 Ms. Harris - I have one. Mr. Steeber, have there been any incidents
2639 that a taller 60-foot screen would have prevented?

2640
2641 Mr. Steeber - I'm sorry?

2642
2643 Ms. Harris - Have you had any incidents that if you had a taller
2644 screen those incidents would have been prevented?

2645

2646 Mr. Steeber - Somehow I missed part of that question. Have we had
2647 any incidents?
2648

2649 Ms. Harris - Right. That if you had had a taller screen the incident
2650 would not have occurred.
2651

2652 Mr. Steeber - Well, again, we're relying—I would say probably for the
2653 most part on design people who go all over the United States. They've just been
2654 in Boston at Fenway Park. They've just been at Three Rivers. I think it's in
2655 Pittsburg. So they are well aware. I'm an engineer. I have studied the trajectory.
2656 We've had our Physics Department study the trajectory. It's not a problem of black
2657 and white. You can't put your finger on it.
2658

2659 In a game situation, with anywhere from 6 to 10, 15, foul balls on the tennis courts.
2660 With young people on the tennis courts. As I say, we just feel for our liability and
2661 for our peace of mind we need to do everything. And this is not an inexpensive
2662 proposal. But we need to do anything and everything we can do to protect our
2663 young people and our visitors.
2664

2665 Mr. Bell - Sir, you're doing a wonderful job. The people who are
2666 the experts, taking all the considerations and viewing from houses. Viewing from
2667 the road, can't be seen. Sound is not all that much of a problem. The distance
2668 between the tennis courts and the screen. It answers all your problems that shows
2669 this is a good design.
2670

2671 Mr. Steeber - Thank you.
2672

2673 Mr. Bell - But what concerns me is our code says 45 feet, and we
2674 have other, our own baseball fields that have people 6 foot 4 knocking the ball just
2675 as far, but the screen is still only 45 feet, or 24 feet on some of them, and that's
2676 what the code requires in this County. So I've got to make the decision. Looking at
2677 the screen. What's any difference than us having the 45, unless we maybe should
2678 raise ours to 60 as well. However, that's not what we do.
2679

2680 Mr. Steeber - I understand that. The fact that some of these other
2681 fields have 24-, 25-, 30-foot screens doesn't mean that they're not having a
2682 problem. I wish I had access to their history to find out if in fact—
2683

2684 Mr. Bell - No, I'm not even suggesting that; I agree with you
2685 there. But still the requirement according our code is only 45 feet.
2686

2687 Mr. Steeber - Well, we considered 45 feet. In talking to the
2688 manufacturers, the problem, if we went with 45 feet to start with, with the possibility
2689 of going to 60 if the 45 didn't suffice, we've got to put in the foundations for 60 now
2690 rather than putting in foundations for 45. Go back two years down the road, and
2691 tear it up, and redo it. Or put in foundations for 60 and only a 45-foot pole. But

2692 nobody makes a pole that extends. And these poles are buried in the concrete. It's
2693 not a matter of a footing and sliding a pole down in the footing. The pole is there
2694 and they pour the footing around it. So we either go with 45 or we go with 60. We'd
2695 love to be able to try 45 and then ease into it if we had to. I guess the bottom line
2696 is if we're going to do it, we want to do it and make sure that we're safe.
2697

2698 Ms. Moore - If I may, I just wish I had more information about the
2699 trajectory and things. Major league baseball, if you look at it, they're extending
2700 lengthwise rather than height. I'm looking at the application. I wish I knew more
2701 information of where the foul balls are going that does not extend really beyond
2702 first and third. You may find that it's more of a length issue than a height issue.
2703

2704 Mr. Steeber - We get foul balls on what I would say would be the
2705 upper four courts in that picture. You can see where our home plate is.
2706

2707 Ms. Moore - My point is extending it lengthwise versus height-wise
2708 might give you more protection.
2709

2710 Mr. Steeber - In fact, I don't I think so. In my view and as I've watched
2711 it, a lot of the balls come up and over. It would help, certainly, but it's the height
2712 coming over the net.
2713

2714 Now remember, if you turn over a ticket to a major league game, there's a
2715 disclaimer. The New York Yankees are not responsible for any fan getting hit by a
2716 foul ball. So you're sitting there at your risk. We don't sell tickets, and I wouldn't
2717 ask our tennis players or our spectators—have a sign up there and—we state that
2718 it's a foul ball area, please be aware. But that seems about the best that we've
2719 been able to come up with so far.
2720

2721 Mr. Mackey - All right, thank you, Mr. Steeber. Are there any other
2722 questions? All right, I don't think we have any.
2723

2724 Mr. Steeber - Thank you.
2725

2726 Mr. Mackey - Thank you. Is there anyone that would like to speak in
2727 favor?
2728

2729 Mr. Secret - Good morning. My name is Bruce Secret. Last name
2730 is S-e-c-r-e-t. I'm the athletic director at The Steward School and also the varsity
2731 baseball coach. I've also been with the Atlanta Braves as an associate scout for
2732 the last 30 years.
2733

2734 I appreciate, ma'am, your information. The problem is definitely height. I've been
2735 the only baseball coach at The Steward School for the last 15 years. I do agree
2736 that players are bigger and stronger everywhere. I coach other teams in the
2737 summer where I coach those boys that go to other schools in our area. So that's a

2738 good problem for us, that's a good thing for me. But the problem is definitely height.
2739 We have extended the length also because not only has it been a height problem,
2740 but we've extended the poles further down the right field line to keep the balls off
2741 of the courts that are further down also.

2742
2743 Years ago we added a second part of the netting to come over the back stop to try
2744 to help with the problem. And we extended the net as far out, as close to the home
2745 plate as we could without the netting going over where it would affect the ball in
2746 fair territory.

2747
2748 We have tennis players that are either practicing or playing matches at the same
2749 time we have baseball games. This is my 15th year at The Steward School. That
2750 I'm aware of, we have never had a player hit yet. But I cannot tell you the hundreds
2751 of times we have had baseballs land right beside players or just miss players when
2752 they're practicing and playing a game. So obviously our first and most important
2753 concern is the safety of our young people. And it's just a matter of time, as Mr.
2754 Steeber said, that that luck that we have been on is going to run out.

2755
2756 I go to fields in the scouting aspect with the Atlanta Braves. Similar situations as I
2757 see right there, and they have the exact same problems. Just our situation is we
2758 want to try to eliminate any possibility of any of our young people or any of the
2759 young people from other schools coming and playing and getting hurt.

2760
2761 That's just what I wanted to share with you guys this morning. I appreciate so much
2762 you allowing us to be here and share with you. If I can answer any questions, I
2763 would definitely be more than glad to do so.

2764
2765 Mr. Green - In the spirit of sportsmanship, while I understand we're
2766 all concerned about them being hurt, have there been times where you've had
2767 tennis matches going on and the balls have gone over and disrupted the actual
2768 tennis match itself which has caused some confusion?

2769
2770 Mr. Secrest - Yes, we have. They would stop and replay the point
2771 that they were currently in. Other than that, we try to have things to keep flowing
2772 as fluid as possible.

2773
2774 Mr. Green - But that's not fair to the tennis players.

2775
2776 Mr. Secrest - Exactly. And that's one issue. But obviously our main
2777 issue has been the safety of our kids, and we're just scared one of our kids would
2778 be hit and injured with a foul ball.

2779
2780 Mr. Green - Right.

2781
2782 Ms. Harris - Mr. Secrest, why 60 feet?

2783

2784 Mr. Secrest - We felt like from projections, we feel like that net will
2785 give us the best safety possibility. I've seen 45-foot nets out at many places on the
2786 college level, and I see balls hit over those nets on a regular basis. I was just down
2787 at Atlanta at their new stadium. They have a net that's around the 45-foot area,
2788 and balls are continually fouled over that net into the stands. So we feel like in our
2789 situation that the 60 feet would give us the best opportunity so we have as few as
2790 possible chances of that happening.

2791
2792 Mr. Mackey - All right. Thank you, Mr. Secrest.

2793
2794 Mr. Secrest - Thank you.

2795
2796 Mr. Mackey - Is there anyone else who would like to speak in favor?
2797 Anyone who would like to speak in opposition? All right, thank you. We'll move on
2798 to our final case.

2799
2800 **[After the conclusion of the public hearings, the Board discussed the case**
2801 **and made its decision. This portion of the transcript is included here for**
2802 **convenience of reference.]**

2803
2804 Mr. Mackey - What is the pleasure of the Board?

2805
2806 Ms. Harris - I move that we approve this variance. I know that the
2807 County's guidelines are 15 feet less, but it appears that there are a lot of foul balls
2808 using those guidelines. I think that we need to step into this century. The pictures
2809 that we saw for the construction seem to be first class. So I believe that we need
2810 to support this variance.

2811
2812 Mr. Green - Second.

2813
2814 Mr. Mackey - It's been properly moved by Ms. Harris and seconded
2815 by Mr. Green. All in favor say aye. Those opposed say no. There is no opposition;
2816 that motion passes and the variance is granted.

2817
2818 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.
2819 Green, the Board **approved** application **VAR2017-00015, THE STEWARD**
2820 **SCHOOL's** request for a variance from Section 24-94 of the County Code to install
2821 protective netting at 11600 Gayton Road (Parcel 736-747-8260) zoned Agricultural
2822 District (A-1) (Tuckahoe). The applicant requests a variance of 15 feet in height.
2823 The Board approved the variance subject to the following conditions:

2824
2825 1. This variance applies only to the height limit for the protective netting. All other
2826 applicable regulations of the County Code shall remain in force.

2827
2828 2. Only the improvements shown on the plot plan and building design filed with the
2829 application may be constructed pursuant to this approval. Any additional

2830 improvements shall comply with the applicable regulations of the County Code.
2831 Any substantial changes or additions to the design or location of the improvements
2832 will require a new variance.

2833
2834 3. This approval is subject to all conditions placed on plan of development (POD-
2835 068-84) by the Planning Commission.

2836
2837
2838 Affirmative: Bell, Green, Harris, Mackey, Reid 5
2839 Negative: 0
2840 Absent: 0

2841
2842

2843 **[At this point, the transcript continues with the public hearing on the next**
2844 **case.]**

2845
2846 **VAR2017-00016** BRAD GILLESPIE requests a variance from Section
2847 24-95(c)(2) of the County Code to build an addition at 7703 Brookside Road
2848 (WESTHAM) (Parcel 760-739-0002) zoned One-Family Residence District (R-3)
2849 (Tuckahoe). The rear yard setback is not met. The applicant proposes 22 feet rear
2850 yard setback, where the Code requires 25 feet rear yard setback. The applicant
2851 requests a variance of 3 feet rear yard setback.

2852
2853 Mr. Blankinship - Would everyone who intends to speak to this case
2854 please stand and be sworn in. Raise your right hands, please. Do you swear the
2855 testimony you're about to give is the truth, the whole truth, and nothing but the truth
2856 so help you God? Thank you. Mr. Gidley.

2857
2858 Mr. Gidley - Thank you, Mr. Secretary.

2859
2860 The subject property is located in the Westham subdivision, and this is located just
2861 southwest of the intersection of Patterson Avenue and Three Chopt Road. This
2862 1,400-square-foot home was constructed on the lot in 1952. There is also a creek
2863 that runs through the front part of the lot, and there is floodplain associated with
2864 this. As a result the home had to be constructed further back on the lot.
2865 Nonetheless, there was adequate room for the home to be built within the required
2866 setbacks. For some reason, the home was nonetheless constructed three feet
2867 inside the 24-foot rear yard setback. That's shown here on the survey plat. The
2868 back left corner here, these three dimensions are into the 25-foot setback.

2869
2870 The applicant purchased the property in May and plans to add a second floor onto
2871 the dwelling. Section 24-8(b) of Zoning Ordinance allows the dwelling, even with
2872 the encroachment, to be enlarged. However, any addition must comply with the
2873 setback requirements. Therefore, any second floor addition needs to be designed
2874 to stay away from the 25-foot rear yard setback. The applicants instead have
2875 chosen to apply for a variance, which is what you're hearing today. This is the rear

2876 yard of the home, and these are the corners that are closer than 25 feet to the back
2877 property line.

2878
2879 In evaluating this request, there are two pathways to get a variance. Under the first
2880 test, does the Zoning Ordinance unreasonably restrict the utilization of the
2881 property. The property, frankly, is not unreasonably restricted. A home was
2882 constructed on the property in 1952, and this use has continued to this day. This
2883 constitutes a reasonable, beneficial use of the property. In addition, the applicant
2884 is free to construct a partial second floor addition. He just needs to stay out of the
2885 25-foot setback.

2886
2887 In the applicant's application, he emphasized the second test for obtaining a
2888 variance, and this is a physical condition related to the property or the
2889 improvements thereon at the time of the effective date of the ordinance. The
2890 applicant claims a hardship exists because the purchase price paid was done with
2891 the assumption a full second floor could be added. This is not a hardship due to a
2892 physical condition of the property, but rather related to whether or not adequate
2893 due diligence was conducted prior to the purchase of the property.

2894
2895 Regardless, no hardship existed at the time of the effective date of the ordinance,
2896 as required under Virginia code. This is because the 25-foot rear yard setback
2897 requirement took effect prior to the construction of the home. So it was already in
2898 place when the home was constructed. Therefore, the requirement under Virginia
2899 law for this avenue for a variance that it takes place, that the effective date of the
2900 ordinance is not met.

2901
2902 Because in staff's opinion neither of the two pathways towards a variance is met,
2903 I won't go through all the subtests here due to elements of time.

2904
2905 In conclusion, the existing home on the property constitutes a reasonable,
2906 beneficial use of the property. As a result, the property is not unreasonably
2907 restricted. The inability of the applicant to build the specific addition he envisioned
2908 when purchasing the property is not a hardship relating to the property or its
2909 improvements at the time of the effective date of the ordinance. The rear yard
2910 setback requirement is the same today as when the home was constructed.
2911 Finally, there are no exceptional conditions that would justify a variance. As a
2912 result, staff recommends denial of this request.

2913
2914 If you have any questions, I can certainly answer those for you. Thank you.

2915
2916 Mr. Mackey - Thank you, Mr. Gidley. Are there any questions?

2917
2918 Ms. Harris - Mr. Gidley, have you heard from any neighbors about
2919 their reaction to this?

2920

2921 Mr. Gidley - I had a number of inquiries, Ms. Harris. I think more of
2922 a curiosity factor. Only one neighbor weighed in with an opinion. She indicated she
2923 was opposed to it, that she just thought it would be too much of a change building
2924 a full second story up there. But she was the only one that actually offered an
2925 opinion. The others were just more what's this about.

2926
2927 Ms. Harris - Thank you.

2928
2929 Mr. Gidley - Yes ma'am.

2930
2931 Mr. Mackey - Any other questions for Mr. Gidley? Okay, thank you,
2932 Mr. Gidley.

2933
2934 Mr. Gidley - Thank you, Mr. Chair.

2935
2936 Mr. Mackey - Can we hear from the applicant?

2937
2938 Mr. Gillespie - Hello. Brad Gillespie. G-i-l-l-e-s-p-i-e. I think
2939 everything's pretty much stated in front of you. I did purchase the house with the
2940 assumption—just with a foolish assumption that I could just add a second floor.
2941 This is on the whole property. Stuff like this is happening in this area. The price per
2942 square foot is really high. For me to get basically exactly what we wanted—we
2943 found something like this that was—it's pretty much uninhabitable. It looks decent
2944 from the outside, but there was some pretty extensive damage. It was an estate
2945 sale, and it sat vacant for a long time, and some water pipes burst. So the inside
2946 is a complete wreck.

2947
2948 Anyway, there is just a few feet on the backside of the house that actually—I think
2949 the design would actually look worse from the street view if we don't go over the
2950 top of the hole and make it actually a two-story house. To me, it's a little bit of an
2951 eyesore in a very nice neighborhood. I'm not 100 percent certain, but my
2952 assumption is the house was placed in this area due to that creek in the front yard.
2953 In speaking with the people from the County, there is no record going back that far
2954 of was it approved or was it not approved. I assume that's why.

2955
2956 It's really close to the creek that runs in the front of yard. It's an irregular-shaped
2957 lot. All of the other houses—even if you just go one house over, they just have a
2958 little bit more room. So we're only talking about just a very small portion of this
2959 house. I think it will be beneficial to the community. Obviously, I can build a house
2960 that looks like a tri-level there. That, to me, is not very appealing. I think going
2961 vertical over the whole entire structure is going to be more visually appealing for
2962 the neighborhood.

2963
2964 This is a ranch-style house, but there are two-story houses all around it. If you're
2965 facing the house right to the left, it's a two-story house. You can see in this picture
2966 a two-story right in front of it. So it's not uncommon for the neighborhood. It may

2967 be something that someone, obviously, isn't used to seeing. I think that the design
2968 that we have in place would definitely just improve everyone's property values. It's
2969 a very high-end, nice design.

2970
2971 Any questions?

2972
2973 Mr. Green - Do you have a rendering of what the house would look
2974 like?

2975
2976 Mr. Gillespie - We do. It's not done by a—it's just a sketch. From
2977 where we submitted the plans. Same material as the plan, an upscale—almost
2978 exactly like what you see there as far as siding. So an upscale vinyl siding. Could
2979 you turn to the front of the house, please?

2980
2981 Mr. Blankinship - These are plans. You don't have any elevations?

2982
2983 Mr. Mackey - Mr. Gillespie, is it your plan to take the existing house
2984 down?

2985
2986 Mr. Gillespie - No it is not. If I were doing that, there wouldn't be a
2987 problem because we could just—well as long as it's actually out of that flood zone.
2988 It's a lot closer to the creek than the picture shows. It's very close. It's so close to
2989 that creek. And I don't know what the actual flood zone is. But it's so close that
2990 when you're walking up, there's not much room even for a sidewalk. It's just very
2991 tight.

2992
2993 Back to the front picture of the house. The plan was to put on a front porch that
2994 sticks off the house with a roof, all of that done in stone. It's going to look pretty
2995 similar to how it already does, just two floors.

2996
2997 Mr. Mackey - Are there any other questions for Mr. Gillespie?

2998
2999 Ms. Harris - You were talking about putting on a front porch with a
3000 roof.

3001
3002 Mr. Gillespie - Yes ma'am.

3003
3004 Ms. Harris - Have you checked the zoning requirements for that?

3005
3006 Mr. Gillespie - Yes.

3007
3008 Ms. Harris - You have.

3009
3010 Mr. Gillespie - I got a survey and everything. We're really just talking
3011 about—looking at the survey, there's just a small portion in the back that falls within
3012 the 25 feet. It would be a pretty funky design to kind of build the second floor

3013 addition and if you were to just like halfway over the left side of the house and then
3014 make it two story all the way across. Other than that, it's going to look like a tri-
3015 level house. Nothing against tri-level houses, but I think it's not as visually
3016 appealing as what I'm proposing.

3017

3018 Ms. Harris - So you're going to let the trees remain? I noticed that
3019 it's a pretty wooded area.

3020

3021 Mr. Gillespie - Some absolutely. I'm all for trees as long as they're not
3022 obstructing anything that we're going to do. They do need to be cut back some.
3023 They're overgrown, was all the landscaping when I purchased the property. I've
3024 been maintaining it. I didn't think this was going to be a problem. You see there's
3025 a dumpster there. We were planning on just getting started. We were submitting
3026 the plans, and then we found this hiccup, which just was completely unanticipated.

3027

3028 If was can't do what we want, I don't know what we're going to do. Maybe a rental
3029 property. It can't be resold at the purchase price that I paid for it in the condition
3030 it's in. The design of the kitchen, these are kind of first-world problems. But the
3031 kitchen, it looks like something from *Little House on the Prairie*. It's a 3-by-5
3032 kitchen. It really looks like the person who built the house lived in it the whole entire
3033 time. Nothing looks of the time. It would even be unappealing for renters to rent
3034 this property in the condition it's in. In this area, no one would rent a house with a
3035 kitchen this small. It's like something you would see in like a Manhattan apartment
3036 size of today, at best.

3037

3038 Any other questions?

3039

3040 Mr. Mackey - Any further questions?

3041

3042 Ms. Harris - No.

3043

3044 Mr. Mackey - Okay. All right, thank you, Mr. Gillespie.

3045

3046 Mr. Gillespie - Thank you.

3047

3048 Mr. Mackey - I don't think there's anyone here to speak in favor or—
3049 oh.

3050

3051 Mr. Polo - How are you doing? I'm Bryan Polo. B-r-y-a-n. Last
3052 name P-o-l-o. I'm the general contractor for this project. When I first met with Brad
3053 Gillespie to take a look at his project, I realized we had some spaces that were
3054 pretty tight. Upon going to the County and trying to find some paperwork on this,
3055 realizing anything past the 1970s is really difficult to find. But I did go to the
3056 courthouse. We found a survey that was done. But oddly enough, it did not have
3057 the rear setbacks on it. It had the side setback, had the front setbacks. And so then
3058 upon that, we did decide to go—because it looked very close to 25 feet.

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Keeping the existing footprint and going straight up from there, it's much more visually appealing. As a contractor, I've been in the business for almost six years now and I worked with other contractors before I started my own business. The way the house is set up on the first floor really gives it an inability to be able to make some of these rooms into bedrooms. Some of the bedrooms are very small. The kitchen is very small. And some of the setup on the first floor is just inadequate for somebody working in it today.

So just basically taking the footprint and just going straight up from it. It's going to look so much better than trying to do like a three-foot bump-in, which would be kind of silly at this point. We were also trying to square off one of the points in the back, which is a 4-by-8-foot-square-foot area. It's basically 32 square feet. That would go a couple more feet into there. But at this point, it's really close, and it would make the upstairs a lot easier to have more room for a hallway, for the kids. What we have here is a family that needs some space.

Most of the houses in this area are two-level houses. As you see in some of the pictures in the neighborhood, a lot of folks have done this. There was recently a similar project that was done in Westham that was approved. A very similar situation, only that it had more contingencies in the project, and it was passed.

Just keeping the same footprint at this point, we'd be very happy with that.

Mr. Mackey - Okay. All right. Thank you, sir. Having heard the final request for today, we'll move on to our motion portion of today's proceeding.

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

Mr. Mackey - What is the pleasure of the Board?

Mr. Reid - I make a motion that we approve VAR2017-00016 for Mr. Gillespie to build the second-story addition on his house on Brookside Road. I think it would certainly be a nice addition to the neighborhood because there are a lot of two-story houses, it's a nice neighborhood. I think it would be beneficial to the neighborhood to have it.

Mr. Green - Second.

Mr. Mackey - It's been properly moved and then seconded by Mr. Green. All in favor say aye. Those opposed say no. There is no opposition; that motion passes.

3104 After an advertised public hearing and on a motion by Mr. Reid, seconded by Mr.
3105 Green, the Board **approved** application **VAR2017-00016, BRAD GILLESPIE's**
3106 request for a variance from Section 24-95(c)(2) of the County Code to build an
3107 addition at 7703 Brookside Road (WESTHAM) (Parcel 760-739-0002) zoned One-
3108 Family Residence District (R-3) (Tuckahoe). The Board approved the variance
3109 subject to the following conditions:

3110
3111 1. This variance applies only to the rear yard setback requirement for one dwelling
3112 only. All other applicable regulations of the County Code shall remain in force.
3113

3114 2. Only the proposed second floor addition within the existing footprint of the home
3115 shown on the plot plan may be constructed pursuant to this approval. Any
3116 additional improvements shall comply with the applicable regulations of the County
3117 Code. Any substantial changes or additions to the design or location of the
3118 improvements will require a new variance.

3119
3120 3. The new construction shall match the existing dwelling as nearly as practical in
3121 materials and color.

3122
3123
3124 Affirmative: Bell, Green, Harris, Mackey, Reid 5
3125 Negative: 0
3126 Absent: 0

3127
3128
3129 Mr. Mackey - We'll move on now to the approval of the minutes for
3130 our July meeting. Is there a motion or do we need any discussion?

3131
3132 Ms. Harris - I move that the minutes be accepted as presented.

3133
3134 Mr. Mackey - Moved by Ms. Harris. Is there a second?

3135
3136 Mr. Bell - Second.

3137
3138 Mr. Mackey - Seconded by Mr. Bell. All in favor say aye.

3139
3140 Mr. Green - I abstain because I wasn't here.

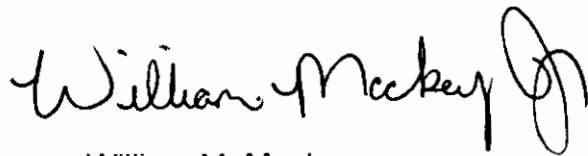
3141
3142 Mr. Mackey - Okay. One abstention by Mr. Green. Those opposed
3143 say no. There is no opposition; that motion passes.

3144
3145 On a motion by Ms. Harris, seconded by Mr. Bell, the Board **approved as**
3146 **submitted the Minutes of the July 27, 2017, Henrico County Board of Zoning**
3147 **Appeals meeting.**

3148
3149 Affirmative: Bell, Harris, Mackey, Reid 4
3150 Negative: 0

3151	Absent:		0
3152	Abstain:	Green	1
3153			
3154			
3155	Mr. Mackey -	New business? Election of officers?	
3156			
3157	Mr. Blankinship -	Yes sir, Mr. Chairman. If you would like, I will go ahead	
3158		and take over the running of the meeting for this item. The floor is now open for	
3159		nominations for the office of chair.	
3160			
3161	Mr. Bell -	I nominate Helen Harris. She's been with us for many,	
3162		many years. She has instructed simply through her reasoning in so many cases	
3163		that have come across here. It's made us think and make a right decision. I believe	
3164		that she would be an excellent vice chair.	
3165			
3166	Mr. Blankinship -	Chair or Vice Chair? This is for the office of Chair.	
3167			
3168	Mr. Mackey -	It's too late.	
3169			
3170	Ms. Harris -	I decline for chair.	
3171			
3172	Mr. Blankinship -	All right. Are there any other nominations for the office	
3173		of chair?	
3174			
3175	Ms. Harris -	Mr. Secretary, I would like to nominate Mr. William	
3176		Mackey for Chair of this Board.	
3177			
3178	Mr. Blankinship -	All right.	
3179			
3180	Mr. Bell -	I second the motion.	
3181			
3182	Mr. Blankinship -	Ms. Harris has nominated Mr. Mackey. Mr. Bell	
3183		seconds that nomination.	
3184			
3185	Mr. Bell -	I want to say a few words about him too. Ever since he	
3186		came here—he's relatively new to the group that was here, which doesn't mean	
3187		that much. But someone who's taken time to study how it's supposed to work, to	
3188		listen to everybody who's been up here, asked a lot of questions that were very	
3189		meaningful. He'll be a wonderful Chairman.	
3190			
3191	Mr. Mackey -	I appreciate those kind words, Mr. Bell. Thank you.	
3192			
3193	Mr. Blankinship -	Are there any further nominations for the office of	
3194		Chair? A motion to close the nominations would be in order.	
3195			
3196	Ms. Harris -	I move that we close the nomination with the one name.	

3197
 3198 Mr. Green - Second.
 3199
 3200 Mr. Blankinship - There's a second by Mr. Green. All in favor of closing
 3201 the nominations say aye. It's 5 to 0. Mr. Mackey, you have been elected by
 3202 acclamation.
 3203
 3204 Mr. Mackey - Thank you.
 3205
 3206 Mr. Blankinship - Congratulations. Now the floor is open, Mr. Bell, to
 3207 nominations for the office of Vice Chair.
 3208
 3209 Mr. Bell - [I nominate Helen Harris.]
 3210
 3211 Mr. Reid - I second Mr. Bell's nomination.
 3212
 3213 Mr. Blankinship - All right. Mr. Bell has nominated Ms. Harris, and Mr.
 3214 Reid seconds that motion. Are there any further nominations for the office of Vice
 3215 Chair? If not, a motion to close the floor to nominations would be in order.
 3216
 3217 Mr. Mackey - I move that we close the nominations with one name.
 3218
 3219 Mr. Green - Second.
 3220
 3221 Mr. Blankinship - All right. Mr. Mackey has moved, and Mr. Green has
 3222 seconded the motion to close the floor to nominations. All in favor signify by saying
 3223 aye. All opposed no. The floor is closed to nomination, and Ms. Harris, you are
 3224 elected Vice Chair by acclamation. Congratulations.
 3225
 3226 Ms. Harris - Thank you.
 3227
 3228 Mr. Blankinship - Mr. Mackey, I will turn the gavel back over to you.
 3229
 3230 Mr. Mackey - Is there any other new business? Having said that, this
 3231 meeting is adjourned.
 3232
 3233
 3234
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 3236
 3237
 3238
 3239
 3240
 3241
 3242



William M. Mackey
 Acting Chairman



Benjamin Blankinship, AICP
 Secretary