

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, JANUARY 26, 2012 AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**
6 **JANUARY 9, 2012 AND JANUARY 16, 2012.**
7

Members Present: Helen E. Harris, Chairman
Greg Baka
Gentry Bell
James W. Nunnally
R. A. Wright

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

8
9 Ms. Harris - Welcome to the January 26, 2012 meeting of the
10 Board of Zoning Appeals for Henrico County. Please stand and recite the
11 **Pledge of Allegiance.**
12

13 Good morning, Mr. Blankinship. Would you read the rules that govern this body
14 and let us know if we have any withdrawals or deferrals this morning.
15

16 Mr. Blankinship - Good morning, Madam Chairman, members of the
17 Board, ladies and gentleman. The rules for this meeting are as follows. Acting as
18 secretary, I will call each case. And as I'm speaking, the applicant is welcome to
19 come down to the podium. We will than ask everyone who intends to speak to
20 that case to stand and be sworn in. Then the applicant will present their case.
21 Then anyone else who wishes to speak will be given the opportunity. And then
22 the applicant, and only the applicant, will have an opportunity for rebuttal.
23

24 After the Board has all of the testimony and asked any questions, they will move
25 on to the next case. They will render all of their decisions at the end of the
26 meeting. So if you wish to know their decision on a specific case, you can either
27 stay until the end of the meeting, or you can check the Planning Department
28 website—we usually get it updated within about half an hour after the end of the
29 meeting—or you can call the Planning Department this afternoon.
30

31 This meeting is being recorded, so we'll ask everyone who speaks to speak
32 directly into the microphone on the podium, state your name, and please spell
33 your last name so that we get it correct in the record.
34

35 Finally, there's a binder in the foyer that includes the staff report for each case,
36 including the conditions that have been recommended by the staff. For those of

37 you who are the applicants on use permit cases, it's particularly important that
38 you be familiar with the conditions that staff has recommended for your case.

39

40 We do not have any requests for deferral or withdrawal this morning.

41

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

43

44 **CUP2012-00001** **W. MICHAEL MAHONEY** requests a conditional use
45 permit pursuant to Section 24-95(i)(4) of the County Code to build a detached
46 garage in the side yard at 9524 Hagan Road (LAUREL HEIGHTS) (Parcel 766-
47 758-6499) zoned R-2, One-Family Residence District (Brookland).

48

49 Ms. Harris - All persons who wish to speak to this case, please
50 stand to be sworn in and raise your right hand.

51

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

54

55 Mr. Mahoney - I do.

56

57 Ms. Harris - Please state your case. Give us your name and spell
58 your last name.

59

60 Mr. Mahoney - It's William Michael Mahoney. Last name is M-a-h-o-
61 n-e-y. All right. I'm proposing and asking for permission for a conditional use
62 permit to build a detached garage. I first intended on building the garage at the
63 foot of my driveway, but there's a main sewer line that runs under my driveway
64 and prohibits building in that area. Then I looked at the possibility of staying in
65 very close proximity to my house for travel back and forth from my vehicle to the
66 house quickly. I looked at the size of my garage and went about changing my lot
67 arrangements. I had three lots—thirteen, fourteen, and fifteen. With help from
68 the people in Planning, I went through the process to eliminate those property
69 lines to then give me just one property to ease the restrictions, I guess I would I
70 say, of the property lines being in conflict. Just asking that I could build at the
71 side of my house rather than behind the rear plane of my house, if I'm stating
72 that correctly.

73

74 Ms. Harris - Are there questions from Board members?

75

76 Mr. Wright - Yes. What is across the street from where you
77 propose to build this garage?

78

79 Mr. Mahoney - Directly across the street is a neighbor, Mr. Bain. He's
80 here today. At 9529. I'm assuming we're all looking at the same thing on the
81 screen. Yes, 9529 is the neighbor's house and he's here today.

82

83 Mr. Wright - How about across the street from the side of the
84 garage?
85
86 Mr. Mahoney - Correct, from the side.
87
88 Mr. Blankinship - There is no street to the south of the property. There
89 is a right-of-way for a street to be built, but it's never been improved.
90
91 Mr. Baka - What is south of that right of way?
92
93 Mr. Blankinship - It goes down to a floodplain. There's a stream back
94 there and I believe it's a floodplain.
95
96 Mr. Mahoney - It's a creek and a floodplain.
97
98 Mr. Blankinship - I believe there's a major sewer line in there as well.
99
100 Mr. Mahoney - Yes, it is.
101
102 Mr. Wright - There are no residences in that area?
103
104 Mr. Mahoney - Not in that area, no sir. And if I may, we attempted
105 maybe eleven years ago when we built to have that road vacated. The County
106 did not want to vacate the plans for the road, but just stated to us that it probably
107 would never be built because of the issues of the floodplain.
108
109 Mr. Wright - So the only residence that would be directly affected
110 would be 9529.
111
112 Mr. Mahoney - Directly affected. I have the ones in the rear, but
113 they're buffered by trees. Yes sir.
114
115 Mr. Wright - They would be a considerable distance from this?
116
117 Mr. Mahoney - They would, yes sir. And if I may also, the plan is that
118 the garage is going to be built with the exact same foundation and bricks to
119 match, the siding to match, the windows and shutters to match, and the
120 dimensional roof shingles to match.
121
122 Mr. Wright - The garage would face the drive? That's the way you
123 would enter the garage?
124
125 Mr. Mahoney - Yes sir. The opening, the garage door will face the
126 attached garage door, face-to-face.
127

128 Mr. Nunnally - You say the only one who would be affected is Mr.
129 Bain?
130
131 Mr. Mahoney - That's my estimation.
132
133 Mr. Nunnally - Is he here today?
134
135 Mr. Mahoney - Yes sir.
136
137 Mr. Nunnally - Okay.
138
139 Mr. Bell - What would a garage be used for?
140
141 Mr. Mahoney - My grandchildren are getting older and their toys are
142 getting larger. I retired early and am looking to do some things like woodworking
143 and that type of thing, kind of a shop. It will have two bays, one that I could finally
144 park my vehicle in the garage instead of the wife parking hers in her garage. And
145 then have a bay for a ping-pong table, those kinds of things, and then also my
146 lawnmower. I have a shed and I have to pull everything out of the shed to get
147 one tool out. So it's just something I've wanted and we've never reached the
148 point of moving forward with.
149
150 Mr. Bell - Thank you, Mr. Mahoney.
151
152 Ms. Harris - Mr. Mahoney, do you know how many acres or
153 fraction of acres you have with the additional lots that you purchased?
154
155 Mr. Mahoney - In total I think it's one and a half. I know it's 1.5428.
156 That's what the County gave me.
157
158 Ms. Harris - Thank you. Could you identify the floodplain on this?
159 Where exactly is the floodplain located? Is there a swimming pool next door to
160 you? Go back, please. Okay. Is there a swimming pool next door to you?
161
162 Mr. Mahoney - Yes ma'am, at 9528, they have a pool. I have a pool
163 as well. There you see the sidewalks and pavers that are going back to the
164 apron. I don't know if I can point, but.
165
166 Ms. Harris - That's okay, I can see. I need to know where the
167 floodplain is located.
168
169 Mr. Mahoney - A lady from the County came out and she's with
170 Public Works. I think she's a wetlands inspector, if that's the correct title. She
171 came out and determined that the floodplain comes up to about thirty-six feet off
172 of the corner of my driveway. If you look and see where my truck is parked in

173 that picture. When that picture was taken there's a pallet of stone. So that's the
174 corner of my driveway, forward of my truck. Am I able to move this?

175

176 Mr. Blankinship - Sometimes yes, sometimes no.

177

178 Mr. Mahoney - Okay, yes. Okay. So that's the corner of my driveway
179 there. And the floodplain runs sort of like that. It's kind of jumping around. And
180 then it drops down here. Something wrong here, sorry. The plan also shows an
181 approximate RPA line of two feet off of the edge of the garage, if that's helpful.
182 That may be an approximate RPA line.

183

184 Ms. Harris - How far is that floodplain from your proposed garage?

185

186 Mr. Mahoney - It would be approximately twelve feet from the lowest
187 point of the garage, from the furthest point away from my house, if I'm saying
188 that right.

189

190 Ms. Harris - Thank you. Are there any other questions of Mr.
191 Mahoney?

192

193 Mr. Baka - I have one question of staff. Mr. Mahoney has applied
194 for a conditional use permit for the garage in the side yard. I wanted to ask what
195 is the history and why this is a conditional use permit. For example, when
196 someone applies for a garage that exceeds the required size, that process would
197 be a variance.

198

199 Mr. Blankinship - That's a very good question, Mr. Baka. The ordinance
200 has provided since 1960 that accessory structures are only allowed in the rear
201 yard. I believe also since 1960 it has limited the lot coverage of accessory
202 structures. From 1960 until, say, 2005, the only way to have any flexibility in
203 those requirements was to apply for a variance from this body. Now a variance is
204 a very different legal instrument from a use permit. To the applicant they look
205 about the same; it's just a different form. But to us, the legal requirements for
206 reviewing and granting one is quite different.

207

208 For a variance there has to be no other reasonable use of the property. And that
209 was clarified for us in a Virginia Supreme Court case in 2005. Up until that point
210 it was not unusual for the Board of Zoning Appeals to grant a variance for a case
211 like this. But after that Supreme Court case, the Board began denying any
212 application where there was some reasonable use of the property without the
213 variance because the Supreme Court had made that standard very clear in 2005.

214

215 Shortly after that we had several people come in wanting variances to put
216 accessory structures—particularly swimming pools—in their side yards. There
217 were a couple of cases where it was clearly the best location. Everyone on both
218 sides agreed that the side yard was a better location for that accessory structure,

219 but the Board felt they did not meet the legal requirements to approve a
220 variance. So they had to deny it even though they were very sympathetic with the
221 case. So this Board addressed the Board of Supervisors and asked them to
222 provide some flexibility in the County code that would allow this Board to approve
223 those cases of accessory structures in the side yard. So the Board of
224 Supervisors amended the code, added 24-95(i)(4), specifically to say this Board,
225 the Board of Zoning Appeals, has the authority to grant a special exception or a
226 conditional use permit to allow accessory structures other than in the rear yard
227 where it meets the criteria that you're used to dealing with.

228
229 There is no parallel authority for you to grant a use permit for lot coverage
230 requirement. So it's still the case that the only way to get around the lot coverage
231 requirement would be to apply for a variance. And that, again, would have to go
232 through that much more restrictive legal test that you cannot grant it unless you
233 make a finding that there is no reasonable use of the property without the
234 variance.

235
236 Mr. Baka - So it's fair to say the Cochran Supreme Court
237 decision came first about variances, and then this BZA asked for flexibility in the
238 code in response to Cochran. This now allows folks such as Mr. Mahoney to
239 apply for a conditional use permit for this.

240
241 Mr. Blankinship - Yes sir.

242
243 Mr. Wright - Can I just add one thing, Mr. Blankinship, for
244 clarification? The Cochran Decision says if there is a reasonable, beneficial use
245 of the property, the Board has no authority to even consider the case. In other
246 words, if we determine there is a reasonable, beneficial use, if a house or
247 dwelling is already on the property, that's been determined by the Supreme
248 Court to be a reasonable, beneficial use. It isn't a matter of we have to deny it;
249 we just don't have authority to even consider it.

250
251 Mr. Blankinship - The Court calls it the *threshold question*. So you don't
252 even get over the threshold unless you can answer that question in the
253 affirmative.

254
255 Mr. Mahoney - You asked about the floodplain. I did find the name. It
256 was Ms. Robin Wilder with the County. She is an Henrico County Floodplain
257 Inspector. She came out and met with me. In her judgment, she advised me to
258 draw on my plan that I submitted for the conditional use permit the line that she
259 designated to me.

260
261 Ms. Harris - I should have said this at the very beginning. We do
262 have a new Board member this morning. Mr. Witte is no longer on the Board;
263 he's with the Planning Commission now. So we welcome Mr. Gentry Bell, who

264 has quite a bit of experience with waste management. We want you know that
265 unless he abstains, he'll be voting on the case today, too.

266
267 Mr. Mahoney - Okay.

268
269 Ms. Harris - Are there any other questions from Board members?
270 Anything else. Mr. Mahoney?

271
272 Mr. Mahoney - No, that's everything, I believe.

273
274 Ms. Harris - Thank you very much.

275
276 Mr. Mahoney - Thank you all.

277
278 Ms. Harris - Is there opposition to this conditional use permit?
279 Okay, that's concludes this case.

280

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

284

285 DECISION

286

287 Ms. Harris - What is the pleasure of the Board?

288

289 Mr. Wright - Madam Chairman, I move that we approve this
290 application.

291

292 Mr. Bell - I second the motion.

293

294 Mr. Wright - My basis for this is I don't think this use will adversely
295 affect the health, safety, or welfare of the persons on the premises or in the
296 neighborhood, nor increase congestion in the streets. I think it would be
297 compatible with the general plans and objectives of the official Land Use Plan.

298

299 Mr. Baka - Would that motion include the four proposed
300 conditions?

301

302 Mr. Wright - Yes.

303

304 Ms. Harris - It has been moved by Mr. Wright and seconded by
305 Mr. Bell that this case be approved. Let's have discussion now. Are there
306 questions?

307

308 Mr. Wright - What were the conditions you had, Mr. Baka?

309

310 Mr. Baka - On the second page. Only the improvements shown
311 on the plot plan.

312

313 Mr. Wright - That always includes the conditions. Do you have any
314 changes to the conditions?

315

316 Mr. Baka - No sir.

317

318 Mr. Wright - Oh, okay.

319

320 Ms. Harris - I think they read the conditions and they had no
321 concerns about the conditions. Any other discussion on this motion? All in favor
322 say aye. All opposed say no. The ayes have it; the motion passes.

323

324 After an advertised public hearing and on a motion by Mr. Wright, seconded by
325 Mr. Bell, the Board **approved** application **CUP2012-00001, W. MICHAEL**
326 **MAHONEY's** request for a conditional use permit pursuant to Section 24-
327 95(i)(4) of the County Code to build a detached garage in the side yard at 9524
328 Hagan Road (LAUREL HEIGHTS) (Parcel 766-758-6499) zoned R-2, One-
329 Family Residence District (Brookland). The Board approved the conditional use
330 permit subject to the following conditions:

331

332 1. Only the improvements shown on the plot plan and building design filed with
333 the application may be constructed pursuant to this approval. Any additional
334 improvements shall comply with the applicable regulations of the County Code.
335 Any substantial changes or additions to the design or location of the
336 improvements will require a new use permit.

337

338 2. The new construction shall match the existing dwelling as nearly as practical in
339 materials and color.

340

341 3. At the time of building permit application, the applicant shall submit the
342 necessary information to the Department of Public Works to ensure compliance
343 with the requirements of the Chesapeake Bay Preservation Act and the code
344 requirements for water quality standards. The applicant shall comply with the
345 Chesapeake Bay Preservation Act and all state and local regulations
346 administered under such act applicable to the property, and shall furnish to the
347 Planning Department copies of all reports required by such act or regulations.

348

349 4. The detached garage shall not be used as a residence.

350

351

352 Affirmative: Baka, Bell, Harris, Nunnally, Wright 5

353 Negative: 0

354 Absent: 0

355

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

358

359 **VAR2012-00001** **JOSEPH MILTON MORRIS** requests a variance
360 from Section 24-95(i)(2) a of the County Code to build a garage at 1707 Tweed
361 Court (NORTH RUN ESTATES) (Parcel 779-761-9945) zoned R-4, One-Family
362 Residence District (Fairfield). The accessory structure lot coverage requirement
363 is not met. The applicant proposes 1,064 square feet accessory structure lot
364 coverage, where the Code allows 683 square feet accessory structure lot
365 coverage. The applicant requests a variance of 381 square feet accessory
366 structure lot coverage.

367

368 Ms. Harris - All persons who wish to speak to this case please
369 stand and raise your right hand.

370

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

373

374 Mr. Morris - I do.

375

376 Ms. Harris - Please state your name, spell your last name, and
377 state your case.

378

379 Mr. Morris - My name is Joseph Milton Morris—M-o-r-r-i-s. I am
380 requesting a variance to build an approximately three-car garage, which is 1,050
381 square feet, where the code allows 683 square feet. The variance is because I
382 think a three-car garage would be much more beneficial to me than a two-car
383 garage. I'm just asking that this be considered.

384

385 Ms. Harris - Mr. Morris, did you get a copy of the report?

386

387 Mr. Morris - Yes ma'am.

388

389 Ms. Harris - Are you aware of the Cochran ruling that we've been
390 talking about this morning?

391

392 Mr. Morris - Well you just made it much more clear in the previous
393 case.

394

395 Ms. Harris - Yes. I think in summary we have no authority to grant
396 you a variance if you have reasonable use of your premises without the variance.
397 Let me get to the questions from the other Board members, but I do have a
398 couple of questions. What about your other options? Have you considered other
399 options, like a smaller garage or not needing this variance at all if you—

400

401 Mr. Morris - Well, I think 683 square feet would kind of equal out
402 to roughly a two-car garage. I wanted to put it in the backyard because the lot is
403 pie shaped. The reason I wanted more space is because I have five
404 grandchildren and there are things that always need fixing. I also own a '72 Nova
405 Super Sport Chevrolet that I restored to show condition, and I'd like to get it out
406 of the elements. I'd also like to park my wife's car in there. I have two pieces of
407 antique furniture that belonged to both of my grandparents, grandmothers. I'd
408 like to be able to restore that, once I figure out how to do it. These pieces are
409 over a hundred years old and you can't restore stuff like that outside. You hope it
410 won't rain on you and then try to run it inside.

411
412 You've made it quite clear about the court ruling in the previous case. I
413 understood it before, but I understand it much better now. I'm just giving you the
414 reasons why I would like to be able to do this. But I understand what you're
415 saying.

416
417 Ms. Harris - According to the staff report you can have a structure
418 up to 683 square feet in size. So have you explored that, whether or not you can
419 get some structure that would be usable for your purposes?

420
421 Mr. Morris - I will certainly consider that now. I mean if you rule
422 against me, I won't have any other choice but to look at something that will
423 conform to the 683 square feet.

424
425 Ms. Harris - Any other questions by Board members?

426
427 Mr. Wright - Mr. Morris, there is a document in this folder,
428 Standard for Review of Variance Applications, which you signed. Did you read it?
429

430 Mr. Morris - Yes sir.

431
432 Mr. Wright - That's exactly what we were talking about. What
433 we're trying to do is explain to folks before they come in and put their money up
434 that they probably will not get this approved because the Supreme Court has
435 taken this authority away from us. We're sorry you have to put your \$300 up.

436
437 Mr. Morris - That's okay. You had people in the Planning
438 Department who made that quite plain. But then other people say, "Well, we're
439 not trying to discourage you. If you want to apply for the variance, that's my legal
440 right to do it."

441
442 Mr. Wright - They can't discourage you; you have a right to apply.

443
444 Mr. Morris - But I had one gentleman tell me that I'd be wasting
445 my time.
446

447 Mr. Blankinship - Yes.
448
449 Mr. Wright - I understand. I just wanted to point that out.
450
451 Mr. Baka - I have one follow-up question. We talked about
452 alternatives, and one alternative, I understand, is that the County could grant a
453 permit for a two-car garage or a three-car garage to be attached to the house.
454 What part of your house is in the northwest corner, the rear left corner there, the
455 side closest to the garage? I'm wondering would it be permissible under the
456 County code to attach a large addition to a house if Mr. Morris desires a larger
457 1,064-square-foot garage. Is it even possible to attach it to the corner of the
458 house somehow and make it permitted by right, Mr. Blankinship?
459
460 Mr. Blankinship - It is possible. The problem we'd run into there is the
461 setbacks. He'd have to meet the setback for the principal structure rather than an
462 accessory structure.
463
464 Mr. Baka - Is that fifteen feet?
465
466 Mr. Blankinship - I believe it's forty. I think this is R-4 zoning, isn't it?
467 Yes. So it would be a forty-foot rear yard; fifteen-foot side.
468
469 Mr. Baka - Fifteen side, forty rear. What room in your house is in
470 that rear corner? Is that a living room, bedroom?
471
472 Mr. Morris - That would be a bedroom, or actually an office now.
473
474 Mr. Baka - That may be an option for you. So it appears you
475 have at least two options here today. I hope that's helpful.
476
477 Mr. Morris - Thank you very much for your time.
478
479 Ms. Harris - Thank you, Mr. Morris, for coming in. Is there anyone
480 else who wishes to speak to this case? If not, that concludes this case.
481
482 **[After the conclusion of the public hearings, the Board discussed the case**
483 **and made its decision. This portion of the transcript is included here for**
484 **convenience of reference.]**
485
486 **DECISION**
487
488 Ms. Harris - What is the pleasure here?
489
490 Mr. Baka - I would make a recommendation for a motion for
491 denial because the case does not meet the minimum standards set forth by the
492 Supreme Court of Virginia case known as Cochran. And furthermore, I don't

493 believe that it meets the first test or the second test in the staff report. I
494 understand the applicant's situation. I hope that there are at least one or two
495 other options the applicant would be able to consider and perhaps work out a
496 viable alternative. So I make a motion to deny this case.

497
498 Mr. Wright - I second that with the further statement that there is
499 already a reasonable beneficial use of the property, already having a residence
500 on the property. Therefore this Board has no authority to proceed further with the
501 case.

502
503 Ms. Harris - Okay. Motion made by Mr. Baka, seconded by Mr.
504 Wright that this case be denied. Any questions on the motion? In discussion I
505 think Mr. Morris knows now, too, what our authority is regarding this case. So
506 that was clarified to him. Any other discussion on this motion? All in favor of
507 denying this case say aye. All opposed say no. The ayes have it; the motion
508 passes.

509
510 After an advertised public hearing and on a motion by Mr. Baka seconded by Mr.
511 Wright, the Board **denied** application **VAR2012-00001**, **JOSEPH MILTON**
512 **MORRIS'** request for a variance from Section 24-95(i)(2)a of the County Code
513 to build a garage at 1707 Tweed Court (NORTH RUN ESTATES) (Parcel 779-
514 761-9945) zoned R-4, One-Family Residence District (Fairfield).

515
516
517 Affirmative: Baka, Bell, Harris, Nunnally, Wright 5
518 Negative: 0
519 Absent: 0

520
521
522 **[At this point, the transcript continues with the public hearing on the next**
523 **case.]**

524
525 **CUP2012-00002** **G. L. HOWARD INC** requests a conditional use
526 permit pursuant to Section 24-116(c)(3) of the County Code to deposit soil as fill
527 material at 601 N Juniper Avenue (Parcels 825-728-7984, 825-728-9280 and
528 826-727-7772) zoned R-3, One-Family Residential District (Varina).

529
530 Ms. Harris - Anyone who wishes to speak to this case please
531 stand and raise your right hand to be sworn in. If you think you might speak to
532 this case, better to be sworn in and not speak and than to want to speak and you
533 have not been sworn in.

534
535 Mr. Blankinship - Do you swear the testimony you're about to give is
536 the truth and nothing but the truth so help you God?

537
538 Mr. Howard - I do.

539

540 Ms. Harris - Please state your name, spell your last name, and
541 then state your case.

542

543 Mr. Grattan - Thank you. Good morning, Madam Chairman,
544 members of the Board. My name is Stuart Grattan—G-r-a-t-t-a-n—representing
545 G. L. Howard and the landowners, the Johnson's, for this case.

546

547 What we'd like to do is a continuation of an activity that has been going on as
548 permitted since 2002. Prior to that it was an ongoing operation, extending back
549 for approximately thirty-four years, according to the staff report.

550

551 G. L. Howard Incorporated is a utility contractor. During their work they generate
552 mass amounts of excess dirt as they excavate and put a pipe in the ground and
553 put everything back. Laws of physics dictate that you have excess dirt when
554 you're done. So they're constantly in the need of a place to put that dirt. It's clean
555 fill. We've read through and understand all the conditions that staff came up with.
556 With the exception of some housekeeping items I want to go over, we are in
557 agreement with those conditions. It's limited to non-toxic fill, clean. It's essentially
558 dirt. There may be some concrete and asphalt and construction debris mixed
559 therein, but essentially it's dirt.

560

561 I understand there is some opposition here and it's my understanding their
562 concerns are, as I've read their petition, additional truck traffic and environmental
563 concerns. We have completed wetland delineations in the area. We have
564 completed an erosion control plan per State and County requirements. It's been
565 submitted. It's my understanding it's approvable. I don't know that we've seen all
566 the comments and completed that review process, but we can tweak it
567 accordingly. As far as the additional truck traffic that this petition is in opposition
568 to, I don't see that there will be additional truck traffic. This operation has been
569 going on in excess of thirty years, and it's a continuation of that activity.

570

571 Mr. Wright - This is going to be an expansion of that, though.

572

573 Mr. Grattan - It will be, but the expansion doesn't really increase
574 the amount of dirt coming in. Through the years they've been filling the
575 Johnson's property and it's a slow process of fill coming in. It's graded out and
576 smoothed and top soil is placed on top. And it's seeded. They're growing hay on
577 it—or grass on it. It's an agricultural use when they're finished with it. So yes, the
578 actual footprint has increased, but that's just a matter of the amount of dirt that's
579 placed and used. The amount of dirt coming in on a daily, monthly or yearly
580 basis I don't think will increase.

581

582 Mr. Wright - It will extend the period of operation, though, won't it?

583

584 Mr. Grattan - It will.

585
586 Mr. Wright - How much longer would it add to what's been going
587 on?
588
589 Mr. Grattan - I don't know. I think 2002 we used up a footprint of
590 about four and a half acres. We're going to add six, so I think we're looking at
591 maybe—
592
593 Mr. Wright - Looking at another seven, eight, ten years?
594
595 Mr. Grattan - Could be, yes sir.
596
597 Mr. Wright - We'll hear from these people, but looks like to me it
598 could create a lot of dust and additional concerns to the people that live there.
599
600 Mr. Grattan - I understand that. There are two points I'd like to
601 make to that. One is, and I'll reiterate, it is a continuation. It's not going to create
602 more dust. It will be a continuation of what's there now. I'm not sure if it's on the
603 existing permit or not, but Condition 20 that staff has put forth, which we are in
604 agreement with, that we will maintain the property so that noise, dust, debris are
605 controlled and all roads in connection with the permit shall be effectively treated
606 with calcium chloride, a wetting agent, to eliminate dust. We understand that
607 concern and we're willing to meet this condition to mitigate that.
608
609 Mr. Nunnally - When you first started out on that property down
610 there, there weren't all these houses that are there now. How many houses do
611 you have down there now, about fifty or sixty?
612
613 Mr. Grattan - Mr. Nunnally, I don't know. I don't know how the
614 development in that area has changed over the years.
615
616 Mr. Wright - If you'd explain for the record how you access this
617 property.
618
619 Mr. Grattan - I can. It's essentially coming down Ivy Road, which
620 dead-ends into this property. So those fronting on Ivy would be affected and I
621 think as the network of roads spread to that point they would decrease on a
622 percentage basis based on where the fill is going.
623
624 Mr. Wright - Ivy is a fifty-foot-wide road. Is that correct?
625
626 Mr. Grattan - I believe so, yes sir.
627
628 Mr. Nunnally - That's the only way you can get in and out of there.
629
630 Mr. Grattan - To this property, yes sir, that's right.

631
632 Mr. Baka - One question, just to clarify. The applicant has
633 mentioned a few times that this is merely a continuation of an existing use. But if
634 it was merely a continuation of an existing use, you wouldn't necessarily be in
635 need of a conditional use permit today. Is that correct? It's an expansion of an
636 existing use.
637
638 Mr. Grattan - That is true.
639
640 Mr. Baka - Doubling the size of the acreage. Is it more than
641 double the existing acreage? Is that correct?
642
643 Mr. Grattan - Yes it is.
644
645 Mr. Baka - Okay.
646
647 Mr. Grattan - Well, usable acreage.
648
649 Mr. Baka - Right.
650
651 Mr. Grattan - I think part of the reason why we're looking for this
652 expansion is because the four and a half acres that were originally permitted had
653 been exhausted. So it's not an expansion of that, it's a continuation. I think it's a
654 better term as long as it's understood that, yes; the total property under the
655 permit is close to nine acres, but some of that you can't fill anymore because it's
656 a final grade.
657
658 Mr. Baka - Thank you.
659
660 Ms. Harris - I have several questions. Which phase is this project?
661 I notice it has several phases on the map that we have.
662
663 Mr. Grattan - We did phase it when we did this in 2002. I cannot tell
664 you right now exactly what has been filled today. I think the aerials that I've
665 looked at look like it's not quite complete, but it's close. But I don't know the date
666 of those areas and I have not done—as is required with these new conditions—a
667 survey or some sort of study to monitor that progress as it goes. I'm sorry, but I
668 can't answer that question.
669
670 Ms. Harris - That's okay. And I notice you pointed out Condition
671 #21. Have you been in compliance with Condition #21 before today?
672
673 Mr. Grattan - I will answer with a lack of a negative. I have not
674 heard that VDOT has any issues with this project.
675
676 Ms. Harris - That's Condition #20 rather than #21.

677
678 Mr. Grattan - Oh, Public Works. Yes, yes. I can assure you if we're
679 into the RPA or into the wetlands, we would have heard about it. Once again, by
680 lack of a negative I will say that yes, we are in compliance.
681
682 Ms. Harris - As far as the dust, the noise and—
683
684 Mr. Grattan - That's #20?
685
686 Ms. Harris - Yes.
687
688 Mr. Grattan - Yes. There is some opposition here, so I'm assuming
689 from that there may be dust and noise that, in their opinion, is excessive. I'm
690 hoping that treatment with the calcium, the monitoring of the truck traffic—we're
691 limiting it to twenty-five trucks a day and regulating the frequency of those trucks
692 so that it's not a parade. Three at a time I think is the max we can send down the
693 road.
694
695 Ms. Harris - So you have not done this in the past? Are you saying
696 that you have not—?
697
698 Mr. Grattan - I'd like to defer to Mr. Blankinship. I'm not up to speed
699 with the conditions of that permit that is already issued and I apologize for that.
700
701 Mr. Blankinship - Many of those conditions were not on the 2002 use
702 permit. We are bringing them forward now because we are seeing an expansion
703 of the use and, as Mr. Wright and Mr. Nunnally point out, many more houses
704 have been built in the area. So these issues that in the past have not created a
705 lot of concern are today creating more of a concern.
706
707 Ms. Harris - Is the existing project area fenced in?
708
709 Mr. Grattan - In some areas. I don't think it's completely fenced in,
710 ma'am. I think the ultimate use of this is very benign, in nature with a field. It's an
711 agricultural use. I hope that answers the question. I don't know if now or during
712 rebuttal would be a better time to go over this, but I would like to say that I'm a
713 little confused with a couple of these conditions. There is one that talks to some
714 of the existing—it's #12. It speaks to some of the construction debris and so on
715 that's on site that needs to be removed. We don't have a problem meeting that
716 condition. The confusion I have is this debris to be removed includes concrete
717 pavers, concrete sewer and Jersey wall sections. Now we're in agreement that if
718 they are stored to be reused that this site is not—and we're not asking for a
719 permit and will not use it as a staging area. But under the definition of the
720 acceptable fill, these three criteria in some form of broken manner could be
721 placed in this fill.
722

723 Mr. Blankinship - That's the question staff wanted to put in front of the
724 Board this morning. The previous use permit, the 2002 use permit, did limit the
725 material that could be brought in to the soil. There is a lot more than soil that's
726 out there now. There is concrete and asphalt and brick and other materials that
727 are not authorized to be filled with right now.

728
729 Mr. Grattan - I understand.

730
731 Mr. Blankinship - We stated that both ways so that the issue would be
732 on the table in front of the Board and they could give us their guidance. If they
733 approve the permit, going forward they'll determine what may be filled there.

734
735 Mr. Grattan - However it is I want to be clear.

736
737 Mr. Blankinship - If they say recycled concrete is fine, then recycled
738 concrete will be fine.

739
740 Mr. Grattan - Thank you.

741
742 Mr. Blankinship - Other conditions you had questions about?

743
744 Mr. Grattan - No, that was it. That was the only one I had any
745 confusion with. I've gone over the rest of them with Mr. Howard and he's fine
746 with them. So I think we are acceptable to staff's recommendations and
747 conditions, along with a clarification of what is acceptable fill.

748
749 Mr. Blankinship - Right.

750
751 Mr. Wright - Addressing that, #11 defines the materials, doesn't it?

752
753 Mr. Blankinship - Yes. And it's a change from what was approved in
754 2002.

755
756 Mr. Wright - If #11 says you can deposit concrete on there, why do
757 you say in #12 it has to be removed?

758
759 Mr. Blankinship - The concrete that's there now—the Jersey walls, for
760 example—they don't look like fill; they look like equipment that's being stored on
761 the site. If the Board wants to approve that, that's fine, but that's not what they
762 applied for.

763
764 Mr. Wright - You're saying that the items in #12, the concrete is
765 something that could be used in manufacturing or—

766

767 Mr. Blankinship - I presume that they're going to take the Jersey walls
768 out. When they're ready to build on the other site, they would use those as traffic
769 control devices.
770
771 Mr. Wright - Okay. They're not supposed to put that on the
772 property.
773
774 Mr. Blankinship - Right.
775
776 Ms. Harris - I noticed, Mr. Grattan, that you are using the
777 Conservation District designation, C-1. Will any of that be used for this project,
778 any of the conservation land?
779
780 Mr. Grattan - I'm not sure exactly where that conservation line falls.
781 We will not be filling in the floodplain; we will not be filling in the wetlands; we will
782 not be filling in the RPA.
783
784 Mr. Blankinship - It runs essentially where the northwest property line of
785 the lots to be filled are. I think the correct answer is that no, none of your activity
786 is shown in the C-1 District. Some of your property is within the C-1 District.
787
788 Mr. Grattan - Yes.
789
790 Ms. Harris - I was concerned about the property that is in the C-1
791 designation.
792
793 Mr. Grattan - We propose no improvements in the C-1 line,
794 assuming that that C-1 line is the same line as the RPA. I think that's the most
795 upland line that we're dealing with here, the RPA. If that is a C-1 designation,
796 then the answer is no, we will not be. If there are other environmental features
797 that are pushing that C-1 line upstream of that or away from that, I'm not aware
798 of it.
799
800 Mr. Blankinship - The C-1 zoning is shown in the dashed blue line on
801 this map. So you see in runs along the north side of the site.
802
803 Ms. Harris - So the answer is that you will not be using C-1?
804
805 Mr. Grattan - Yes ma'am, that is true. Yes ma'am.
806
807 Ms. Harris - Are there any other questions from Board members?
808
809 Mr. Baka - Yes, I have one. The suggested Condition 19—and
810 you talked about this earlier, sir—mentions shall not exceed twenty-five trucks
811 per day. Did you mention about how many trucks per day there are right now?
812

813 Mr. Grattan - I don't know specifically or historically what they've
814 been doing, but I assume they have met the twenty-five trucks a day at some
815 point. But there are many days when the trucks are zero.

816

817 Mr. Baka - Do you think there are some days that they are
818 exceeding that right now and this would actually be a decrease?

819

820 Mr. Grattan - I'm going to have to default on the lack of a negative
821 there. I'm sorry. I don't know that that condition exists in the existing permit. But
822 twenty-five trucks a day is a number that we can agree to. This is a sporadic use.
823 As they have work and as that work generates dirt they load a truck and they
824 send it off and they place it here. It moves through like that. So the frequency of
825 those trucks depends on how fast you get a loaded truck and how many trucks
826 they have on the site and so on. As that work goes on, you know, if they had a
827 big job with two or three excavators, the possibility is yes, they could exceed
828 twenty-five trucks a day, but we won't. We're agreeing to that condition.

829

830 Mr. Baka - Thank you.

831

832 Mr. Blankinship - That's another condition that staff had a difficult time
833 coming up with. There is no condition in the existing permit limiting the number of
834 trucks at all. In the testimony before the BZA in 2002 the question was asked,
835 and the answer given was no more than twenty-five is what is done. But that was
836 not made a condition in 2002. So staff, again, we're not saying that twenty-five is
837 too high, or too low, or is just the right number; we took that out of the 2002
838 testimony and put it in the conditions for the Board to consider and make your
839 own decision after we hear from the public as to what you think would be
840 appropriate.

841

842 Mr. Nunnally - Mr. Blankinship, do you have any idea how wide it is?

843

844 Mr. Blankinship - The pavement is about twenty feet; the right-of-way is
845 fifty feet. Paul, if you would bring up the aerial photo and zoom in on the
846 intersection of the new streets with the existing Ivy. You can see very clearly how
847 the County builds a new street today compared to how Ivy was built at the time.
848 Do you see Ivy Cliffs Court at the bottom? Bring that up a little bit.

849

850 Mr. Grattan - I'm going by memory here, if I may. Depending on the
851 amount of vehicles that travel a day, which is the function of how many lots are
852 on there or how many businesses are on that, there are different categories of
853 road that define the width. I believe according to VDOT—and even Henrico,
854 which adopts a lot of what VDOT does—eighteen-foot width is a Category 1
855 minimum dimension for pavement. As you increase your traffic and you want to
856 put parking on the side and so on, then it rises.

857

858 Mr. Blankinship - The labels are obscuring that. If you go to the 2011
859 aerial I think it will be easier.

860

861 Mr. Nunnally - I was down there yesterday in my car and a front-end
862 loader was coming out. We had a right good time getting by each other, so it's
863 not a real wide street. With twenty-five trucks going in, of course they have to
864 come back, so that's fifty trucks. And that's the only entrance you have.

865

866 Mr. Grattan - To this property. Yes sir.

867

868 Mr. Nunnally - And there are a lot of houses that have been built
869 down there. That's what worries me.

870

871 Mr. Blankinship - I don't know why the computer's not cooperating with
872 us. The standard now is twenty-four feet face-of-curb to face-of-curb. I believe
873 the existing Ivy Avenue is about twenty.

874

875 Mr. Grattan - Right. And Ivy is a roadside ditch road. It does not
876 have a curb, so that pavement ends.

877

878 Ms. Harris - While you're looking for that, do you see in the staff
879 report the picture—I think it's the last page of the staff report—that has the debris
880 and—

881

882 Mr. Grattan - I'm sorry. I received my report by fax and the pictures
883 didn't come through.

884

885 Mr. Blankinship - It's right there on the screen.

886

887 Mr. Grattan - I think there's a condition to remove all that, which
888 we're comfortable with. Once again, other than the confusion over what type of
889 fill is acceptable, we are fine with the staff conditions.

890

891 Ms. Harris - This is the way it looks now? This is your property?

892

893 Mr. Grattan - It's the Johnson's property. I trust the picture. I didn't
894 take it, so.

895

896 Ms. Harris - Okay. Are there other questions? Thank you so very
897 much. Is there anyone else who wants to speak in favor of this case? Okay,
898 opposition? You've already been sworn in. Please give us your name and spell
899 your last name.

900

901 Ms. Hornberger - My name is Marie Hornberger. And it's spelled H-o-r-
902 n-b-e-r-g-e-r. I live at 430 N. Ivy Avenue. I'm part of the new home section. I
903 moved there in 2003 and there are about thirty new homes that were added to

904 the neighborhood. I was also here back in April of 2011, and I was petitioning a
905 similar situation that involved N. Juniper. So that's why I needed to come again
906 today over this. It is a residential area. There are seventy homes, but there are
907 actually more than that because it would involve the road that takes you out to
908 the main road. So those homes as well would be affected by this traffic. There
909 are no sidewalks. And like it was pointed out, there is one way in and one way
910 out. So if they have to come in, they have to go out the same way. There are
911 cars usually parked on the side of the road. This road just can't handle this type
912 of construction vehicle traffic. It's a risk and a safety issue to us residents. It will
913 increase the dust and exhaust fumes as well. I understand that it was brought up
914 about treating the roads with the calcium, but when that was done in the past,
915 that just created more debris pushed into the front of our yards.

916
917 Also, it's like when you have kids with the school buses being picked up in the
918 morning and coming off in the afternoon. And then you have the kids in nice
919 weather or even other people during the summer that are out and about, whether
920 it's riding bikes or playing basketball. You don't need added stuff that's in the
921 road that could trip up a bike or something like that.

922
923 We also have a number of elderly in the area who have concerns about
924 emergency vehicles being restricted in getting to them, as well as the elderly that
925 drive and have difficulty pulling in and out of their driveways. I witnessed that one
926 time, too, with an elderly lady who was trying to get out of her driveway with the
927 truck situation going on.

928
929 Does this sound like a place for residential living? Or is this a construction work
930 zone? By definition, residential living provides safe living environments that
931 promote academic, personal, and social achievement.

932
933 I want to thank you for listening to me today.

934
935 Ms. Harris - Are there questions of Ms. Hornberger?

936
937 Mr. Nunnally - Are there school buses picking the children up while
938 any of these trucks are out on the road? Around my house these little kids are
939 out there at six, seven o'clock in the morning going to school before I get out of
940 bed.

941
942 Ms. Hornberger - Right. Well there is one bus that comes a little after
943 eight. And then yesterday was a situation in our neighborhood where—I think it
944 was with the high school age kids—they were getting out early because of
945 exams going on right now. So we had school buses and trucks and construction
946 vehicles all going on our road yesterday at the same time.

947
948 Mr. Wright - Did you notice the activity, how many trucks are
949 coming and going? Could you give us some idea of that?

950
951 Ms. Hornberger - That I couldn't actually give you an accurate count for,
952 but at times it just seems steady, you know, that movement. The permit that was
953 trying to go through in April of 2011 was over a workstation site that was—if you
954 follow Ivy to the end and then go around, which is N. Juniper, it was back over
955 there. That permit was denied for that.
956
957 Mr. Wright - Any other type of equipment going up and down the
958 road other than trucks?
959
960 Ms. Hornberger - Trucks and also you had the front-end loader that
961 would be traveling. Or if they're bringing in a piece of equipment like that.
962
963 Ms. Harris - How far do you live from this site? I know you're on
964 Ivy.
965
966 Ms. Hornberger - I'm at 430 N. Ivy.
967
968 Ms. Harris - Can you point that out on the map?
969
970 Ms. Hornberger - It's between the two cul-de-sac roads that are there.
971 You have Ivy Cliffs and the other one. I'm kind of directly in between them. Yes,
972 right about there. That's where I live right there.
973
974 Mr. Blankinship - She's about a thousand feet from the entrance to the
975 site.
976
977 Ms. Harris - Are there any other questions? Thank you, Ms.
978 Hornberger.
979
980 Ms. Hornberger - Thank you.
981
982 Ms. Harris - Is there anyone else who wishes to speak to this
983 case? What we do ask is that you try not to repeat something that has already
984 been expressed, if at all possible.
985
986 Ms. Claridge - My name is Janice Claridge—C-l-a-r-i-d-g-e. This is
987 my husband, Roger. We live at the adjoining property. This dump site is being
988 proposed to be in our front yard. Literally, their property adjoins ours at the point
989 where they want the new dump site to go. It would be right outside our front door.
990 We would not be able to get up in the morning or even go outside before we'd
991 hear the constant noises of the dump trucks crashing their loads down, the
992 backup alarms going off. And it's an all-day process. You hear this all day now.
993 The reason we have not come forward and complained before is because we're
994 fairly new to the neighborhood and we think the world of the Johnson's. They're

995 good neighbors, so we didn't want to upset them; Mr. Johnson is getting older.
996 But to come at our front door and have a dump—it's just very upsetting.

997
998 Mr. Claridge - I have some photos here and I would like to show
999 them and discuss the environmental part of it.

1000
1001 Mr. Blankinship - Are these the photos that were e-mailed to our office
1002 yesterday afternoon?

1003
1004 Ms. Claridge - No. Now they're proposing eleven hours a day.
1005 Presently it's already at least that. It's a constant flow in and out. And now where
1006 the dump site is it's probably over a thousand feet or fifteen hundred feet from
1007 out house. Where it would be now is right outside our door. We'd never be able
1008 to open our windows again; the dust is that bad. It's just all day. We'd have to
1009 keep the house shut up. The house would stay dirty. The porch, the exterior
1010 would be dirty all the time. There would be no peace.

1011
1012 Mr. Claridge - If you would notice that this is our house right here.
1013 From our house to this line is less than a hundred feet. So it would be right there
1014 at our door. This is kind of like a bulldozed trail down the line between the
1015 Johnson's and my property. My property is right here on the right. You can see
1016 with what little bit of rain we've had that water stands in here. And then it
1017 progresses through here. This back line across is between the Johnson's and
1018 the property we own. It ponds up right here and it comes from here down through
1019 here across the pipeline. This is a County pipeline. It's a sewer line that goes to a
1020 pumping station.

1021
1022 This is another road that's on the property. It's just to the east of the one that I
1023 just showed you. You can see that there is a little bit of erosion here from natural
1024 water runoff. It ponds up in here and runs out through there toward the pipeline.
1025 This is small ditch between these two roads that come in. It ponds up here in a
1026 little field that I have there and it also comes in here and joins with this other one
1027 and runs across the pipeline into the lower ground.

1028
1029 This is what it looks like from this pipeline on our property. Our property is off to
1030 the left here, and this is the barrier behind the pile. And this is the erosion that's
1031 washed down through here. The 25-foot extension runs at the top of this all the
1032 way back to the pipeline. This is supposedly the 25-foot extension, and it runs all
1033 the way down to my property. My border is right here along this treeline. And my
1034 property comes down and then it's over twenty-five feet. This is another part of
1035 this road here where it comes down the hill and it's eroded. Nothing has been
1036 done about that.

1037
1038 This is the fence that they installed. This area right here was a pond behind this
1039 fence, which is no longer a pond. The water is trenched under this and runs
1040 across this bull-dozed area. It's settled in here, up in here, and all down in here.

1041 And this is my property right here. And then it runs off and across the pipeline
1042 into the lower ground. We've seen this one. That's all the pictures that I have of
1043 this.

1044
1045 We're already getting a substantial amount of runoff with just the normal flow of
1046 the land. If you take it and add more topsoil or dirt or whatever in there it's just
1047 going to give you more and more. And all this water goes to the Chickahominy
1048 River. And it concerns me because the Chickahominy River forms the
1049 Chickahominy Lake. And the Newport News reservoir or Newport News uses
1050 that water to supply Newport News for drinking water and stuff like that. That part
1051 concerns me as far as where this water is going.

1052
1053 Mr. Wright - How many acres do you own?

1054
1055 Mr. Claridge - I think it's 51.7.

1056
1057 Ms. Claridge - We're afraid that all this water that's now going down
1058 to the river, if it's right at our door, all this nasty, stagnant water is going to be
1059 rolling right past our yard, right to our door.

1060
1061 Mr. Claridge - Yes. This picture here shows what it looks like from
1062 the pipeline looking south towards N. Ivy Avenue. If I was over in our pasture, I
1063 would be looking at something like this, too. Maybe not this high, but it would be
1064 the same. It would be straight up hill from the border of my property. I really do
1065 not want to look at that. If we come out of our front porch in the mornings, we'll
1066 be able to see everything that goes on right off to our left. We're retired. We're
1067 there all the time. We don't want to listen to that all the time. We want peace and
1068 quiet; that's why we bought this piece of property.

1069
1070 Ms. Claridge - And the devaluation of our property. If we decided to
1071 move to get away from it, who would buy our property? No one. I'm sure none of
1072 you would want to have it right in your front yard.

1073
1074 Ms. Harris - How long have you been living there?

1075
1076 Ms. Claridge - We moved in in 2006. Our property was in horrible
1077 shape when we bought it. We spent a year cleaning up that property and
1078 renovating the house and making it nice. It's just really sad to think it's going to
1079 look like it did before right out in our front yard.

1080
1081 Ms. Harris - Since 2006 have you noticed a vast difference?

1082
1083 Ms. Claridge - In the traffic that's going in and out now?

1084
1085 Ms. Harris - Right.

1086

1087 Ms. Claridge - Yes ma'am.
1088
1089 Ms. Harris - And the effect that it's having on your property?
1090
1091 Ms. Claridge - Yes ma'am. I was outdoors all day yesterday working
1092 on our property. The whole time I was out there, dump trucks came and went,
1093 came and went. There were backhoes coming and going, large piece of, I don't
1094 know, maybe bulldozers, whatever they were, coming and going. And it was a
1095 constant flow. And the noise and the dust. And this time of year the dust isn't so
1096 bad, but in the summer it gets so bad that the neighbor that lives at the end of
1097 our driveway, closer to where it is now, they never, ever open their windows. I
1098 asked them one day, "Why don't you open your windows in the spring?" They
1099 said, "We can't. The dust is so bad from the dump trucks that we have to keep
1100 everything closed up." I have allergies, indoor allergies, and we open our
1101 windows every day for at least of period of time, even in the winter. We'd never
1102 be able to do that with this right outside our front door.
1103
1104 Ms. Harris - And you used to be able to open your windows.
1105
1106 Ms. Claridge - We still can to an extent. The house gets full of this
1107 dust, but I still open them every day now. But if it's right outside our door a
1108 hundred feet, there's no way in this world. Even the exterior of our house would
1109 just have a level of dust on it.
1110
1111 Ms. Harris - Is twenty-five trucks an accurate estimate, you think,
1112 of the traffic?
1113
1114 Ms. Claridge - Now? I think there's probably that many going in there
1115 now. Sometimes it's more than others. Yesterday there certainly were. It was just
1116 all day. And the noise is awful. When the dump trucks back up they make a
1117 loud—I don't know if you've heard the *beep beep*, this big loud noise. That could
1118 go on all day long. And then it makes a big noise when it drops the load. It's a big
1119 crashing sound. We can hear it inside the house with the doors closed now.
1120 Even in the winter. We're a long ways from it now. It would be at our front door.
1121
1122 Ms. Harris - And that's Monday through Friday, no Saturdays or
1123 Sundays, right?
1124
1125 Ms. Claridge - We have seen it before on weekends. But, of course,
1126 the proposition is to not do it on weekends anymore. We've seen it on weekends
1127 before. Who would count all these trucks coming in and out to make sure there's
1128 not more than twenty-five?
1129
1130 Ms. Harris - After six o'clock you've noticed truck traffic?
1131
1132 Ms. Claridge - Yes, we have. In the summer it's right up until dark.

1133
1134 Ms. Harris - Mr. Claridge, you were getting ready to say
1135 something?
1136
1137 Mr. Claridge - Yes. When you come down the street and see this,
1138 it's already an eyesore. With the extension of it and everything, when we come
1139 out of our house, every day it's going to be an eyesore for us. It's just
1140 heartbreaking that we would have this in our front yard or side yard there that
1141 close to us.
1142
1143 Ms. Harris - You said you had fifty-one acres of land?
1144
1145 Mr. Claridge - Yes.
1146
1147 Ms. Harris - Do you have plans for farming or just using the land
1148 for conservation purposes or what?
1149
1150 Mr. Claridge - We use it for conservation purposes too, but we do
1151 plant stuff on it, too.
1152
1153 Ms. Harris - Thank you. Other questions?
1154
1155 Mr. Baka - One question. I know the applicant has to comply with
1156 the Chesapeake Bay standards and erosion control standards, but would any of
1157 these proposed conditions—maybe it's a question for staff—address the
1158 environmental and stormwater management concerns and the water runoff
1159 concerns?
1160
1161 Mr. Blankinship - Condition #2 requires that they work through Public
1162 Works in order to make sure that they comply with all of those requirements. And
1163 that's actually what brought us here this morning. Public Works had notified the
1164 applicant that they needed a new erosion control plan. When that plan crossed
1165 my desk is when I observed that they would be increasing the area beyond what
1166 had previously been approved. So it's because they were actively complying with
1167 the erosion control requirements that this hearing was triggered.
1168
1169 Ms. Harris - Any other questions by Board members? Thank you,
1170 Mr. Claridge and Ms. Claridge. Anything else you'd wish to say?
1171
1172 Ms. Claridge - We thank you very much for your time in listening to
1173 us. I'm sorry I became so emotional.
1174
1175 Ms. Harris - Are there others who wish to speak in opposition to
1176 this application? Please give us your name and spell your last name.
1177

1178 Mr. Palmer - I'm Ron Palmer—P-a-l-m-e-r. I'm the son of Macie
1179 Palmer who is an adjacent property owner. I live on N. Juniper Avenue and travel
1180 N. Ivy on a daily basis.

1181

1182 My first concern on the application permit is the startup date is listed as January
1183 2012 and the end date is when filled. I think it would be appropriate to address
1184 that and set a definite end date.

1185

1186 Under the background on the same set of documents, page 1, it states the
1187 property, known as 601 Juniper Avenue, is bisected by a private road identified
1188 as N. Ivy Avenue Extended. Well for those that don't know, within the limits of
1189 this said road and beyond as shown on County maps, property maps, and an
1190 erosion control plan dated 11/09/11, which is also part of this same document,
1191 there is a 25-foot access easement that extends from the end of N. Ivy Avenue
1192 northward to the property of Macie Evelyn Palmer. This 25-foot access easement
1193 is the only access to that property of Macie Evelyn Palmer. The 25-foot access
1194 easement needs to remain free and clear of any obstructions and obviously be
1195 accessible. The erosion control plan dated 11/09/11, and the erosion control plan
1196 dated 12/7/01, which are also a part of these same documents, indicate
1197 disturbance in the form of fill material within the limits of this 25-foot access
1198 easement.

1199

1200 Under suggested condition #2, will the adjacent property owners be notified of
1201 the approval of the erosion control plan which basically, I think, would signify the
1202 beginning of the dumping? Will an erosion control inspector perform random
1203 evaluations of the site to make sure that the erosion control features are
1204 maintained and functioning properly? At the conclusion of each visit by the
1205 erosion control inspector, would the adjacent property owners be notified of the
1206 conditions of the erosion control measures on the site, or is it up to the private
1207 sector to view the site and report to the County any non-compliant issues?

1208

1209 Under suggested conditions item 12, it states that the materials currently on the
1210 site shall be removed no later than May the 1st, 2012. I think the materials
1211 currently on the site should be removed and the site inspected by an authorized
1212 County inspector before any new material can be dumped or any other existing
1213 stockpile soil be disturbed.

1214

1215 Under suggested conditions item 15, it states that this is a private fill site
1216 operation for the applicant except that other contract haulers licensed by the
1217 Commonwealth of Virginia may be permitted to dump on the site at the property
1218 owners' discretion. Is a contract hauler someone working for the applicant or is it
1219 anybody with a license that would be allowed to dump on this site with the
1220 approval of the property owner, even though the applicant is the one applying for
1221 the permit. If all the licensed haulers are allowed to dump on the site, will that
1222 number of trucks be included in the 25-truck limit per day as stated in suggested
1223 item 19? Or will it be above and beyond that number?

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Is the proposed construction entrance that's shown on both of the erosion control plans to be equipped with a wash rack per the E&S manual to help eliminate soil from being tracked offsite onto the paved road north of Ivy Avenue?

Those are my concerns.

Mr. Blankinship - I can go ahead and answer a couple of those for you. There would be a routine inspection by an erosion control inspector. There would also be a separate inspection by a member of my staff on a monthly basis to make sure that the applicant was in compliance with all the conditions, and with the Erosion Control Manual. You would certainly have the ability to call or e-mail the inspector or the supervisor of the inspectors on either side. You could certainly report any violation you observe, and you could certainly ask us, "When was the last time you were there and did you observe any violation." There is not a normal standing communication. It's not a public hearing or anything like that, but we'd certainly respond to any requests that you had.

The number of trucks of any other hauler would be included within the twenty-five. That would be the total number of truck trips brought to the site in any day.

And I'm sorry; what was your last question?

Mr. Palmer - About the construction entrance. The construction entrance basically is a stone entrance that the trucks run on, obviously, before they go off site. It can include a wash rack, which the contractor would have to provide water and also a little sediment basin for the water to run in so it wouldn't run offsite. That would have to be provided.

Mr. Blankinship - Right. That would be determined by the Department of Public Works at the time they review and approve the erosion control plan.

Mr. Palmer - Right. Okay.

Ms. Harris - Hopefully some of your questions will be answered in the rebuttal.

Mr. Palmer - Thank you, ma'am.

Ms. Harris - Okay. Thank you, Mr. Palmer. Before you sit down, Mr. Palmer, do Board members have any questions of Mr. Palmer? Thank you. Are there other persons who wish to speak in opposition?

Ms. Buckner - Hi, my name is Kitty Buckner—B-u-c-k-n-e-r. I'm the daughter of Macie Palmer.

1270 Mr. Blankinship - Would you mind pulling that microphone a little closer
1271 to you, please?

1272
1273 Ms. Buckner - How about this?

1274
1275 Mr. Blankinship - Thank you.

1276
1277 Ms. Buckner - Better? A number of questions and things have been
1278 stated, so I'm kind of here as the wrap-up to make certain that everything was
1279 said that we wanted to do. One thing that I will touch on again, though, as far as
1280 my mother's property is concerned, it's thirty-six acres in the lowland. We, too,
1281 are very concerned about the erosion and the runoff that comes from the
1282 dumping back there. Personally I, too, am concerned about the Chesapeake Bay
1283 and the runoff that goes into that.

1284
1285 You just addressed the monitoring, because that was a very tough question that
1286 we had, as to how it's monitored, the inspections and so forth. And I think now
1287 you'll understand that the neighbors probably would speak out a little more if
1288 something is not right.

1289
1290 Also, just to clarify that yes, it might have been dumped in for thirty-four years,
1291 but in the last ten years thirty houses have been built in there. And school buses
1292 have gone back in there; they didn't use to go back in there. As you all know,
1293 that's a very small street. You have the fifty trips as far as the trucks are
1294 concerned, when you're looking at twenty-five. But the thing I think that bothers
1295 the neighbors more than anything else is that this case has caused friction
1296 between families that have known each other for four generations—over ninety
1297 years. And it's all because the dumping rules, let's say, weren't followed, and
1298 nobody spoke out. And it's just sad for that neighborhood.

1299
1300 The thing that all the neighbors want down there is not any hard feelings about
1301 what's being done, but it's a nice area. It's a quiet residential community. And
1302 that's the way neighbors help neighbors. And that's the way they'd like for it to
1303 stay. And not to see the big sign at the end of the road that gives you that
1304 perception of there's a dump at the end of the road.

1305
1306 Thank you for your time.

1307
1308 Ms. Harris - Thank you. Are there questions for Ms. Buckner? Is
1309 there anyone else who wishes to speak in opposition? Then we're ready for the
1310 rebuttal. Mr. Grattan.

1311
1312 Mr. Grattan - I did hear a number of concerns. The traffic issues
1313 and so on, I really don't see that as a change from what's there now. Obviously I
1314 can't dispute the fact that there are more houses and people back there, which
1315 will cause more friction. But it will be the same number of trucks, in fact, even

1316 less, if there was no limit on what there were before. Possibly we could have
1317 exceeded twenty-five a day in the past.

1318

1319 As far as the environmental concerns, the pictures that were shown up there, it
1320 was a little tough to tell where they were and how they found it. Erosion is a
1321 natural process. Some of the ones they showed coming down that hill and down
1322 that old roadway, you know, I don't see any way to attribute that to this site. It
1323 could have been just coming through the woods and the conveyance increases
1324 and the drainage area increases, and ultimately a creek is formed. That's just a
1325 natural process. What I saw of the silt pits there, it was all filled in; it wasn't
1326 flapping in the breeze, so to speak, it is catching the water and it is behaving.
1327 The picture behind the sediment trap, which is where all of the water from this fill
1328 area is directed, which is a significant point of the problem, if there is one. Fill dirt
1329 typically is red and it was gray; it appeared to be native soils that were in those
1330 trees. Even if you want to go back to the point of 2002 when that sediment trap
1331 was installed, if that's the only erosion coming out of there it is native soil that's
1332 being moved around just being down in the floodplain. Considering some of the
1333 rainstorms that we've had over the last five to ten years, I think it's doing
1334 remarkable well from an environmental point of view.

1335

1336 Mr. Blankinship is right that the County does monitor E&S and that's part of their
1337 job. I think there's also an obligation on the contractor as well to look at the E&S
1338 devices after significant rain events to make sure they are not damaged and are
1339 still operating appropriately.

1340

1341 There was a question about truck sources. I don't know really how to answer that
1342 other than saying that if G. L. Howard and the Johnson's are accepting trucks
1343 outside of G. L. Howard's ownership, as long as they meet the conditions of
1344 these permits and as long as they're responsible for the behavior and what
1345 happens and hours of operation and number of trucks and so on, I don't know
1346 that it should really matter where they come from. It's limited to what kind of fill
1347 goes in there, it's limited to hours, it's limited to the number of trucks a day, and
1348 they're dealing with it from erosion control. So from a receiving point of view,
1349 they're responsible for them.

1350

1351 There were references to rules not followed. Other than the staging of the
1352 material and the pallets and the other debris that was seen out there, which we
1353 have acknowledged shouldn't be there and we'll fix, I don't know of any other
1354 broken rules, so to speak. I think there was some controversy over a separate
1355 site between Juniper and Ivy that was denied at some point. I don't know exactly
1356 what happened there, but I certainly don't want to be found guilty of their sins.

1357

1358 Mr. Baka - I understand that erosion is a natural process, but in
1359 instances where erosion control measures aren't meeting the minimum
1360 standards, then they do need to be addressed, and usually corrected and
1361 rectified and adjusted within seven days. So if those are broken rules or if you're

1362 saying that those are not broken rules, they are at least standards that need to
1363 be rectified. So I'd appreciate a clarification on that.

1364

1365 Mr. Bell - Mr. Blankinship, a question for you; maybe you can
1366 help me. Would you know how much residential land is available for
1367 development around this site now? We've had ten houses in the last thirty years,
1368 how much more development is there now?

1369

1370 Mr. Blankinship - That's a good question. I'm going to refer to the site
1371 map included in your package. We've pointed out before that the zoning district
1372 boundary between the R-3 and the C-1—of course you can't develop in the C-1.
1373 So in the property that's zoned R-3, it looks like almost all of the land along N.
1374 Ivy right up on the road has been built. And you see the new subdivision there
1375 with the two cul-de-sacs—Ivy Cliffs and Ivy Heights. There is some property
1376 between Ivy and Juniper that is still vacant that could be developed. There is
1377 some property on the east side of Juniper that has not been developed. What
1378 other development limitations are present there, whether there are floodplains or
1379 wetlands or shrink-swell soils, I can't tell from looking at this map.

1380

1381 It doesn't look like there is a lot of available land. I would say that there's not
1382 going to be any residential development beyond this site, meaning north of this
1383 site, because you're going to get into the Chickahominy up there. I think there is
1384 the opportunity for some infill development, but I wouldn't foresee any major new
1385 development that would be directly impacted by this site.

1386

1387 Mr. Bell - Thank you.

1388

1389 Mr. Blankinship - Yes sir.

1390

1391 Mr. Baka - I think that's a really good question. Typically as you
1392 plan out communities, more so from a comprehensive planning standpoint,
1393 you're looking at when possible separating industrial and residential uses. You
1394 have residential that's grown here to the side. It may say this in the front of the
1395 staff report, but the Comprehensive Plan contemplates what land use for this?

1396

1397 Mr. Blankinship - I was actually just wondering that myself and I'm
1398 looking it up. It is Suburban Residential 1 where the zoning is R-3. And then it's
1399 Environmental Protection where the zoning is C-1.

1400

1401 Mr. Baka - So it's Suburban Residential for the area of the
1402 current operations and the future proposed operations.

1403

1404 Mr. Blankinship - Yes.

1405

1406 Mr. Baka - Okay. Thanks.

1407

1408 Ms. Harris - Mr. Grattan, do you see a possibility of an access
1409 road other than Ivy?
1410
1411 Mr. Grattan - From Hanover?
1412
1413 Ms. Harris - Probably, yes.
1414
1415 Mr. Grattan - No I don't. This property has limited frontage. It's on
1416 Ivy, or I guess you could swing around through Juniper. I don't see how that
1417 would resolve any problem.
1418
1419 Mr. Blankinship - Yes. You'd have to come back onto Ivy before you
1420 get to Washington.
1421
1422 Mr. Grattan - So no ma'am, I don't. I'd like to go back to another
1423 point that was made about that access easement that is essentially Ivy Road
1424 Extended. The question about having that to be free of debris and open and
1425 accessible and so on, my question is to whom right now it is not accessible. The
1426 existing topography does not lend itself for access. And even though I believe
1427 the property to the north, if it is indeed landlocked, and I can't see from this
1428 picture whether it is or it is not, you can't build a road through it; you can't
1429 develop it. It's wetland and floodplain associated with the Chickahominy River.
1430
1431 Mr. Blankinship - It's undeveloped, but they do have a legal right to
1432 have access to it. And Paul, would you click on the 2011 aerial again, please?
1433 You can see there the access easement is represented by the right-of-way. And
1434 there's a huge pile of gravel that blocks that path of travel.
1435
1436 Mr. Grattan - Okay. If there is a need to keep that open, then we
1437 will. We can add that as a condition. We need to word this carefully. I don't want
1438 to obligate ourselves to build a road through the RPA.
1439
1440 Mr. Blankinship - I think the owner of the property is bound by the
1441 easement that's there now. It's a legally defensible right.
1442
1443 Mr. Grattan - I just heard from the owner's son that it is accessible
1444 now. I'm not sure the date of this picture nor the height of the pile that's there,
1445 but it is accessible now, according to the owner.
1446
1447 Mr. Baka - I have a question. Is there a minimum setback from
1448 the property line for where the new fill would take place? Has that been
1449 discussed, an acceptable setback?
1450
1451 Mr. Blankinship - I'm not aware of a setback for fill; there is for
1452 excavation.
1453

1454 Mr. Baka - I don't mean a statutory requirement in the code. I'm
1455 discussing was there any practical consideration given by the applicant to try to
1456 mitigate the impact on the adjacent property to say we realize there is no code
1457 requirement for a setback, but what about proposing some type of—it's not a
1458 buffer, but simply a natural setback from the property so that fill material wouldn't
1459 go right up adjacent to the property line.

1460
1461 Mr. Grattan - There is probably some room in there; if we need to
1462 define a number we can. I think right now you're right, we're limiting our grading
1463 to the property line so that we can not just keep the grading on site, but keep
1464 whatever erosion is associated with that grading on site as well. We have a toe
1465 ditch that runs around the perimeter so anything that falls down that hillside is
1466 carried into the sediment trap, sediment basin. So that's the design.
1467 Considerations are met from an erosion control point of view and drainage point
1468 of view. Buffering at this point, no. If we are talking a buffer, that's a different
1469 discussion we can enter now. But at this point there is no County requirement to
1470 buffer. It's no pavement, no development.

1471
1472 Mr. Baka - I guess the other practical side of that question is to
1473 what extent does a buffer even adequately address the concerns. If it addresses
1474 it somewhat, or environmental water drainage concerns, it may, but a buffer may
1475 not necessarily address the concerns of things like dust flying through the air or
1476 added material like that. So I think it's very important to carefully consider what's
1477 the net effect that something like that would have on both the applicant and the
1478 neighbors, does it even bring about any good use, any good purpose.

1479
1480 Ms. Harris - Mr. Grattan, I'm a little concerned about access to this
1481 property. I'm thinking about other landfills or burrow pits that we have, where you
1482 have a residential neighborhood that's screaming that this is not acceptable, in
1483 fact is dangerous. I'm not hearing from you that you plan to do anything to solve
1484 this little dilemma. We have all this land, you have a legal right to come down
1485 that street, but the reality is it is bordering a residential neighborhood. You have
1486 twenty-five trucks, at least, going and coming—fifty visits.

1487
1488 Mr. Grattan - Twenty-five trucks at most.

1489
1490 Ms. Harris - Right. In and out, twenty-five trucks? So we say
1491 twenty-five trips?

1492
1493 Mr. Blankinship - No, fifty trips.

1494
1495 Ms. Harris - That's what I'm saying.

1496
1497 Mr. Grattan - In and out, one truck is two.

1498

1499 Ms. Harris - This is why I'm wondering is there a possibility of
1500 another way to access this property other than down the 30-foot-wide street,
1501 even though you have legal right to do what you desire. I'm looking at the landfill
1502 on Nuckols Road; we don't have that problem with the residential neighborhood.
1503 Even on Darbytown Road we don't have that with the residential neighborhood.
1504 And here we have one that's growing with this narrow way to bring these trucks
1505 in, and I'm not hearing any type of compromise.

1506
1507 Mr. Grattan - I think we are offering some compromises and I don't
1508 want them to be missed. We're limiting hours of operation. We're limiting trucks
1509 a day. We're limiting the rate of trucks in a given time period. We're agreeing to
1510 do what we can to mitigate the dust associated with it all. And I think part, to our
1511 credit, which is being missed, is that this has been in operation for thirty-four
1512 years. It's been permitted for ten years. And this neighborhood has grown while
1513 it's occurred. So I find it hard to believe in the argument about how property
1514 values are going to decrease and so on and so forth when the neighborhood's
1515 grown while this has been in operation with less conditions on it than we're
1516 proposing now. So I think we are doing a lot. We've done a good job. And we are
1517 making amends to improve.

1518
1519 Mr. Blankinship - There just isn't another way. As you can see on the
1520 map on the screen now, North Daisy Avenue is no better; it's a different
1521 neighborhood. North Mullens Lane is the same situation. Maybe it's a little bit
1522 less densely developed but there are still houses all along there. And you're half
1523 a mile from East Washington Street. There are just a limited number of ways to
1524 go; you can't go north.

1525
1526 Mr. Wright - Mr. Blankinship, have we established that without this
1527 extension how much longer this operation would continue?

1528
1529 Mr. Blankinship - No sir. It has a tendency, historically, to sit dormant
1530 for years at a time, and then all of a sudden there's a project with a lot of waste
1531 material and a lot of fill going on. That project is completed and then it sits
1532 dormant again.

1533
1534 Mr. Wright - How much more fill is needed to complete this? Does
1535 anybody know?

1536
1537 Mr. Blankinship - Mr. Grattan might; I do not. Do you have any idea like
1538 in cubic yards what the capacity of this would be?

1539
1540 Mr. Grattan - If the site was flat and we were filling it flat, it would
1541 be easy to map. But right now with this thing I don't know if we've come up with
1542 that number. Off the top of my head I'd be scared to take a guess at it. The best
1543 way I could probably address this, Mr. Wright, is to go about the history of it, that
1544 we were filling four and a half acres in ten years. Let's say we're eighty percent

1545 of the way through it. We're going to six now, so we're probably looking at fifteen
1546 unless there is a change.

1547

1548 Mr. Wright - We've already talked about how long it would go if
1549 they grant this permit. I was wondering if we don't grant this how much longer it
1550 would go.

1551

1552 Mr. Grattan - By looking at the pictures and so on, and by evidence
1553 of the fact that they're looking forward, I'd say they're pretty close to finishing up
1554 where they are now. And so they've looked at adjacent properties and are
1555 moving that way to prepare.

1556

1557 Ms. Harris - Does this project include reclamation?

1558

1559 Mr. Blankinship - Yes ma'am. Erosion control would require them to
1560 smooth the slopes down and seed and establish a ground cover that would
1561 prevent erosion.

1562

1563 Mr. Grattan - There is also a condition to put five inches of topsoil
1564 on it, and properly lime and fertilize is so that it will grow grass. The ultimate use
1565 is a field.

1566

1567 Ms. Harris - Are there any other questions? Thank you so very
1568 much.

1569

1570 Mr. Grattan - Thank you.

1571

1572 Ms. Harris - That concludes this case.

1573

1574 **[After the conclusion of the public hearings, the Board discussed the case**
1575 **and made its decision. This portion of the transcript is included here for**
1576 **convenience of reference.]**

1577

1578 **DECISION**

1579

1580 Mr. Nunnally - Madam Chairman, I move we deny this use permit. I
1581 believe it will affect the health, safety, and welfare of the persons in the
1582 neighborhood, and increase the traffic congestion. And it could impair the value
1583 of the homes that are already built down there. Those are my reasons.

1584

1585 Mr. Wright - Second.

1586

1587 Ms. Harris - Motion by Mr. Nunnally, seconded by Mr. Wright that
1588 this case be denied. Is there any discussion on this motion?

1589

1590 Mr. Baka - I have one question. We heard a lot about a
1591 community meeting on the latter case on Charles City Road. I guess this is a
1592 question for the Board members. Do you recall hearing if there was a community
1593 meeting about this case?

1594
1595 Mr. Blankinship - I'm not aware of one.

1596
1597 Ms. Harris - No, I don't think so.

1598
1599 Mr. Baka - Would a community meeting be of benefit to work out
1600 any of the concerns that you have in your motion, sir, or do you feel that that
1601 would not work that out?

1602
1603 Mr. Wright - Would a community meeting alleviate the problems or
1604 help them work out something.

1605
1606 Ms. Harris - We would think if they want to proceed they might
1607 need to meet with the community. It might be pretty obvious.

1608
1609 Mr. Baka - I understand the reasons for the motion of denial. I'm
1610 just wondering if there are issues that would be worked out. Since the second
1611 case had a community meeting and this one didn't, would there actually be a
1612 tangible benefit to hold a community meeting. And if there is, maybe that's worth
1613 exploring. If there isn't, then I understand the reason for the motion and perhaps
1614 I understand why you made a motion to deny the case right now. I just throw that
1615 out there for the Board's consideration.

1616
1617 Ms. Harris - I don't think that was agreed to as a condition. Any
1618 more discussion on this motion? Has your question been clarified?

1619
1620 Mr. Baka - Yes.

1621
1622 Ms. Harris - All in favor of this case being denied say aye. All
1623 opposed say no. The ayes have it; the motion passes.

1624
1625 Mr. Baka - I'll vote no.

1626
1627 Ms. Harris - Okay. That's four to one on the case. The denial is
1628 affirmed.

1629
1630 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
1631 Mr. Wright, the Board **denied** application **CUP2012-00002, G. L. HOWARD**
1632 **INC's** request for a conditional use permit pursuant to Section 24-116(c)(3) of
1633 the County Code to deposit soil as fill material at 601 N Juniper Avenue
1634 (Parcels 825-728-7984, 825-728-9280 and 826-727-7772) zoned R-3, One-
1635 Family Residential District (Varina).

1636			
1637	Affirmative:	Bell, Harris, Nunnally, Wright	4
1638	Negative:	Baka	1
1639	Absent:		0

1640
1641

1642 Mr. Baka - I would like to note that the reason for the nay vote
1643 was to have a meeting, not in support of the case and not in opposition to the
1644 case.

1645

1646 **[At this point, the transcript continues with the public hearing on the next**
1647 **case.]**

1648

1649 **CUP2012-00003 BFI WASTE SYSTEMS OF VIRGINIA** requests a
1650 conditional use permit pursuant to Section 24-116(c)(3) of the County Code to
1651 operate an existing landfill at 2075 Charles City Road (Parcels 808-712-0741,
1652 811-709-7458, 812-709-6554, 812-710-6492 and 813-709-2443) zoned M-2,
1653 General Industrial District and R-4, One-Family Residence District
1654 (Varina).

1655

1656 Ms. Harris - All persons who wish to speak to this case please
1657 stand to be sworn in, raising your right hand.

1658

1659 Mr. Blankinship - Do you swear the testimony you're about to give is
1660 the truth and nothing but the truth so help you God?

1661

1662 Mr. Rothermel - I do. Thank you.

1663

1664 Ms. Harris - Okay. Before you begin, Board members, do we want
1665 to recess or do we want to go straight forward? Okay. Please give us your name
1666 and spell your last name.

1667

1668 Mr. Rothermel - Madam Chairman, members of the Board, my name
1669 is Mike Rothermel, spelled R-o-t-h-e-r-m-e-l. I'm an attorney with the law firm of
1670 Spotts Fain. I want to introduce a number of other folks who are here today as
1671 well. Tim Loveland with BFI Republic. He is the general manager of the site, as
1672 well as a number of Republic's other landfills in Virginia. Ray McGowan is the
1673 environmental manager for BFI Republic. And then we also have a number of
1674 people here on behalf the County this morning. Art Petrini, director of Public
1675 Utilities is here. John Cleary, chief of Solid Waste. And Ben Thorp with the
1676 County Attorney's Office.

1677

1678 Mr. Blankinship - Mr. Rothermel, just very briefly would you explain the
1679 relationship between Republic and BFI?

1680

1681 Mr. Rothermel - And you preempted my segue.

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Mr. Blankinship - Oh, sorry.

Mr. Rothermel - To speak a little bit about the applicant before talking about the application, BFI, as many of you know, has been around a long time. BFI was acquire by Allied Waste in I think it was 1999. And Allied Waste then merged with Republic Services in 2008. So the entity who is before you today is BFI entities. They are a subsidiary, so to speak, of Republic Services. And again, the entity progression was BFI – Allied Waste – Republic. Republic is the second largest waste services company in the United States. They operate in about forty states to have approximately 200 landfills, a couple hundred transfer stations, several hundred hauling operations, and a number of recycling facilities.

I just want to say that I've represented BFI, and now Republic, for a little over ten years now; my firm longer than that. So we have a history with this company. I know that the Board has seen a number of landfill applications, and not just applications, but appeals and other matters before it in the last couple years. BFI has not come in as an applicant in any of those. The last time we were in as an applicant was back in 2004. I say that up front because landfills are never the sexy application. It's not like coming in for a mixed use with lots of retail and lots of elevations to show you, with neat storefronts. Landfills in and of themselves are objectionable by a lot of folks. So I wanted to give you a little bit of background on the company. And again, before talking about the specifics of this particular application, I'd like to also lay out the history of the site. Not only our existing site, but the two properties that we're seeking to include here in the use permit.

I don't know if we can pull up the aerial that actually shows the parcel lines. If you're looking at the picture in front of you and you're moving east to west, right inside the yellow line there is the old closed Charles City Landfill. That was a BFI landfill that was open back in the seventies, 1973. And that operated for about twenty years; it closed in 1993. That's sort of the first rectangle you see there inside the yellow line.

Again, moving east to west. Immediately adjacent on the western side of the old closed Charles City Landfill is the Cox C&D Landfill. That is a very thin rectangular strip there. That was opened back in 1976 and closed in 2002.

As you move further west now, you come upon the old closed County landfill. Henrico County opened its landfill back in the 1960's, I think is what the staff report said. I'm not sure of the exact date. It closed in 1991.

So finally as you move a little bit farther west you come upon the Old Dominion Landfill, which is BFI. That opened in 1994, about a year after the Charles City Road Landfill closed further to the east. So we've been in operation over there approaching twenty years now. And so when we came in back in 2004, we had

1728 about ten years of a track record at the current location. Now we're approaching
1729 about twenty years of existing operations.

1730

1731 When we came in in 2004, the application was to essentially consolidate, at that
1732 time, the existing BFI Old Dominion Landfill with the closed County landfill
1733 immediately adjacent to it. There were a number of reasons for doing that. At
1734 one time, as I've pointed out, you had four separate landfills along this corridor.
1735 I'm sure you all have become somewhat of an expert in solid waste over the last
1736 couple years. But with each landfill you have unique requirements to that landfill,
1737 so you have setbacks from the property lines; you have slopes that you need to
1738 meet. So what we did in 2004 was we contracted to purchase the County site,
1739 the closed County landfill, and consolidate with the existing Old Dominion
1740 Landfill. What that allowed BFI to do was to essentially—the valley that you have
1741 in between landfills was then able to be used as fill space. It added a number of
1742 years to the life of the landfill by creating a number of new acres of disposal
1743 space.

1744

1745 So we've been operating since that time. The use permit was granted by this
1746 Board in 2004. The final DEQ permits were not obtained until 2009. It is quite an
1747 extensive process that you need to go through with the Department of
1748 Environmental Quality. But since receiving DEQ approval, we have been
1749 operating the expanded Old Dominion Landfill, which now includes the old
1750 closed County landfill. That shows the eleven phases, the different cells of the
1751 existing landfill as it is operated now. And so since 2004 we've been operating
1752 under a host agreement with the County of Henrico. As part of the real estate
1753 contract, the County leases back from us the public use area for a dollar a year.
1754 Mr. Cleary can certainly talk about this more, if you wish, but the County has two
1755 public use areas, one over in the West End off Nuckols at the Springfield Road
1756 Landfill, and one off Charles City Road adjacent to the Old Dominion Landfill.
1757 Since that time the use area has been leased by the County and continues to
1758 serve the citizens of the East End.

1759

1760 As I said, we also operated under a host agreement where BFI pays a certain
1761 tonnage fee, called a host fee, to the County for each ton that we get in. There is
1762 a royalty on that. And the County also gets a significant amount of free disposal.
1763 The County under the host agreement gets 70,000 free tons of disposal at this
1764 facility. And I'll get into that a little bit later because it's not only a monetary issue,
1765 it really goes to the sort of health, safety, welfare issues that you look at when
1766 considering landfills and waste applications because it does provide for a facility
1767 in the East End. And BFI, if you go further down the street, you'll notice an Allied
1768 Waste building. Their regional hauling operation is actually based right down the
1769 road. So you have a number of trucks serving that area that really don't need to
1770 go very far to dispose of their waste. So it goes to the traffic issue as well.

1771

1772 One more item I want to discuss before talking about the specifics of what we're
1773 asking for today. This facility has an exceptionally strong environmental record.

1774 Again, that facility has been operating for almost twenty years. It has never
1775 received one waste-related violation. There was one issue a number of years
1776 ago that actually had to do with stormwater runoff. There are some existing clay
1777 pits that when the stormwater hit them it affected the pH of the water. Now this
1778 goes back prior to the last time we were in here. That was remedied and the
1779 existing clay is now covered, so that is no longer an issue. I do want to point out
1780 that there was one non-waste-related issue in the past, but in almost twenty
1781 years we have not had even any minor violations. I want to point out the strong
1782 environmental record that this facility has. Again, that can be attested to by the
1783 County representatives who are here today; you don't need to just take my word
1784 for it.

1785
1786 It's estimated that there are currently about anywhere from eight to ten years
1787 remaining, as far as life and space, in the current facility. Again, I pointed out in
1788 the beginning how long the DEQ approval process works to illustrate why we're
1789 in here when we still have eight or nine years left at the current facility. What
1790 we're requesting today is to essentially add two properties into the existing use
1791 permit. The use permit that was approved in 2004 included not only the original
1792 Old Dominion site, but then it added in the entire parcel, which was previously
1793 owned by the County of Henrico, which we purchased. And so what we're
1794 seeking to add today are the two additional parcels on the right side of your
1795 screen, the east side of your map there, the very thin Cox C&D Landfill site, and
1796 the closed Charles City Road Landfill site. The Cox site is approximately twenty-
1797 one acres; the BFI site is approximately sixty-seven acres. And so what we've
1798 requested is that those two properties be added into the existing use permit so
1799 that the landfill could move further to the east.

1800
1801 Obviously as we look eight to ten years down the road—and with waste and
1802 landfills you have to plan that far in advance—we look for alternative sites, and
1803 the County looks for alternative sites to dispose of its waste. There really is no
1804 better site than this one because we have a corridor that for upwards of forty
1805 years now has had landfills. And what we're seeking to do is to use some
1806 existing landfills and go between those and sort of over those, and fill in the
1807 space between those and what we currently have now.

1808
1809 I want to stress that we have attempted to make as few changes as possible. I
1810 think what the application will illustrate—and the conditions, most of which have
1811 remained verbatim, word for word—is that the operation itself, the daily operation
1812 of the landfill will not change. The current entrance, which is not shown—well,
1813 you can sort of see the top of it on this site—that will stay the same. In fact, we
1814 would not be allowed to move the entrance; that would stay the same. The daily
1815 limits on tons per day remain the same. The hours of operation remain the same.
1816 What we're proposing is that the same height limitations be in place that are
1817 currently in place. And the conditions also specify, among other things, that the
1818 existing vegetation would remain in place.

1819

1820 One of our biggest concerns, and it always has been, and we've always tried to
1821 maintain communication with and dialogue with the residential community that
1822 sits right off Charles City Road there. So the conditions specify that there is a
1823 naturally existing buffer there. It's heavily vegetated behind that small
1824 subdivision. So that would remain in place. The one exception would be that the
1825 DEQ and the County have already approved—in the event it would be
1826 necessary—relocation of a stream that runs through the old County site. So the
1827 only exception to that buffer would be a small stream that would sort of go
1828 through the buffer, but the buffer would still be there.

1829

1830 The conditions also specify that there would be a detailed landscaping plan that
1831 we would need to go through with the County. Obviously one of the things that
1832 we strive to do is to minimize any visual impacts and to minimize any sightlines.
1833 You could probably see one or two spots along Charles City Road that would
1834 need some additional berms and buffers and plantings, and I'm sure the County
1835 will not be shy in telling us what we need to do there.

1836

1837 What we've illustrated is a potential Phase 3 and a potential Phase 4. Phase 3
1838 would essentially be using the portion of the former County parcel on the east
1839 side. There are a set of Virginia Power transmission lines that run through here.
1840 So Phase 3 would use the portion of the old County parcel east of those power
1841 lines, and would incorporate the closed Cox site and the closed BFI site. And
1842 then a potential Phase 4, if it's ever deemed to be possible engineering-wise and
1843 cross-wise, would actually fill in the space between the two landfills.

1844

1845 We estimate that the additional life expectancy from the Phase 3 area would be
1846 anywhere from ten to fifteen years. I will note that have entered into an amended
1847 and restated host agreement with the County, which has been approved and
1848 signed, which would continue to sort of dictate and provide that relationship
1849 between the landfill owner and operator and the County of Henrico. So all of
1850 those benefits that the County receives in the host fees, which in the last couple
1851 of years have been about a million dollars a year, and the free disposal, again,
1852 which is 70,000 tons a year. If you'd like to put a dollar figure on that, it's
1853 probably a conservative estimate to say a ton of disposable probably would cost
1854 about \$20, so you're looking at about a million and a half in free disposal each
1855 year. So the host agreement would cover this and would really govern for the life
1856 of a landfill. And so if we got an extra ten to fifteen years out of the site that
1857 would continue on.

1858

1859 One other thing that I want to stress—and I made mention of this—is that we do
1860 work hard to maintain a relationship with our neighbors. We did hold a
1861 community meeting last week and we had a number of folks attend. I don't know
1862 if any of those folks are here. Mr. Adkins is here. And we had a number of folks
1863 who owned property within both the little residential subdivision off Charles City,
1864 as well as a number of folks who own property directly across the street from us

1865 on Charles City Road. We had a very good meeting. And we've had a number of
1866 meetings.

1867

1868 There is a gas-to-energy plant that opened on the facility within the last year.
1869 Fortistar is the operator of that, and what that does is it converts the methane
1870 gas that is originated in landfills and it turns it into power. I think that facility
1871 actually generates power for about 5,000 homes. Is that right? And so when that
1872 opened up we invited our neighbors and we had a number of them attend. I think
1873 a lot of the same folks come to these meetings. Those who wished to, we took
1874 them on a tour of the facility and we drove them up to the face of the landfill, and
1875 we took them around the site. And we showed them the energy plant and
1876 basically the entire landfill. I don't think most of those folks are here tonight. They
1877 were receptive of what we had to say. They were appreciative. I think we
1878 answered all their questions. So we've always attempted to really maintain that
1879 relationship with our immediately adjacent neighbors.

1880

1881 Again, nobody likes a landfill, at least viewing it in a vacuum. But we're a partner
1882 in many ways with the County, and the County has its own site in the West End,
1883 and then this site is used for County waste. And so when you look at the grounds
1884 that this Board has to consider in reviewing these types of applications and
1885 determining whether or not to approve it, the nature and condition of the adjacent
1886 uses and structures—well, this is surrounded by industrial uses, for the most
1887 part. What we're doing is, again, attempting to capitalize on the fact that we
1888 already have landfills in this corridor and we're seeking to use those existing
1889 landfills and go in between them.

1890

1891 On the other factors, the special characteristics, design, location, construction,
1892 effect on traffic conditions, that sort of thing. Here again I want to stress that the
1893 daily operation is still not going to change. The restrictions that are in place
1894 would continue, so you're not going to have any change in daily numbers of
1895 trucks, daily tons being taken in, other than fluctuation from day to day
1896 depending on the economy and projects that are going on.

1897

1898 Whether or not it adversely affects the health, safety, and welfare of persons
1899 residing or working on the premises, again, I think it actually will improve in some
1900 respects. Some of the environmental issues with the old landfill—I don't think the
1901 old site has a liner. So this facility would make some environmental
1902 enhancements to those landfills that were previously there and closed. Again, as
1903 far as health and safety, I just need to stress the environmental record of this
1904 facility and the company. This Board understands waste. And I'm talking to folks
1905 who are educated on waste issues because you've had to be over the last
1906 couple of years, and so that's why we're not afraid to put our record out there
1907 and to put it for everybody to observe.

1908

1909 At this point I'll reserve some time. I'm happy to answer any questions now. I
1910 know Mr. Petrini is here as well to give a very short presentation.

1911
1912 Mr. Wright - If I could ask a couple of questions, Mr. Rothermel.
1913
1914 Mr. Rothermel - Sure.
1915
1916 Mr. Wright - It indicates here, especially in our staff report, that
1917 this application will increase the visibility of the landfill from Charles City Road.
1918 Why is that if we're using what was already there?
1919
1920 Mr. Rothermel - Right. We submitted some line-of-sight profiles. I
1921 think probably the area that would be most affected would be as you're coming in
1922 from Laburnum on Charles City Road. There are just some spots that probably
1923 could use some additional berms and plantings so that as you're driving down
1924 that road it wouldn't be as visible. What's there right now is a closed landfill,
1925 portions of which you can see. It is a grassy hill at this point. If we used that, that
1926 then becomes a working face of a landfill, so the portions that you can see are
1927 not as desirable to see as a green hill.
1928
1929 Mr. Wright - Well, you're not increasing the footprint.
1930
1931 Mr. Rothermel - I want to make sure I answer your question. I don't
1932 know if Paul can pull up the—okay. Looking from the east to the west, the right
1933 side of your screen, the closed Charles City Road site, we would not go any
1934 farther east than the existing Charles City Road Landfill. So in that respect, no,
1935 we are not moving outwards of where the landfill currently is. When moving to
1936 the west there, you know, we would be moving in between those landfills.
1937
1938 Mr. Wright - That's the other way.
1939
1940 Mr. Rothermel - Correct.
1941
1942 Mr. Wright - I'm talking about towards Charles City Road.
1943
1944 Mr. Rothermel - No. More towards Laburnum.
1945
1946 Mr. Wright - What you are doing is increasing the elevation.
1947
1948 Mr. Rothermel - Right. The elevation of those existing closed landfills
1949 would be increased, yes.
1950
1951 Mr. Wright - I believe you're going up to 320 feet.
1952
1953 Mr. Rothermel - Right. That is what we've requested. And again, that
1954 was to be consistent with what is currently in place.
1955
1956 Mr. Wright - It was 232.

1957
1958 Mr. Rothermel - Right. You're right. When we came in back in 2004
1959 the top elevation at that point—and I'll trust your recollection better than mine,
1960 Mr. Wright—was 230. So at that time we increased it.
1961
1962 Mr. Wright - Mr. Blankinship, have we included in the conditions
1963 the additional screening to protect Charles City Road as much as we can here?
1964
1965 Mr. Blankinship - We have not in detail. We are going to require that
1966 they submit a detailed landscaping plan for our review.
1967
1968 Mr. Wright - I would want to ensure that if this is approved that we
1969 have something there to protect Charles City Road as much as we can.
1970
1971 Mr. Blankinship - Condition #6 requires that they submit a detailed
1972 landscaping, lighting, and fencing plan for review and approval. That will be the
1973 main point of concern, the main reason for that plan.
1974
1975 Mr. Wright - Do we need a special condition in our conditions to
1976 ensure that that's done?
1977
1978 Mr. Blankinship - In addition to #6?
1979
1980 Mr. Wright - Yes.
1981
1982 Mr. Blankinship - Saying what, exactly?
1983
1984 Mr. Wright - That there will be additional screening there to protect
1985 Charles City Road.
1986
1987 Mr. Blankinship - We can certainly add that to #6 and make it more
1988 detailed.
1989
1990 Mr. Wright - I would be more comfortable with something like that.
1991
1992 Mr. Rothermel - Mr. Wright, may I comment on that?
1993
1994 Mr. Wright - Sure.
1995
1996 Mr. Rothermel - Prior to 2004 and this application we worked very
1997 hard with the County to formulate the conditions. I also do a lot of land use work
1998 in general and land use litigation. When I go before the Board of Supervisors and
1999 I have a proffer there that has all sorts of disclaimers, I'm mindful of the
2000 skepticism that I sometimes get when you have a lot of caveats. We tried to keep
2001 the condition fairly broad and subject to the review and approval by the Planning
2002 Department. We view that condition as giving pretty broad authority, and we're

2003 certainly not disagreeable to strengthening it. But I would view that—not only as
2004 the applicant's representative here, but as a land use lawyer—as we're
2005 consenting to this, giving it a pretty broad authority for the Planning staff to look
2006 at our landscaping plan.

2007
2008 Mr. Wright - I just want the Planning staff to understand that from
2009 my viewpoint it would be the Board's concern to provide some additional
2010 screening to Charles City Road. We could leave that up to the staff, but I think it
2011 would make me feel better since we admit here that everything else is basically
2012 the same except that point, increasing the visibility from Charles City Road.

2013
2014 Mr. Rothermel - Correct.

2015
2016 Mr. Wright - Another question. When would activity on this new
2017 expansion begin? When will you begin to use it?

2018
2019 Mr. Rothermel - The current estimates are eight to ten years for the
2020 existing site.

2021
2022 Mr. Wright - So it would be after that?

2023
2024 Mr. Rothermel - Yes. You sort of build in a time frame there because
2025 of the economy.

2026
2027 Mr. Wright - I understand. But we're looking down the road a good
2028 ways before this would even take place.

2029
2030 Mr. Rothermel - Correct. And again, one of the main reasons that we
2031 came in so early is because the DEQ approval process takes so long.

2032
2033 Mr. Wright - Well not only that, but it affects the use of the old one.
2034 If you're going to bring it together, you would have some difference there in the
2035 in-between part.

2036
2037 Mr. Rothermel - That's correct.

2038
2039 Ms. Harris - Mr. Rothermel, a question about the conditions. Look
2040 at Condition #9. We use the terminology, "waste that was generated." And then
2041 in your report under Traffic, the third line, it says, "the solid waste can originate." I
2042 was wondering, to be consistent can we use "originated." We've had people
2043 come before our Board who want to bring in waste from areas greater than 150
2044 miles. Then they came back with a third site where they would bring that waste to
2045 that third site. Then *that* site would be within 150 miles. So I was wondering that,
2046 to be absolutely clear if we could just be consistent and use the word "originated"
2047 rather than "was generated." Is that okay? That would be in keeping with the

2048 report you gave us. Mr. Rothermel that would be consistent with your Traffic
2049 paragraph if we use the word "originates." Okay.

2050
2051 The other thing is Condition #5. Curb and gutter shall be constructed. So you
2052 don't have curb and gutter now, right, along Charles City Road?

2053
2054 Mr. Rothermel - That's an existing condition. When this use permit
2055 went effect, I think certain curb and gutter was added at that time. This simply
2056 gives Public Works the discretion to go back and say we want curb and gutter
2057 here or there. I think they've done that previously, but the conditions remained in
2058 there simply to allow them to continue to have that discretion if they determined
2059 that additional curb and gutter is necessary.

2060
2061 Mr. Blankinship - And to require that it be maintained.

2062
2063 Mr. Rothermel - Correct.

2064
2065 Ms. Harris - So you're saying as required by the Department of
2066 Public Works. So it's not just at the entrance, where it is now, but you said along
2067 Charles City Road. The qualifier is, "as required by the Department of Public
2068 Works." So they may not require it all along Charles City Road? Is that what
2069 we're hearing?

2070
2071 Mr. Rothermel - I'll let staff speak to that. My thought is that Public
2072 Works, they're the experts on roads and where curb and gutter should go. So we
2073 sort of defer to them to tell us where to put those.

2074
2075 Mr. Blankinship - We defer to Public Works as well, we in the Planning
2076 Department. And that's a standard condition that they ask us to include. Where
2077 you have the opportunity to require an applicant to do something, they don't
2078 always have that authority. But if you put this kind of statement in their use
2079 permit, then that gives Public Works the authority to say we need you to go out
2080 and change something or fix something. It also mentions storm drainage
2081 facilities. So if there were a silt basin that failed or something, and there was any
2082 question about whether Public Works had the authority to require them to make
2083 a repair or do maintenance, this would clarify that Public Works does have that
2084 authority.

2085
2086 Ms. Harris - Okay. The Nuckols Road Landfill. What is the mean
2087 sea level of that facility? I know we're seeing here the proposed elevation of 320
2088 feet above the mean sea level. Is that landfill taller than that? How do they
2089 compare, do you know? Does anyone know?

2090
2091 Mr. Blankinship - I will know in a minute.

2092
2093 Mr. Wright - The old permit gave them 232 feet.

2094
2095 Ms. Harris - Yes.
2096
2097 Mr. Wright - That will give you some idea. This would only
2098 increase it from what was there.
2099
2100 Ms. Harris - Yes. My question was in comparison to Nuckols Road
2101 where do we stand.
2102
2103 Mr. Blankinship - I'll have that in just a second.
2104
2105 Ms. Harris - He's checking on that.
2106
2107 Mr. Blankinship - That would be 340 at Nuckols Road.
2108
2109 Ms. Harris - Okay. I just want to get a visual. Not as high as
2110 Nuckols Road. Any other questions from Board members?
2111
2112 Mr. Baka - I have one question. On Condition #3 about the time,
2113 you had 6:30. Waste may be accepted for disposal starting at 6:30 a.m.?
2114
2115 Mr. Rothermel - Correct.
2116
2117 Mr. Baka - So what is the reasoning for that time? In other
2118 examples it's been 7:00 a.m. Is it currently open at 6:30 a.m.?
2119
2120 Mr. Rothermel - Yes. This condition is currently in place, so we just
2121 kept the current condition in place.
2122
2123 Mr. Baka - Okay. Thank you.
2124
2125 Ms. Harris - Thank you very much. Any other persons who wish to
2126 speak for this application? Please state your name.
2127
2128 Mr. Petrini - Arthur Petrini, Director of Public Utilities, Henrico
2129 County. Good morning.
2130
2131 Ms. Harris - Good morning.
2132
2133 Mr. Petrini - I'm here just to restate the benefits to the County. All
2134 existing benefits to the County in the original host agreement are preserved
2135 under the amended host agreement. If all of the necessary approvals are
2136 obtained and the life of the landfill extended, the benefits also extend with the
2137 extended life of the landfill.
2138

2139 Currently, the amended post-agreement allows for 70,000 tons of free waste
2140 disposal per year for the life of the landfill. Again, if this is approved we would get
2141 the benefit of the extension of the life of the landfill. Right now that's a cost
2142 avoidance of about one and half million dollars. We don't have to bring it to our
2143 landfill because we have our own internal costs, so it does two things: It avoids
2144 cost and it allows the Springfield Road Landfill to stay open longer. So we have
2145 two benefits right now. Once we do have to pay, it will be a cost offset of
2146 whatever the tip fee is, about twenty dollars, twenty-five dollars a ton. So that
2147 would put it in the million-and-a-half-dollar range per year.

2148
2149 There is a disposal host fee, which is \$2.50 a ton, and that's on all tonnage
2150 deposited in the BFI Republic landfill. And that would also be extended to this
2151 increased area, if approved. In calendar year 2011, revenue was \$908,000. It
2152 typically runs around a million dollars, plus or minus.

2153
2154 BFI also pays for a County solid waste employee with benefits. That's
2155 approximately \$80,000 per year, and that's indexed to inflation. And if a transfer
2156 station is ever to be built, we would get a host fee of fifty cents per ton of all
2157 transferred waste.

2158
2159 So all these current benefits stay in the amended host agreement and would be
2160 extended to whatever the life is of the future landfill, if approved.

2161
2162 Ms. Harris - Thank you, Mr. Petrini. Any questions from Board
2163 members? Anyone else who wishes to speak to this application?

2164
2165 Mr. Williams - Good morning. I'm Marty Williams. I represent the
2166 government relations work for Waste Associates, who owns a facility directly
2167 adjacent and south of the current applicants. Hopefully, Mr. Blankinship, you
2168 received a letter from us in support of the applicants.

2169
2170 Mr. Blankinship - This letter was left on the table—this morning.

2171
2172 Mr. Williams - I just wanted to make sure it was in the record that we
2173 were in support of the applicants' request.

2174
2175 Ms. Harris - Thank you. Is there anyone else who wishes to speak
2176 in support of this application? Do we have anyone who opposes this application?
2177 Would you come forward, please, and give us your name.

2178
2179 Mr. Adkins - My name is Donald Adkins.

2180
2181 Ms. Harris - A-d-k-i-n-s?

2182
2183 Mr. Adkins - Yes.

2184

2185 Ms. Harris - Thank you. Please state your opposition.
2186
2187 Mr. Adkins - I'm not sure if opposition is the correct word, but I do
2188 have concerns.
2189
2190 Mr. Wright - You want clarification.
2191
2192 Mr. Adkins - Yes sir.
2193
2194 Ms. Harris - Okay.
2195
2196 Mr. Adkins - I own the property located at 1909 Charles City Road,
2197 which on this picture I believe it's on the north side of Charles City Road towards
2198 the west. Charles City Road, west in this picture. It's somewhere in this area right
2199 over in here. Is that correct? West down this way? It's off the map? Right here?
2200 Okay.
2201
2202 Mr. Wright - Which side of the road are you on, the north side?
2203
2204 Mr. Blankinship - Same side as the landfill.
2205
2206 Mr. Wright - The same side as the landfill.
2207
2208 Mr. Adkins - Yes sir. My concern is these properties right here—
2209 and I'm not speaking for the whole community; I'm just speaking for myself and
2210 what I have. These properties here are basically abandoned. No one lives in
2211 these properties; the houses are uninhabitable at this point. We do have trucks
2212 that come through here. This property was appraised a couple years ago, which
2213 in relationship to what the tax assessment is, it's forty percent below. So I reckon
2214 I'm just concerned about the value and how this is affecting the value of my
2215 property.
2216
2217 Mr. Wright - How is that zoned?
2218
2219 Mr. Blankinship - All of that strip is zoned B-3, Business District, the
2220 most intensive business district.
2221
2222 Mr. Wright - So his property is zoned B-3?
2223
2224 Mr. Blankinship - Yes. His house was built in 1935, so we just barely
2225 had zoning at that point. So I guess it's a non-conforming dwelling.
2226
2227 Mr. Wright - But that's all B-3.
2228
2229 Mr. Blankinship - Yes. It looks like all the other property along there is
2230 owned by BFI.

2231
2232 Ms. Harris - So there has been a decline in real estate value?
2233
2234 Mr. Adkins - I'm uncertain. I don't keep up with it every year, but
2235 just based on what the appraisal came in and what the tax assessment was. The
2236 appraisal I believe I was somewhere around sixty, sixty-five to seventy,
2237 somewhere in there. It wasn't done by me personally. And then the tax
2238 assessment is somewhere around the hundred range and I'm not sure of exact
2239 numbers. But it looks like thirty-five to forty percent, somewhere in there that the
2240 property has been affected by the landfill. And I don't know if others are in the
2241 same boat.
2242
2243 Mr. Wright - It's business property. And I guess what business is
2244 generated in the area would have a lot to do with it.
2245
2246 Mr. Adkins - Yes sir. Those are the biggest concerns. They have
2247 to come through there and pick up debris out of the yard that has been
2248 generated by trucks driving by and such as this. My concern is if it continues and
2249 the new portion opens up, or these new cells open up and there is additional
2250 traffic, will that continue to devalue my property because of the increase in traffic.
2251
2252 Mr. Wright - The testimony is there won't be any additional traffic.
2253 It will be continued, but not at any increased amount. It's just a matter of shifting
2254 what they're doing to the new area. There won't be any increase in truck traffic;
2255 it'll be what has been generally taking place there. That's what I understand from
2256 the testimony.
2257
2258 Mr. Blankinship - It would also be moving farther away from your home
2259 than where they are now.
2260
2261 Mr. Adkins - They'll still use the same road.
2262
2263 Mr. Blankinship - Same entrance.
2264
2265 Mr. Adkins - There are no other ways to get there than off of
2266 Charles City Road.
2267
2268 Mr. Blankinship - It would be the same entrance, they did say that. Mr.
2269 Rothermel said that.
2270
2271 Mr. Adkins - It will be the same type of debris?
2272
2273 Mr. Blankinship - Yes.
2274
2275 Mr. Adkins - I reckon that's my only concern.
2276

2277 Ms. Harris - Have you been to the Real Estate Board to express
2278 your concern?

2279
2280 Mr. Adkins - It has been brought up, yes ma'am.

2281
2282 Ms. Harris - Okay. Thank you so much.

2283
2284 Mr. Adkins - Thank you.

2285
2286 Ms. Harris - Is there anyone else who wishes to speak in
2287 opposition? Please give us your name.

2288
2289 Mr. Winston - Good morning, Madam Chairman and Board
2290 members. My name is Roland Winston—W-i-n-s-t-o-n. I'm a Henrico resident on
2291 Darbytown Road. I'm authorized this morning to speak for Sierra Club – Fall of
2292 the James. We're not speaking in direct opposition to this. Everything I've heard
2293 this morning basically sounds positive. We would ask that this permit application
2294 be carried over to another meeting.

2295
2296 There is an assorted coalition of neighborhood associations, a neighborhood
2297 resource center, which is in Richmond about two blocks from the County line that
2298 we've been working together on the TEEL issue. Mr. Leabough, Eric Leabough
2299 (L-e-a-b-o-u-g-h), that has spoken before this Board before on that issue e-
2300 mailed BFI or spoke to someone at BFI. I have an e-mail from him dated the
2301 twentieth requesting that BFI conduct a broader community meeting than just the
2302 immediately adjacent neighbors. He has not gotten a reply. We would just like to
2303 have an opportunity for BFI to arrange a meeting with more residents. Mr.
2304 Leabough is involved with a coalition of let's say three or four neighborhood
2305 associations. So we're not immediate neighbors, mostly off of Darbytown Road.
2306 But the expansion of the facility, the length of the time that it will continue to be
2307 used beyond what its current capacity is, and the height restrictions are things
2308 we just want to get more information on, and we don't believe we've had
2309 adequate opportunity or response from BFI to accomplish that.

2310
2311 Ms. Harris - Thank you, Mr. Winston. Is there anyone else who
2312 wishes to speak in opposition or if you have concerns? Mr. Rothermel, do you
2313 want to address the concerns?

2314
2315 Mr. Rothermel - Thank you. Just very briefly. I know Mr. Adkins was
2316 one of the folks who attended the meeting last week. And I know my client in the
2317 past has had a number of discussions with him about his property and the
2318 possibility of BFI acquiring that property. I will note that we are moving down
2319 away from where he is. Real estate values in general have declined; my home
2320 has declined in the last few years. I'm not sure what is attributable to the landfill
2321 being there. It has been operated there for about twenty years now, so I guess I
2322 would qualify some of what he said.

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As far as working with the community—and again, I think I started my comments by saying that landfills are not popular things. I've been involved in a lot of landfill applications over the years, not just in Henrico County, and other solid waste applications. You very rarely get people to come out and say they want it. But I think what speaks volumes today is the fact that, again, we took the County's notice list and we've been working with a lot of these people over the years, the folks who are most directly affected by our facility. And again, there's that residential subdivision right there off of Charles City Road on our side. There are a number of homes in there and directly across the street from Charles City. And those folks are okay. They've been to the meetings and we've taken them on tours. We're not going to be able to make everybody happy. It's just sort of the nature of the beast. So we feel like we really have worked hard, and not just in the last month or two, but the entire time that this facility has been in operation it's always been one of our—we have sort of an open access policy. Anybody that wants to come in, learn more about it, schedule a tour. We've offered in the past to folks who have come, if their children want to mention it to their teachers we're happy to take them out on the site in organized groups and show them about solid waste because it's something that we need to deal with as a society, as a county government.

I noted and Mr. Petrini spoke that we've worked hard with the County, not only in post-agreement issues, not only on the various economic issues here, but also in maintaining that pristine record. And he noted that part of our agreement is to pay for a full-time inspector to make sure things are being done right. So again, I would just note that based on all of our efforts, the track record here, what we're proposing as far as using existing areas that have been used for this before, and the support of the County Administration, we would respectfully request this Board to approve our use permit application.

Ms. Harris - Question. How often have you met with the citizens of the adjacent community?

Mr. Rothermel - My client can speak to that better than I can. We've obviously brought them up to speed on this application. I think last spring we had them out for the opening of the Fortistar facility over there. And I think prior to that I think sporadically. They have a dialogue with some of the folks. I know there's an older woman that lives in that subdivision. I'm not sure if she's homebound, but she's not able to get out as much. She had questions and they went over to see her and meet with her in her house. It's sort of an ongoing symbiotic relationship because they're so close.

Ms. Harris - Okay. Could you meet with that coalition? You say that you have an open policy, if a person wanted to know more about the area they could schedule a meeting or take a tour. Would you be amenable to meeting with that coalition?

2369

2370 Mr. Rothermel - We're absolutely happy to meet with them. Again, we
2371 respectfully request that this Board move forward today, but we're always happy
2372 to meet with them.

2373

2374 Ms. Harris - Any other questions? Thank you, Mr. Rothermel.

2375

2376 Mr. Rothermel - Thank you very much.

2377

2378 **[After the conclusion of the public hearings, the Board discussed the case**
2379 **and made its decision. This portion of the transcript is included here for**
2380 **convenience of reference.]**

2381

2382 DECISION

2383

2384 Ms. Harris - Is there a motion on this case?

2385

2386 Mr. Wright - Madam Chairman, I move that we approve this
2387 application for a use permit on the grounds that I don't think that this additional
2388 use will adversely affect the health, safety, and welfare of persons on the
2389 premises or the neighborhood, nor increase congestion in the streets. And I think
2390 it will be consistent with the character of the district. And I'll state further that this
2391 situation is one where we face a public interest. We have to have somewhere to
2392 dispose of our waste. This has been there and it's been done in I think a very
2393 good manner; they've handled it properly over the years. I don't think granting
2394 this use permit will increase anything. It will extend it; no question about that. But
2395 we're in a position of having to find places to dispose of the material, and I think
2396 the public interest has a lot to do with this, especially since I don't think this will
2397 affect the neighborhood or any premises around it any more that it does now.

2398

2399 Ms. Harris - Will Condition #6 have, "with additional screening for
2400 Charles City Road"?

2401

2402 Mr. Wright - Yes, I'd like to add that.

2403

2404 Ms. Harris - Is there a second to this motion?

2405

2406 Mr. Bell - Second.

2407

2408 Mr. Blankinship - Were there any other changes to conditions? Oh yes,
2409 you wanted to change that one word from "generated" to "originated."

2410

2411 Ms. Harris - Yes. In Condition #9, instead of saying "that was
2412 generated," say "that originated." This facility shall not accept waste that
2413 originated more than 150 miles from this location.

2414

2415 Okay. Motion made by Mr. Wright, seconded by Mr. Bell that we approve this
2416 case. Is there any further discussion on this motion? All in favor say aye. All
2417 opposed say no. The ayes have it; the motion passes.

2418
2419 After an advertised public hearing and on a motion by Mr. Wright, seconded by
2420 Mr. Bell, the Board **approved** application **CUP2012-00003, BFI WASTE**
2421 **SYSTEMS OF VIRGINIA** request for a conditional use permit pursuant to
2422 Section 24-116(c)(3) of the County Code to operate an existing landfill at 2075
2423 Charles City Road (Parcels 808-712-0741, 811-709-7458, 812-709-6554, 812-
2424 710-6492 and 813-709-2443) zoned M-2, General Industrial District (Varina).
2425 The Board approved the conditional use permit subject to the following
2426 conditions:

- 2427
- 2428 1. The landfill shall meet all applicable federal and state requirements
2429 regarding air pollution, water pollution and solid waste management.
2430
 - 2431 2. The paved driveway to the landfill shall be maintained for at least 400 feet
2432 off of Charles City Road. The operator shall take all necessary steps to prevent
2433 the tracking of mud or debris onto any public road.
2434
 - 2435 3. Waste may be accepted for disposal from 6:30 AM to 6:00 PM Monday
2436 through Friday, from 7:00 AM to 6:00 PM Saturday, and such other times as
2437 expressly required or permitted by the Director of Planning or the Director of
2438 Public Utilities or their designees.
2439
 - 2440 4. The facility shall not be used for the disposal of toxic or hazardous waste
2441 as defined by the Virginia Department of Environmental Quality or the U.S.
2442 Environmental Protection Agency.
2443
 - 2444 5. Curb and gutter and necessary storm drainage facilities shall be
2445 constructed and maintained along Charles City Road as required by the
2446 Department of Public Works.
2447
 - 2448 6. Within 45 days of approval, the applicant shall submit a detailed
2449 landscaping, lighting and fencing plan for review and approval by the Planning
2450 Department to provide additional screening to protect the view from Charles City
2451 Road.
2452
 - 2453 7. A slurry wall shall be constructed prior to the disposal of any waste within
2454 five vertical feet of the ground water table.
2455
 - 2456 8. No landfilling shall take place on any part of the property that lies within
2457 the 100-year floodplain.
2458

- 2459 9. This facility shall not accept waste originating more than 150 miles from
2460 this location.
2461
- 2462 10. Water quality shall be monitored as required by the Virginia Department of
2463 Environmental Quality and the results provided to the Henrico County
2464 Department of Public Utilities.
2465
- 2466 11. The final elevation of the property after completion shall not exceed 320
2467 feet above mean sea level. Such final elevation point of 320 feet MSL shall be at
2468 least ¼ mile from any residence not owned by the applicant.
2469
- 2470 12. All trucks hauling material to the property shall be covered with a tarp
2471 unless they are completely enclosed.
2472
- 2473 13. There shall be no entrance for the depositing of waste from any road
2474 other than Charles City Road. The main entrance to the site shall not be
2475 relocated without the approval of the Director of Planning.
2476
- 2477 14. The operator shall daily monitor and clean up trash on both sides of
2478 Charles City Road from Williamsburg Road to Laburnum Avenue. This condition
2479 may be satisfied in cooperation with the County operation of the convenience
2480 site on the adjoining property.
2481
- 2482 15. In addition to those areas already approved as disposal areas under UP-
2483 018-04, the areas shown as "Phase III" and "Phase IV" on the exhibits submitted
2484 with the application may be used for the sanitary landfill disposal area.
2485
- 2486 16. The landfill shall be fenced and shall be secured or monitored at all times.
2487
- 2488 17. Prior to closing the landfill, the operator shall install a cover as required by
2489 Virginia Department of Environmental Quality regulations on any portion of old
2490 County landfill not already covered by the expansion of the applicant's landfill.
2491
- 2492 18. All existing vegetation within 250 feet of Pickwick Lane shall be preserved
2493 subject to easements and other agreements for ingress, egress or utilities and
2494 subject to the necessary removal of vegetation pursuant to any plans to relocate
2495 streams or waterways as may be approved by the US Army Corps of Engineers,
2496 the Virginia Department of Environmental Quality, or the County of Henrico.
2497
- 2498 19. That portion of Parcel 808-712-0741 (formerly identified as Parcel 10-A2-
2499 7) within 1,000 feet of Charles City Road and comprising a surface water body
2500 known as Lake Schneider, consisting of approximately 14.3 acres, shall be left in
2501 its natural condition and shall not be developed or used as a portion of the
2502 sanitary landfill.
2503

2504 20. That portion of Parcel 808-712-0741 (formerly identified as Parcel 10-A2-
2505 7) north of Lake Schneider and toward Charles City Road shall remain in its
2506 natural state, except for supplementary landscaping, improvements to the
2507 entrance to the landfill, and any other improvements approved by the Director of
2508 Planning.

2509
2510 21. The requirements and conditions of the Host Community Agreement, as it
2511 may be amended by both parties from time to time, are incorporated as if fully
2512 set out herein.

2513
2514
2515 Affirmative: Baka, Bell, Harris, Nunnally, Wright 5
2516 Negative: 0
2517 Absent: 0

2518
2519
2520 Ms. Harris - Let's look at the minutes, please, from the last
2521 meeting. A motion is in order for the approval of the minutes. Any changes?

2522
2523 Mr. Wright - I move we approve the minutes as submitted.

2524
2525 Mr. Nunnally - Second.

2526
2527 Ms. Harris - Motion by Mr. Wright, seconded by Mr. Nunnally that
2528 the minutes be approved as submitted. Any discussion on this motion? All in
2529 favor say aye. All opposed say no. The ayes have it; the motion passes.

2530
2531 On a motion by Mr. Wright, second by Mr. Nunnally, the Board **approved as**
2532 **submitted the Minutes of the December 15, 2011** Henrico County Board of
2533 Zoning Appeals meeting.

2534
2535 Affirmative: Baka, Bell, Harris, Nunnally, Wright 5
2536 Negative: 0
2537 Absent: 0

2538
2539 Ms. Harris - One other item of business, we need to select a vice
2540 chair for this Board. Is it agreeable with everyone that we do this at the next
2541 meeting, or do you want to do it now?

2542
2543 Mr. Blankinship - Mr. Witte was the vice chairman.

2544
2545 Mr. Wright - Oh yes, that's right.

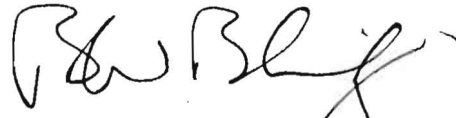
2546
2547 Mr. Blankinship - Since he's moved on to the Planning Commission,
2548 we're left without a vice chairman. It's not on the agenda, so I would think we
2549 should do it next month.

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Ms. Harris - So we will do that at the next meeting. That will be an agenda item for the next meeting. If there is no other business before this body, the meeting is adjourned.



Helen E. Harris
Chairman



Benjamin Blankinship, AICP
Secretary