

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, JUNE 23, 2011 AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH JUNE 6,**
6 **2011 AND JUNE 13, 2011.**
7

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

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

8
9 Ms. Harris - Good morning. This is the June 23, 2011 meeting of
10 the Board of Zoning Appeals for Henrico County. Please stand and recite the
11 **Pledge of Allegiance.**
12

13 Good morning, Mr. Blankinship.

14
15 Mr. Blankinship - Madam Chairman.

16
17 Ms. Harris - Do we have any deferrals or withdrawals? And we
18 need you to also give us the rules that govern this meeting.

19
20 Mr. Blankinship - All right. Good morning, everyone.

21
22 The rules for this meeting will be as follows. Acting as secretary, I will call each
23 case and as I'm speaking the applicant is welcome to come up to the podium.
24 We will then ask everyone who intends to speak to stand and be sworn in. Then
25 the applicant will give their testimony. Then anyone else who wishes to speak will
26 be given the opportunity. And after everyone has spoken, the applicant, and only
27 the applicant, will have an opportunity for rebuttal.

28
29 This meeting is being recorded so we will ask everyone who speaks to speak
30 directly into the microphone on the podium, state your name, and please spell
31 your last name so that we get it correctly in the record.

32
33 I should have mentioned before that after the Board has heard the testimony on
34 each case they'll proceed on to the next case. They will render all of their
35 decisions at the end of the meeting. So if you wish to know their decision on a
36 specific case you can either stay until the end of the meeting or you can check

37 the Planning Department website this afternoon—we update it right after the
38 meeting is over—or you can call the Planning Department this afternoon.

39
40 Finally, there's a binder out in the foyer that includes the staff report for each
41 case, including the conditions that have been recommended by the staff. It's very
42 important that the applicants be familiar with these conditions.

43
44 Madam Chairman, we did have one case where notices were sent out before we
45 were notified that it would be deferred another month. So it does not appear on
46 the agenda. That was the application of Mr. Paul Kalimerakis for a variance. If
47 anyone is here for that case I apologize; it will not be heard this morning. It will
48 be heard in July. No, I'm sorry. The notices were sent out and then we found out
49 later that day that the case can't be heard until July because of some other
50 actions that need to be taken. I apologize. That will be heard on July 28th. We will
51 send out another notice. That is not on the agenda. We knew before the agenda
52 was published, even before it was advertised in the newspaper, that the case
53 could not be heard yet, but we had already mailed out the notices.

54
55 There is one case that was deferred from last month. The public hearing on that
56 case was closed, so we won't go through it on the public hearing portion of the
57 agenda, but when we come back to make the decisions.

58
59 Ms. Harris - Okay. Please call the first case.

60
61 **CUP2011-00014** **EASTERN HENRICO RURITAN CLUB** requests a
62 temporary conditional use permit pursuant to Section 24-116(c)(1) of the County
63 Code to conduct a turkey shoot at 3808 Nine Mile Road (Parcel 806-723-4768),
64 zoned A-1, Agricultural District (Varina).

65
66 Ms. Harris - All persons who wish to speak to this case please
67 stand and raise your right hand.

68
69 Mr. Blankinship - Do you swear the testimony you're about to give is
70 the truth and nothing but the truth so help you God?

71
72 Ms. Harris - I'll ask the applicant to come and state your name
73 and spell your last name, please.

74
75 Mr. Courtney - My name is Jim Courtney, spelled C-o-u-r-t-n-e-y. I
76 am the chairman of the board as related to this situation.

77
78 Ms. Harris - Would you state your case, what it is that you desire.

79
80 Mr. Courtney - Eastern Henrico Ruritan has conducted a turkey
81 shoot on this particular property at 3808 Nine Mile Road for forty-four years

82 without any incidents or any kind of safety violation or anything of that nature.
83 We are asking to renew it for the next two years.

84
85 Mr. Nunnally - Before we go any further, have you worked out all the
86 details with the County of Henrico about the shots and all—
87

88 Mr. Courtney - No sir. I haven't talked to anyone with the County. We
89 have only had it (staff report) for seven days. But I haven't talked to anyone from
90 the County.
91

92 Mr. Wright - Have you read the conditions?
93

94 Mr. Courtney - Yes sir.
95

96 Mr. Wright - Are you in accord with the conditions?
97

98 Mr. Courtney - No sir.
99

100 Mr. Wright - Well okay, that's what we need to address.
101

102 Mr. Courtney - Correct.
103

104 Ms. Harris - Would you address that, what condition you're not in
105 agreement with?
106

107 Mr. Courtney - Well, the condition for item number three, which is the
108 elimination of the lead shotgun pellets and the use of steel or non-toxic pellets is
109 the issue. As I said, we've done it for forty-four years and we've never had any
110 problem of this nature whatsoever. The steel pellets—I guess number one is a
111 secondary issue—are more expensive. We have to compete and they are more
112 expensive. And there's a certain amount of danger of misuse of the shell and the
113 combination of the choke of the gun. It could cause the barrel of the gun to blow
114 up and hurt someone.
115

116 Mr. Wright - If you use lead?
117

118 Mr. Courtney - If you use lead and a choke that is specified "no lead
119 shot." The bulk of guns that are used today in turkey shoots are choked, as
120 much as you can choke one to get it down to where it shoots a small pattern.
121 The steel shot will not contract in the barrel. As it comes down the end of the
122 barrel, it has a tendency to want to push it out and it will blow the ends out of the
123 barrels. So you can have damage to the gun, you can have damage to the
124 shooter, you have damage to the guy standing next to it should this happen. The
125 lead shot will contract, so when it comes through there that danger doesn't exist.
126

127 There are, to the best of my knowledge, no other turkey shoots or sporting play
128 events or skeet shoots or trap shoots that require this. Everybody is using lead
129 shot. The preference of the steel shot or the non-toxic shot for me is for
130 waterfowl hunting. It's to be used when you're around the water, but we're in the
131 middle of a softball field and we don't have any water around to contaminate. I
132 don't know, but if steel shot is lying out there on the ground and it's subject to the
133 environment, it is going to rust and then do we have a contamination problem
134 with the rust? No pun intended, but are we shooting ourselves in the foot here
135 with what we're doing? We just don't feel like this is necessary in our situation.

136
137 Mr. Wright - What kind of shot do you now use?

138
139 Mr. Courtney - We use a number eight.

140
141 Mr. Wright - That's the same number they're saying. Do you have
142 any problem with gauge?

143
144 Mr. Courtney - Low powered. No. Number eight, low powered. Two
145 and three quarter, because that basically fits everybody's gun. And the number
146 eight shot. It's going to be difficult to go to a steel shot that's not going to be high-
147 powered shells. So that puts you into that also because of the steel shot, like I
148 said, is used for water fowl, ducks and geese, and hunters just don't use low-
149 powered shells for that.

150
151 Mr. Wright - Have you known anybody that's ever participated in
152 one of these turkey shoots to have this lead-free shot?

153
154 Mr. Courtney - No sir. I do have a letter from Green Top that answers
155 that question. It's from the vice president of Green Top. He is saying, "I checked
156 with Remington, Federal and Winchester and the smallest shot they offer is
157 number seven shot. I have never heard of any turkey shoot or similar competitive
158 shoot using this low. We do not stock this ammunition because the specific order
159 for this ammunition will be at least twenty-five percent more than what you're
160 paying now."

161
162 Mr. Wright - So what you're saying is it would knock your turkey
163 shoot out.

164
165 Mr. Blankinship - It would cut into your fundraising.

166
167 Mr. Courtney - Oh yes sir.

168
169 Mr. Blankinship - It doesn't require a steel shot. The Department of
170 General Services was concerned about the lead, so they wanted anything other
171 than lead. But I guess steel is probably the second least expensive.

172

173 Mr. Courtney - Yes. And then you can get into ceramics or
174 something of that nature. Then it goes from six dollars a box to twenty dollars a
175 box, where now it's six dollars a box to maybe twelve. It just continues on in that
176 respect.

177
178 Mr. Blankinship - The other turkey shoots I think do use lead shot—in
179 fact I'm confident they do—but the other turkey shoots don't take place on
180 County property.

181
182 Mr. Courtney - Yes, I understand that.

183
184 Mr. Blankinship - That was the concern. This year the County acquired
185 the property from the School Board, so different people were reviewing the
186 application than have in past years. They passed this on to us and said they
187 were okay with this but didn't want lead shot. And they had a couple of other
188 concerns regarding insurance requirements.

189
190 Mr. Wright - Why don't they want lead shot?

191
192 Mr. Blankinship - Because of the potential for contamination of the soil.
193 It is most important in water, but apparently there is also some danger
194 particularly with soil that is cultivated. Where they shoot is in the infield, so the
195 soil is loose and it's bare soil; it's not grass.

196
197 Mr. Wright - They've been doing it for forty-some years. Have they
198 had any problem with it?

199
200 Mr. Blankinship - Well, it's environmental concerns that accumulate
201 over time.

202
203 Ms. Harris - Is there a special gun that is used for the lead-free
204 shot? You were saying it's used for bird hunting. Is there a special gun that
205 would not cause all of the fallout that you described to us?

206
207 Mr. Courtney - Is there a special gun that would do what?

208
209 Ms. Harris - Not cause the explosion or the potential damage to
210 the person doing the shooting?

211
212 Mr. Courtney - You should not exceed a modified—I don't know what
213 that's going to mean to you—but a modified choke.

214
215 Mr. Witte - A modified choke is a little larger pattern?

216
217 Mr. Courtney - You start out with full and then you come to modified
218 and then you come on back to the point where the end of the barrel is the same

219 bore basically as the shell is. So when you start restricting it, you bring that
220 pattern in. Now there are over 3,000 combinations between gun manufacturers
221 and tube manufacturers for different screw-in tubes at the end of the barrel that
222 can bring it down from what they call a super turkey choke or other things like
223 that. So you may start out with something that's an inch in diameter and when it
224 comes out the barrel it's three-quarters. It's pulled it down to that. The pattern,
225 instead of going out in this direction becomes concentrated on the target. That's
226 the reason that's traditionally the gun that's used for turkey shoots.

227

228 Mr. Blankinship - Are you saying the safety issues could be addressed
229 by using a different choke?

230

231 Mr. Courtney - It could be addressed by using a different choke, if
232 you can monitor it. They screw up in the end of the barrel—you apparently are
233 familiar with that—. Then, too, you have the chokes that are the older guns
234 before they came with the screw-in tubes and the screw-in chokes. If you had a
235 double barrel, one might have been full and the other one modified. You shot the
236 modified barrel when the birds are closest to you because the pattern was
237 bigger. And then as they were getting away from you, you shot the full choke to
238 bring it down to get out to the distance. But now you have all those combinations
239 of various tubes.

240

241 Mr. Blankinship - Do your contestants bring their own shotguns?

242

243 Mr. Courtney - Shotguns. We furnish all the shells. You have to do
244 that, you have to furnish the shells so everybody is shooting equally.

245

246 Mr. Blankinship - Right.

247

248 Mr. Courtney - They bring their own guns, yes. There are even things
249 like you have a gun that's shooting well so you have three or four people
250 shooting it. Well we don't do that. Two people can shoot a gun on a round.

251

252 Mr. Wright - Mr. Blankinship, would it be possible that you could
253 have a condition that after the shoot they would rake that area?

254

255 Mr. Blankinship - Something like that might be possible.

256

257 Mr. Wright - Would that be possible?

258

259 Mr. Courtney - Well the shots are not going in the infield; the shots
260 are going out in the grass. The targets are at the back line of the infield. You're
261 shooting from what is essentially the third baseline to the second baseline. Or
262 you're standing at home plate and shooting at first base. The targets are yay tall
263 (motioning). I put the targets that way so in essence you're shooting downhill a

264 little bit to keep it from wanting to go up and down. When it crosses the back of
265 that infield, it's probably that tall.

266

267 Mr. Wright - So lead doesn't fall in the infield.

268

269 Mr. Courtney - It falls in the grass in the outfield.

270

271 Mr. Wright - So if it doesn't fall in the infield it doesn't get into the
272 soil.

273

274 Ms. Harris - There's soil under the grass. It's an environmental
275 concern. They didn't specify that it had to fall on the infield; it's contamination of
276 the soil, period, whether it's grass-plotted or not. But let me ask you this. Is it
277 possible that you could phase in an environmentally safe shell sometime in the
278 future? I know now you said that they bring their own rifle and you furnish the
279 shells. But can you foresee that at some point in the future you can use an
280 environmentally safe shell that would not be damaging to the soil or
281 contaminating to the soil?

282

283 Mr. Courtney - The non-toxic shell is supposedly—as is stated in this
284 thing, over a period of years, not weeks or months, but over a period of years
285 there could be contamination to the soil, which could cause contamination to the
286 water. What we're saying is they create other problems. You go ahead and hunt
287 and you're hunting with your own gun; what kind of shell you use is your
288 business.

289

290 Mr. Blankinship - With many people shooting in the same location time
291 after time—

292

293 Mr. Courtney - Well, that's right. This goes one Friday night a week
294 for three and a half months. That's it.

295

296 Mr. Blankinship - I don't know what the Department of General
297 Services would say is appropriate for controlling the lead. It's County property
298 and the County—

299

300 Mr. Wright - This begins in October?

301

302 Mr. Courtney - Yes sir. And it goes every Friday night for—

303

304 Mr. Blankinship - We could just change that to containing number eight
305 shot as — Department of General Services.

306

307 Ms. Harris - I have a couple of questions that do not pertain to the
308 shells. Is there is a new modular building that will be completed near the turkey
309 shoot?

310
311 Mr. Courtney - Yes. What about the building.
312
313 Ms. Harris - How close will it be to the—
314
315 Mr. Courtney - That's written in here as to what they're planning on
316 doing.
317
318 Ms. Harris - How close will that be to the targets? What is the
319 range of the firearms? Those are the questions I have.
320
321 Mr. Courtney - All right. It's saying, "The subject property was
322 transferred from the Henrico County School Board to Henrico County last year.
323 The County intends to renovate the Glen Echo building, which houses the Health
324 Department as well as other offices. During the construction, the County intends
325 to locate a temporary modular building." Is this what you're talking about?
326
327 Ms. Harris - Yes.
328
329 Mr. Courtney -
330
331 Behind the Glen Echo building where the basketball courts are now
332 located. As a result, the turkey shoot will be closer to the office
333 building than it has been in the past. Since the turkey shoot is
334 conducted in the evening when the offices are closed and the shot
335 is fired in the opposite direction, the administration has determined
336 that the turkey shoots do not conflict with the modular building. The
337 Board may consider when the firing line and target line should be
338 moved to the north, further away from the proposed building.
339
340 Is that what you're asking me?
341
342 Ms. Harris - No. They say it will be closer to the modular building.
343 Do you know how close? How far from the—
344
345 Mr. Courtney - I don't where they're going to move it.
346
347 Ms. Harris - I know it will be in the opposite direction.
348
349 Mr. Courtney - If they move it, but where are they going to move it?
350 Where are they going to put it?
351
352 Mr. Blankinship - The one that shows the site plan with the modular
353 building on it?
354
355 Ms. Harris - Twelve feet?

356
357 Mr. Blankinship - Is it in the package?
358
359 Mr. Wright - It says the administration has determined that the
360 shoot will not conflict with the modular building. What's the problem?
361
362 Mr. Blankinship - They had asked that it be moved farther north if that
363 is appropriate. Is there a reason you have to be set up where you are? Could
364 you move the firing line to the second baseline and the target line—
365
366 Mr. Courtney - Where we are shooting is down the first baseline, for
367 all practical purposes. You get down to that fence and that fence is 299 feet from
368 home plate. We put it back behind home plate a couple of feet to give us 300
369 feet from the firing line to that fence. The area is fenced in so people can't walk
370 in the back of it. What's behind it is a slight treeline. It's not a real dense forest
371 but a slight treeline. And then behind that is a County maintenance storage
372 building. They say to the north. If we move it to the north or move it away, you
373 can't go towards our building by so far. If you did that, you'd have to tear down
374 your dugout and do those kinds of things. So that's about the only way they
375 could go to get away from that basketball court.
376
377 Mr. Blankinship - So you're saying if you moved to the north, then you'd
378 be moving closer to the maintenance yard.
379
380 Mr. Courtney - Right. We have another twenty-five or thirty feet
381 behind that, but we try to keep in that fence, in that fenced-in area because it's
382 clearly marked that it's 299 feet from home plate to that fence.
383
384 Mr. Wright - What's the effective range of the shot?
385
386 Mr. Courtney - That shot is probably 200 feet out there.
387
388 Mr. Wright - So you have an extra hundred feet of safety.
389
390 Mr. Courtney - Yes. I can tell you how it is. On a given night we have
391 deer on the outside of that fence in the cleared area. They stand there and look
392 at us. To make them move, you have walk across that grass into the outfield, do
393 this, and then they'll trot off.
394
395 Mr. Wright - Have the deer ever been struck?
396
397 Mr. Courtney - No sir. Never seen one jump. When they come out of
398 that little area of woods, you know, you have to walk over there to make them
399 move. There's no shot going in there, I don't think.
400

401 Mr. Blankinship - Lead-free shot I think is going to be an issue for
402 General Services. But the exact location I think is up to you.
403
404 Mr. Wright - Do you have any problem with us changing number
405 three to say that you will work out an agreement with General Services?
406
407 Mr. Courtney - If that's what we have to do. There are three things
408 here. We are saying number eight shot. Steel shot, of what I've been able to find,
409 number seven is the smallest thing you can get. Bismuth, number six is the
410 smallest. Now you're getting up into bigger shot.
411
412 Mr. Wright - Maybe if you sat down with them and you worked it all
413 out. How many times is this done?
414
415 Mr. Courtney - Twelve nights a year.
416
417 Ms. Harris - Any other questions? I noticed that in the narrative it
418 mentioned parking is off the street. You don't use the parking lot?
419
420 Mr. Courtney - The parking lot. Yes ma'am. What about it?
421
422 Ms. Harris - Okay. I just noticed that in our report it reads off-
423 street parking and I was just wondering because there are plenty of parking lots
424 in and around that area.
425
426 Mr. Blankinship - Off-street just means not parking on the street.
427
428 Mr. Courtney - There is plenty of parking there. There are
429 bathrooms. There are, "No Drinking" signs. Everything else in the conditions is
430 met out there.
431
432 Ms. Harris - Are there any more questions by Board members?
433
434 Mr. Nunnally - You don't have any problem with item number nine
435 about the insurance?
436
437 Mr. Courtney - What we need to do is find out if we're going to be
438 able to use the shells. And then we'll address the insurance.
439
440 Mr. Nunnally - Do you know offhand the limit of the liability insurance
441 you're carrying now?
442
443 Mr. Gregory - My name is Benjamin Gregory. Last name is G-r-e-g-
444 o-r-y. I'm a member of the club and serve on the Board with Jim. We've had
445 insurance all along and we will continue to have insurance, but we have to wait
446 and see what the shell requirements are, and also to take a look at what the

447 facility change is once they start the construction. As far as the insurance it's not
448 going to be an issue. We have a great rating; we've never had any incidents.

449
450 The Chairman asked a question. If you can go back about three slides I can
451 show you where that trailer is going to be because I had to show the insurance
452 company. You had one that showed the parking lot and all. Okay. If you'll take a
453 look at that picture, look at the bottom and look over in the left-hand corner. You
454 see that little piece of pavement? That's the basketball court. That's where that
455 modular unit is going to be. You can see the distance between there and the ball
456 field. The important thing about the ball field is that it's completely fenced in,
457 which is a big plus for us. Everybody that looks at that says wow, this turkey
458 shoot is one of the safest because you can't get out there. You have to walk
459 through the dugouts. We have one entrance. They have to check in through that
460 entrance. And that's when the shell is put in their hand. So they don't even have
461 a shell outside of that fenced-in area, which makes it a very positive thing. And
462 that's what makes the insurance protection that we've had so much better.
463 We've been able to get that without any issues because of the safety features
464 that we have.

465
466 Ms. Harris - Did you have one million dollars' worth of insurance?
467

468 Mr. Gregory - We've had one million dollars' worth of insurance, yes
469 ma'am. The only thing we have to change now is that we have to add the County
470 to it. We have to get their okay, which means they have to send an adjustor out
471 and a rate experiencer [sic], and he has to come out and look at it again and
472 take a lot of the same pictures you have right here. Go back and show them
473 because now there are going to be two insureds instead of one insured. And
474 then, of course, there will need to be a signature from the County saying that this
475 only pertains to the six to nine, but that's something we have to work out again
476 with General Services. That's not an issue for you all, I don't think; I think it's with
477 them.

478
479 Ms. Harris - Six to nine, are you talking about the hours of
480 operation?
481

482 Mr. Gregory - Six to ten, I meant.
483

484 Ms. Harris - Okay. Just wanted to be sure we were on the same
485 page.
486

487 Mr. Gregory - Generally we're done by nine. Six to ten are the
488 hours, but generally we're done by nine.
489

490 Ms. Harris - Are there any more questions by Board members?
491 Thank you for your information. Is there anyone else who wishes to speak to this
492 case? Mr. Courtney, do you have any additional comments?

493
494 Mr. Courtney - No ma'am.
495
496 Ms. Harris - Thank you so much.
497
498 Mr. Courtney - Thank you.
499
500 Ms. Harris - That concludes this case.
501
502 **[After the conclusion of the public hearings, the Board discussed the case**
503 **and made its decision. This portion of the transcript is included here for**
504 **convenience of reference.]**
505
506 Ms. Harris - What is your ruling on this particular case?
507
508 Mr. Wright - I move we approve this application. I think to change
509 condition number three—.
510
511 Mr. Blankinship - My suggestion, Mr. Wright, is that we strike the words
512 beginning with "number eight shot," so that rather than specifying either the size
513 or the composition of the shot we just end that sentence with something like, "low
514 powered two-and-three-quarter-inch shells containing shot as approved by the
515 Department of General Services."
516
517 Mr. Wright - I think he was on board with that, too.
518
519 Mr. Blankinship - He's going to have to be. It is the County's property,
520 so he's not just dealing with the Board as a regulator.
521
522 Mr. Wright - With that change on condition three I move we
523 approve it on the grounds that it will not adversely affect the health, safety, or
524 welfare of the persons on the premises or in the neighborhood; nor unreasonably
525 impair an adequate supply of light and air to the adjacent property; nor increase
526 congestion in the streets; nor increase public danger from fire or otherwise
527 unreasonably affect public safety; nor impair the character of the district; nor be
528 incompatible with the general plans and objectives of the official Land Use Plan;
529 nor be likely to reduce or impair the value of buildings or property in surrounding
530 areas. And it will be substantially in accordance with the general purpose and
531 objectives of this Chapter.
532
533 Mr. Bruce - I second.
534
535 Ms. Harris - Motion by Mr. Wright, seconded by Mr. Bruce that we
536 approve this case with the amended condition three. Is there any discussion on
537 this motion? All in favor say aye. All opposed say no. The ayes have it; the
538 motion passes.

539

540 After an advertised public hearing and on a motion by Mr. Wright, seconded by
541 Mr. Bruce, the Board **approved** application **CUP2011-00014, EASTERN**
542 **HENRICO RURITAN CLUB's** request for a temporary conditional use permit
543 pursuant to Section 24-116(c)(1) of the County Code to conduct a turkey shoot
544 at 3808 Nine Mile Road (Parcel 806-723-4768), zoned A-1, Agricultural District
545 (Varina). The Board approved the use permit subject to the following conditions:
546

547 1. Hours of operation shall be limited to 6:00 pm to 10:00 pm on Fridays,
548 October through December, and on the Wednesday before Thanksgiving Day,
549 2011 and 2012. This permit shall expire on December 31, 2012.
550

551 2. No firearm shall be discharged within 300 feet of any lot occupied by a
552 dwelling, or within 300 feet of any building other than buildings on the same
553 parcel, or across any road or street.
554

555 3. [AMENDED] The turkey shoot shall only involve the use of shotguns no larger
556 than 12 gauge and low powered (2-3/4") shells containing shot approved by the
557 Department of General Services.
558

559 4. The land shall be clearly posted to show where shooting will occur.
560

561 5. Sufficient off-street parking shall be provided for all cars visiting the premises.
562

563 6. No alcoholic beverages may be consumed on the site during the turkey shoot.
564 A sign to this effect must be conspicuously posted in the immediate vicinity of the
565 shooting area. No person under the influence of alcohol, as defined in Section
566 18.2-266 of the Code of Virginia, may be permitted in the shooting area.
567

568 7. Restrooms shall be provided.
569

570 8. This use permit shall not be effective until the applicant and the County enter
571 into a license agreement or memorandum of understanding, which shall include
572 an indemnification and hold harmless clause in favor of the County, its elected
573 officials, employees, agents and volunteers.
574

575 9. The applicant shall provide general liability insurance in the minimum amount
576 of \$1 million per occurrence, \$2 million aggregate, naming the County of Henrico
577 as an additional insured. This coverage shall be primary to the additional
578 insured and to any self-insurance or insurance afforded to the County of Henrico.
579

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

581 Negative: 0

582 Absent: 0

583
584

585 [At this point, the transcript continues with the public hearing on the next
586 case.]

587
588 **CUP2011-00015 BRENT T. BUSHNELL** requests a conditional use
589 permit pursuant to Section 24-95(i)(4) of the County Code to build a detached
590 garage in the side yard at 1021 Dinwiddie Avenue (University Heights) (Parcel
591 757-741-3306), zoned R-2, One-family Residence District (Tuckahoe).

592
593 Ms. Harris - All persons who wish to speak to this case please
594 stand and raise your right hand and be sworn in.

595
596 Mr. Blankinship - Do you swear the testimony you're about to give is
597 the truth and nothing but the truth so help you God?

598
599 Ms. Harris - Please state your name and spell your last name.

600
601 Mr. Bushnell - It's Brent Bushnell and it's B-u-s-h-n-e-l-l.

602
603 Mr. Blankinship - Pull the microphone a little closer.

604
605 Ms. Harris - State your case, please.

606
607 Mr. Bushnell - Yes. We would like to build a garage. We've recently
608 moved to the University Heights area and we're very lucky to find such a large lot
609 in the area. Where I moved from I had a garage and I have workshop. I work
610 with wood and clay. We had a couple of ideas on building the garage but this
611 was probably the most suitable area. We wanted to build it detached from that
612 side of the house because primarily we have a sunroom on the side. If we did an
613 attached garage on the side it would basically defeat the whole idea of having a
614 sunroom; it would block it all in and make it dark. And we have a nice treeline on
615 that easement side towards Patterson, so we could basically nestle it closer to
616 Patterson, still push it away from the house, keep the treeline, and then also use
617 the garage as a buffer for sound in the backyard.

618
619 We didn't really want to put it in the back of our lot because it does get kind of
620 mushy back there. I'm also kind of concerned about security. It's about an acre
621 lot in that area, which is pretty strange. But the soil gets pretty wet and pretty soft
622 towards the very far back of our area where we would possibly be able to build it
623 without the appeal.

624
625 And also the ease of movement from the house to the garage off of this area.

626
627 In the future we possibly will be constructing a breezeway from our house over to
628 the garage, if we can build it on this site. We also think that it would add a great
629 deal of curb appeal to our home, having it off of that edge. I do have some

630 additional photos; I don't know that they've been submitted. It shows the way it
631 would look from the street on the Dinwiddie Avenue side.

632
633 Ms. Harris - Do you have some photos you want to pass around?
634

635 Mr. Bushnell - I would.

636
637 Ms. Harris - You have to speak through the microphone so we can
638 hear you, please.

639
640 Mr. Bushnell - The color photo is basically a sketch-in of what it
641 would look like after. The black-and-white photos, I have a before and after, how
642 it would look from Dinwiddie Avenue. From Patterson Avenue it's probably going
643 to be pretty obscured by the treeline that's in the easement. Since we just moved
644 into this area we were very lucky and we do plan to stay there for a long period of
645 time. I like keeping it close to the house for security reasons and for ease of
646 movement to and from the house.

647
648 Mr. Wright - Mr. Blankinship, if you put a breezeway from the
649 house to the garage, what does that do to the setbacks?

650
651 Mr. Blankinship - If the breezeway is ten feet wide or wider then it
652 becomes a part of the dwelling and you wouldn't be able to do that probably
653 because of the side yard setbacks. But a narrower breezeway wouldn't—.

654
655 Mr. Bushnell - That would be down the road, if we choose to do that.
656 I don't think it would really be necessary for a while, but my wife does tend to like
657 that look.

658
659 Mr. Wright - How much further would you have to move it back
660 from where it's located to be in the backyard?

661
662 Mr. Blankinship - About twenty feet.

663
664 Mr. Bushnell - What we wanted to currently do is have it be pushed
665 to the edge, to the eastern edge of the sunroom and then push it as far as we
666 can to the edge of the building envelope. That way if we do put a breezeway in,
667 the breezeway would come and basically line up with the inside corner of the
668 sunroom and the house. We primarily want to use that as a sound barrier as
669 well. Where we were previously living we had our house as our sound barrier
670 from where we lived on Glenside Drive and it's a substantial change once you
671 have that structure in place.

672
673 Mr. Witte - How are you going to access the garage? Where is
674 the driveway going to be?
675

676 Mr. Bushnell - There are two plats on here. You can see there is a
677 give-back on that corner lot where Patterson was adjusted years ago. Towards
678 the back you see a small gravel drive coming in. There's a way of seeing that,
679 the rear of the property. Pull up the site plat. Okay. You see in the upper left-
680 hand corner you have a small gravel drive. We'd probably just wrap that around
681 and bring it back towards the edge of the house. Just basically along that route.
682 We're going to keep a narrow drive. There is not going to be a whole lot of
683 access from vehicles coming and going from that area because this is going to
684 be my workshop and sculpture studio. So no vehicles are going to be kept in
685 there.

686
687 Mr. Witte - So you're going to access that from Patterson
688 Avenue.

689
690 Mr. Bushnell - Yes.

691
692 Mr. Witte - Not from the circular drive.

693
694 Mr. Bushnell - Correct. It's a very unique lot and I don't know if there
695 are too many like this.

696
697 Mr. Wright - Is that basically what you do now, you come in from
698 Patterson Avenue?

699
700 Mr. Bushnell - No. We can. We can use that rear access road. It
701 carries all the way around the lot, but it's dirt except for that section of gravel
702 right now that comes in probably about twenty-five feet or so. But right now we
703 just use the turnaround in front of the house, the horseshoe in the front of the
704 home.

705
706 Mr. Bruce - What causes me some concern is that you're coming
707 in from Patterson Avenue. There are no driveways on what would be the south
708 side of Patterson Avenue all the way up to Parham Road. And now you're
709 creating another turn off Patterson Avenue that's very close to the turnoff to the
710 bank, the Bank of America down there.

711
712 Mr. Bushnell - I believe the bank is another three or four hundred
713 yards down the road. Could there be some sort of a reflector system or some
714 kind of system that calls that driveway as a private drive or are you concerned
715 that it's possibly going to lead a driver to want to make that turn in there and not
716 really understand that it's not a—

717
718 Mr. Bruce - My concern is the amount of traffic on Patterson
719 Avenue during the day. It's a main thoroughfare from east to west. I know at 5:00
720 p.m. coming in it is a racetrack. Another car turning off of Patterson Avenue, I'm

721 just concerned about the safety factor. How much trouble would it be to come off
722 your existing driveway or from Dinwiddie?

723
724 Mr. Bushnell - It would require some substantial construction and
725 alteration to our front driveway area. There would have to be some grading done.
726 I'd have to take a number of the trees down just to get access up into that side. I
727 think it would maybe ruin the look of the front of the home. I really can't see a
728 good way of doing that from the front of the yard.

729
730 Mr. Wright - If you moved it back twenty feet—

731
732 Mr. Blankinship - The driveway would be short.

733
734 Mr. Wright - He wouldn't be here, though.

735
736 Mr. Blankinship - Right.

737
738 Mr. Wright - He could come in off of Patterson Avenue and we
739 wouldn't have any control over it. Would we?

740
741 Mr. Blankinship - The Board would not, no. I don't know whether VDOT
742 or Public Works has any control over that. If there's already an existing entrance
743 they may not.

744
745 Mr. Wright - Is there already an existing entrance?

746
747 Mr. Bushnell - Mmm-hmm. That was a give-back. They had
748 preserved the previous drive that was there. From what I was able to
749 determine—or what I was informed is that if we build anywhere in the back that
750 would be the driveway. It would be off that little gravel road from Patterson.

751
752 Surprisingly, though, that little driveway coming off of here has much better
753 visibility pulling out than actually the top of the hill at Dinwiddie. If you're pulling
754 out of Dinwiddie Avenue onto Patterson, since it on that rise, you have cars
755 coming up from the eastbound side and you can barely see them until the last
756 second.

757
758 Mr. Bruce - Which way would your garage doors face?

759
760 Mr. Bushnell - I'm going to do a gable and doors. It would be two
761 gable and doors facing the rear of the property. I think that that would be the
762 easiest way for me to not have to alter my yard or really do a whole lot of
763 landscape changes and wreck the natural beauty that we have back there. This
764 would let me keep the gravel driveway towards the rear of the garage as narrow
765 as possible because I would like to preserve as much of my backyard as
766 possible.

767
768 Mr. Witte - Mr. Bushnell, are you aware that if you pushed it back
769 twenty feet you wouldn't have to be here at all, you would just file for the permit
770 and move on?
771
772 Mr. Bushnell - I am.
773
774 Mr. Witte - Okay.
775
776 Mr. Bushnell - We really wanted to be able to have that opportunity
777 in the future to do the small breezeway and also use it as a sound buffer for
778 being on our back deck or our patio, if we put it in at some point. And just the
779 way that it would line up for visibility purposes from Dinwiddie and from the
780 house that this would be the most optimal location that we could find.
781
782 Ms. Harris - Any more questions by Board members? Thank you,
783 Mr. Bushnell. We're going to hear from the other side and then you can come
784 back for rebuttal.
785
786 Mr. Bushnell - Okay. And I'm sorry my general contractor couldn't be
787 here today; he's on vacation. I'm a little new to this process.
788
789 Ms. Harris - Anyone else who wishes to speak to this case please
790 come forward. State your name and spell your last name, please.
791
792 Mrs. Mundle - Hi. Mrs. Mundle. And my last name is spelled capital
793 M-u-n-d-l-e.
794
795 Ms. Harris - What is your first name, please?
796
797 Mrs. Mundle - Iris. I-r-i-s. I live across the street. My address is 1014
798 Dinwiddie. We are both corner houses. Many years before I moved to Dinwiddie,
799 two lanes were added to Patterson Avenue, taking land from both of the end
800 houses. I have lived in my home for thirty-two years. The traffic, as one of your
801 Board members said, is extremely busy at all times of the day. There is an
802 existing small gravel entrance into the back of my neighbor's property, but there
803 are lots of trees—there are less trees now since the last hurricane—but it is a
804 very tree area, very beautiful area. I think a garage with two doors would take
805 away from the street, that part of Dinwiddie Avenue. There are no driveways,
806 unattached or attached. In our section of Dinwiddie Avenue, all the way down,
807 there are long driveways up to the houses. Mr. Bushnell has a very small little
808 drive in and out.
809
810 I'm opposed, too, because there are so many trees. Once you get the two-door
811 garage it would be a crowded area and it would change the essence of the area.
812 There are old houses. The lot appears to be a large lot, but it is really not that

813 large. It's very treed. I've had several of the trees from that lot fall into my
814 driveway during very bad weather. I'm opposed. I can understand his wanting a
815 driveway—I noticed he has a truck and cars—but I prefer that it would be in the
816 back of his yard. He would probably have to do some landscaping to get rid of
817 some of the evergreens and trees that are there. But then we would not have to
818 look at it.

819

820 There are no carports or garages on that end of Dinwiddie. I would like all of you
821 to visit our area; it's beautiful. We want it to remain that way and I think a boxed
822 unattached garage would take away. I am directly across the street and I would
823 not want to look at it.

824

825 Mr. Wright - Mrs. Mundle, do you realize he could move it back
826 twenty feet and put it right in there?

827

828 Mrs. Mundle - You need to see his lot. It seems as though there is
829 lots of land, but it is not lots of land however he would move it. He does have a
830 deck in the back. And a garage with the deck would really make it a little crowded
831 back there. The woman that lived there died and I've been on the property quite
832 a number of times. It is not as much room in the back as one would think there
833 is. I'm here to say a garage, maybe not a two-door—one door or smaller. We all
834 have light sheds in the back of our property and what have you. But I don't want
835 it to look sort of non-urban or non-rural. We don't want it to look urban. We would
836 like it to look like it looks now.

837

838 Mr. Witte - He only has to move it back maybe from me to you—
839 that's twenty feet.

840

841 Mrs. Mundle - It's going to be very crowded.

842

843 Mr. Witte - He can do that without us approving it by just moving
844 it back maybe from me to you, leaving it in the same position, same line on the
845 property, just move it back twenty feet.

846

847 Mrs. Mundle - Not have the garage? I'm just saying that
848 aesthetically I think it would be crowded looking, even if he moved it back
849 because his backyard is not a large backyard.

850

851 Mr. Witte - According to the plan here and plat, you won't be
852 looking at the garage doors; they'll be on the other side.

853

854 Mrs. Mundle - What I would like to see him do—

855

856 Ms. Harris - You need to speak into the microphone, please, Mrs.
857 Mundle.

858

859 Mrs. Mundle - What I would like to see him do before he would build
860 a garage is take down some of those maybe sixty-year-old trees that are hanging
861 across Dinwiddie Avenue. I wanted to come today and let you know how I feel.
862 There was a driveway entering Patterson Avenue onto my property when I first
863 bought the house. And I think I was burglarized three times by the accessibility of
864 cars coming in and out of Dinwiddie, into Patterson and out of Dinwiddie. I don't
865 know whether or not that would be a problem. Because of the heavy trucks and
866 what have you that come into Dinwiddie, we would like for VDOT repave. It's a
867 much-traveled area. I don't know if you have any other questions for me. I don't
868 have a garage on my property. I have a very large yard, too.

869
870 Ms. Harris - Two questions. How many acres of land do you
871 have?

872
873 Mrs. Mundle - I don't think any of the yards are exactly an acre, but
874 they're basically the same. I'm on the hill; he's lower than the hill. But looking at
875 us from Dinwiddie Avenue the layout of the property is very aesthetically
876 beautiful. I was fortunate enough to work with one of the women whose father-in-
877 law built University Heights. It's a very nice area of Henrico.

878
879 Ms. Harris - Another question. You don't think that the breezeway
880 that he eventually plans to build would add to the beauty of the neighborhood?

881
882 Mrs. Mundle - It would add no beauty because the little room—it
883 was a former porch and it was closed in. If you add something to that porch and
884 have a garage, to me it would be crowded.

885
886 Ms. Harris - Are there any more questions by Board members?
887 Thank you very much.

888
889 Mrs. Mundle - Thank you very much.

890
891 Ms. Harris - Mr. Bushnell, do you care to make any more
892 comments?

893
894 Mr. Bushnell - I just wanted to assure—

895
896 Ms. Harris - Excuse me. Is there anyone else who wishes to
897 speak to this case?

898
899 Mr. Bushnell - I just want to make sure my neighbor knows that I do
900 want to preserve the natural beauty of that area. If I move my garage to any
901 other part of the yard I'm going to have to take down a number of trees. If I can
902 take this location where it's currently at, I won't have to take any trees down that
903 would really alter the way it looks from the road. This is my first large purchase
904 with my wife and I would like to spend potentially the next thirty or forty years in

905 this location. And I want to keep it close to my house to have that ease of access
906 from my home so that I can continue to enjoy it and create things on my own as
907 a hobby. And also the security of having that garage fairly close. I don't want to
908 put it in the back of my property where there's the potential for someone to come
909 in and rob me. That is a concern.

910
911 I just want to assure everybody that I definitely recognize the natural beauty of
912 University Heights. It's a wonderful area and I want to preserve it. With the way I
913 can configure this garage I'm really hoping to preserve that and add to the value
914 of the property. I just want to assure everyone that I'm doing this with the best
915 intentions of not altering the natural beauty of this property. It is a very unique
916 property. I don't want to alter it a big deal by putting the garage in. I want to do it
917 with as minimal an impact as possible.

918
919 And I understand that yes, that gravel driveway is in the back and the visibility
920 often can be seen as an issue. But it's actually much better visibility seeing
921 towards the west of Patterson Avenue, vehicle oncoming, than it actually is
922 pulling off of Dinwiddie Avenue itself.

923
924 That's about all I have.

925
926 Ms. Harris - Thank you very much. That concludes this case.

927
928 **[After the conclusion of the public hearings, the Board discussed the case**
929 **and made its decision. This portion of the transcript is included here for**
930 **convenience of reference.]**

931
932 Ms. Harris - What is your pleasure on this case?

933
934 Mr. Witte - I make a motion we approve it. I don't see where it's
935 going to affect the health, safety, or welfare of any of the residents. I think it's not
936 going to affect the aesthetic nature of the area as much as taking down some of
937 those sixty-year-old trees. From looking at the plat, there are lots of driveways on
938 the other side of Patterson Avenue. This will be the only one on this side, but I
939 don't think with only the resident using it it's going to create much problem.

940
941 Mr. Wright - I'll second that motion.

942
943 Ms. Harris - Moved by Mr. Witte, seconded by Mr. Wright that this
944 case be approved. Is there any discussion on this motion? All in favor say aye.
945 All opposed say no. The ayes have it; the motion passes.

946
947 After an advertised public hearing and on a motion by Mr. Witte, seconded by
948 Mr. Wright, the Board **approved** application **CUP2011-00015, BRENT T.**
949 **BUSHNELL's** request for a conditional use permit pursuant to Section 24-
950 95(i)(4) of the County Code to build a detached garage in the side yard at 1021

951 Dinwiddie Avenue (University Heights) (Parcel 757-741-3306), zoned R-2, One-
952 family Residence District (Tuckahoe). The Board approved the use permit
953 subject to the following conditions:

954

955 1. This use permit applies only to the construction of a detached garage in the
956 side yard. All other applicable regulations of the County Code shall remain in
957 force.

958

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

964

965 3. The structure may not be used for dwelling purposes and may not contain any
966 cooking facilities.

967

968 4. The structure shall be setback a minimum of 22 feet from the existing
969 Patterson Avenue right-of-way.

970

971

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

973 Negative: 0

974 Absent: 0

975

976

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

979

980 **CUP2011-00016 JOHN W. WRAY AND CATHERINE S. ROLFE**
981 request a conditional use permit pursuant to Section 24-95(i)(4) of the County
982 Code to allow accessory structures in the front/side yard at 9480 Hoehns Road
983 (Parcel 765-759-1344), zoned A-1, Agricultural District and R-3AC, One-family
984 Residence District (Conditional) (Brookland).

985

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

988

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

991

992 Ms. Harris - Please state your name and your case.

993

994 Mr. Waring - My name is Mark A. Waring—W-a-r-i-n-g. I'm with
995 Bain Waring Builders. We are the general contractor and builder of a proposed
996 house on this property. We are seeking to build a net zero house where we will

997 try to have the house generate as much electricity as it uses over the course of a
998 year. We have asked for permission to install two solar arrays on trackers, as
999 well as allow a shed that's existing on the property to remain.

1000

1001 In reviewing the staff's comments, we agree a hundred percent with their
1002 comments and also agree with the conditions that they put with this.

1003

1004 Ms. Harris - In the proposal the panels are placed in the side yard.
1005 How far from the neighbor's house would the panels be?

1006

1007 Mr. Waring - The side is a little difficult to really understand on this
1008 house. I guess if we were looking at the side yard, which would be, Mr.
1009 Blankinship, in line with the shed and also the lower end of the lot. That would be
1010 the side yard?

1011

1012 Mr. Blankinship - The front is along Hoehns Road. So everything
1013 between Hoehns Road and the front of the dwelling is the front yard. The rear is
1014 pretty much shown by the dashed line there where it joins the subdivision.
1015 Everything else is the side.

1016

1017 Mr. Waring - This is a heavily-treed property and the location that
1018 we have identified is probably the best location in order to track the sun across
1019 its whole exposure during the day. Anywhere else, just about, we will have a
1020 problem with trees impacting the ability of the solar panels to collect.

1021

1022 Mr. Witte - You say track. These panels actually move to follow
1023 the sun?

1024

1025 Mr. Waring - Yes sir. They're very similar in size and scope to the
1026 ones that are on the corner of Staples Mill and Hungry Spring. They're actually a
1027 little bit less tall than that one is.

1028

1029 Ms. Harris - Did you place that one there?

1030

1031 Mr. Waring - No ma'am.

1032

1033 Ms. Harris - Did you answer the question how far these panels will
1034 be from the neighbor?

1035

1036 Mr. Waring - From the nearest neighbor that can actually see it
1037 they look to be eight-nine feet from their rear yard and that house has, it looks to
1038 me, about a thirty-five-foot rear yard setback. So it's a substantial distance, over
1039 120 feet from their yard.

1040

1041 Mr. Wright - Are there trees between that location and that
1042 neighbor?

1043
1044 Mr. Waring - Yes sir. The whole area is surrounded by trees. The
1045 area in which we're proposing to do it is actually—I call it the north forty; the
1046 homeowners call it the orchard area. It's a separate area where there are apple
1047 trees, a pecan tree, some garden areas, and some more trees plants. There will
1048 be no less than what's there now and more will be planted.
1049
1050 Mr. Wright - That would be to the back of the neighborhood it's
1051 closest to.
1052
1053 Mr. Waring - Yes sir.
1054
1055 Ms. Harris - Are you going to cut down any trees? We know that it
1056 has to have access to the sun.
1057
1058 Mr. Waring - No. Where we are now we won't need to remove any
1059 trees at all.
1060
1061 Ms. Harris - Any more questions from Board members? Thank
1062 you. We'll see if anyone else wants to speak to the case.
1063
1064 Mr. Waring - Thank you.
1065
1066 Ms. Harris - Is there anyone else who wishes to speak to this
1067 case? If not, that concludes this case.
1068
1069 **[After the conclusion of the public hearings, the Board discussed the case**
1070 **and made its decision. This portion of the transcript is included here for**
1071 **convenience of reference.]**
1072
1073 Ms. Harris - Is there a motion on this case?
1074
1075 Mr. Witte - I also make a motion to approve this one. Once
1076 again, I don't think it's going to affect the health, safety, or welfare of any of the
1077 residents or the neighbors. In general, I think it's a good process for nature.
1078
1079 Mr. Wright - I'll second that motion.
1080
1081 Ms. Harris - Moved by Mr. Witte, seconded by Mr. Wright that this
1082 case be approved. Is there any discussion on this motion? All in favor say aye.
1083 All opposed say no. The ayes have it; the motion passes.
1084
1085 After an advertised public hearing and on a motion by Mr. Witte, seconded by
1086 Mr. Wright, the Board **approved** application CUP2011-00016, **JOHN W. WRAY**
1087 **AND CATHERINE S. ROLFE's** request for a conditional use permit pursuant to
1088 Section 24-95(i)(4) of the County Code to allow accessory structures in the

1089 front/side yard at 9480 Hoehns Road (Parcel 765-759-1344), zoned A-1,
1090 Agricultural District and R-3AC, One-family Residence District (Conditional)
1091 (Brookland). The Board approved the use permit subject to the following
1092 conditions:

1093

1094 1. This use permit applies only to the installation of two pole-mounted solar
1095 panels in the side yard of a one-family dwelling. All other applicable regulations
1096 of the County Code shall remain in force.

1097

1098 2. Only the improvements shown on the plot plan filed with the application may
1099 be constructed pursuant to this approval. Any additional improvements shall
1100 comply with the applicable regulations of the County Code. Any substantial
1101 changes or additions to the design or location of the improvements will require a
1102 new use permit.

1103

1104

1105 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5

1106 Negative: 0

1107 Absent: 0

1108

1109

1110 **[At this point, the transcript continues with the public hearing on the next**
1111 **case.]**

1112

1113 Ms. Harris - We're going to go to the deferred case, CUP2011-
1114 00012, Susan Mills.

1115

1116 **CUP2011-00012 SUSAN W. MILLS** requests a conditional use permit
1117 pursuant to Section 24-12(e) of the County Code to allow a noncommercial
1118 kennel at 9738 Laurel Pine Drive (Laurel Pines) (Parcel 771-760-0658), zoned
1119 R-4, One-Family Residence District (Brookland).

1120

1121 Mr. Wright - Madam Chairman, before we get into that I'd like to
1122 address a legal issue that I think has a lot to do with this case.

1123

1124 In March of 2011, the Community Maintenance Division of the County issued a
1125 Notice of Violation to Ms. Susan W. Mills for operating a kennel without a
1126 Conditional Use Permit. In order to cure this alleged violation, Mrs. Mills came to
1127 the County Planning Office and was advised—as they normally do—that she
1128 would have to apply for a Conditional Use Permit pursuant to Section 24-12(e) of
1129 the County Code to allow a non-commercial kennel at a residence at 9738 Laurel
1130 Pine Drive in Henrico County, which she did.

1131

1132 Section 24-12 provides for conditional uses permitted by special exception.
1133 Those would be granted by this Board. Paragraph (e) of that section provides,

1134 and I quote, "Non-commercial kennels for the keeping," I emphasize that word,
1135 "of animals by the occupant of the property."
1136

1137 In his evaluation with his write-up submitted to the Board of Zoning Appeals for
1138 this application, Mr. Blankinship states, and I quote, "While Mrs. Mills cares for
1139 seven feral cats, she does not keep them on her property." After reviewing all of
1140 the testimony, I agree with Mr. Blankinship. County Inspector Jeff Atkinson, who
1141 was instrumental in having the Notice of Violation issued to Mrs. Mills, testified at
1142 the May hearing on this application that the cats in question are feral cats.
1143 Webster's Dictionary defines feral as "undomesticated, existing in the wild state."
1144

1145 It is clear from the testimony at the May hearing on this application that the cats
1146 in question are feral cats and that Mrs. Mills has no control over them. They do
1147 not stay in her home or in any enclosure she has. She has *no* control over them;
1148 they live in the wild. She does not keep them. Since Mrs. Mills does not keep
1149 these cats and the provision of the County Code under which this application
1150 was filed provides for a non-commercial kennel for the *keeping* of animals by the
1151 occupant of the property, this application was filed in error. Therefore I move that
1152 this application be dismissed since it should not have been allowed to have been
1153 filed in the first place.
1154

1155 Ms. Harris - Motion has been made to dismiss this case. Do I hear
1156 a second?
1157

1158 Mr. Witte - I'll second it.
1159

1160 Ms. Harris - Motion by Mr. Wright, seconded by Mr. Witte that this
1161 case be dismissed. Are we ready for questions or discussion? Mr. Witte.
1162

1163 Mr. Witte - One of the conditions says that they shall be kept on
1164 their own property at all times, which is impossible, as Mr. Wright stated. And as
1165 long as Ms. Mills doesn't try to keep them or control them, they're wild animals.
1166 It's no different than if she fed a raccoon or a possum or any other kind of animal
1167 that comes in. So from my standpoint she's just feeding wild animals.
1168

1169 The other side of that is she did put her name on the cats as owner. She had
1170 them cared for by the SPCA, which indicates that she does have some type of
1171 relationship with the cats. She does feed them; she's admitted to that. But I don't
1172 think that she can own the cats anymore than she could conceivably control
1173 raccoons or other wild animals.
1174

1175 Mr. Wright - The reason I moved to dismiss this application rather
1176 than to deny it is if we deny it we're assuming that she would be in violation and
1177 then the County would then have the wherewithal to enforce whatever they could
1178 enforce.
1179

1180 I take the position that it should not have been filed to begin with. She was put in
1181 this position; she didn't do it voluntarily. She had to go to the office because she
1182 was given a notice that she could be prosecuted if she didn't do something to
1183 cure it. So by dismissing it we are putting her back into the position where it
1184 never happened. And if there is something that needs to be worked out on this
1185 issue, it's a much broader and deeper issue than this Board should be involved
1186 with. It's a County issue. It should be handled between the SPCA and the
1187 County.

1188

1189 Ms. Harris - Are there any more comments by Board members?

1190

1191 Mr. Witte - I do want to make one more comment. I do
1192 sympathize with the other residents in the neighborhood. I know wild cats and
1193 any animals can be a nuisance and spread disease and whatever else—walk on
1194 your cars. But I just don't see where we have the authority here to rule on this
1195 other than to dismiss it.

1196

1197 Ms. Harris - I was not at this meeting, the last meeting, but I did
1198 read the minutes very carefully. And I did a little research on what *The*
1199 *Washington Post* said about TNR colonies. It was talking about the trap, the
1200 neuter, the return colonies as it pertained to cats. It's saying the jury is still out.
1201 There are places where it's working and there are places where it is not working.
1202 To me, if there is an instance of where it's not working, I think it's in Henrico
1203 County in this particular neighborhood because clearly some of these cats have
1204 been a nuisance to the neighbors. I'm not sure that the Board at this juncture can
1205 do anything about it. I remember even as a child that I was told if you don't feed
1206 the wild animals they'll go away. So common sense tells us that if we keep
1207 feeding them they're going to be a nuisance to someone, even though they're
1208 loved by the occupant of the property.

1209

1210 I don't think we solve anything with this particular motion; I just think we simply
1211 said that this is not the place to solve it.

1212

1213 Mr. Witte - And the other residents still have the option of having
1214 the County trap them and remove them if they come on the other people's
1215 property.

1216

1217 Ms. Harris - Someone mentioned in testimony last month that the
1218 County does have a leash law that pertains to dogs. There is not such a law
1219 pertaining to cats. So maybe that's something the Board of Supervisors might
1220 consider. Those are my comments. Are there any more comments? Are we
1221 ready to vote on this?

1222

1223 Mr. Blankinship - I'll just point out, Madam Chairman, that I did set at
1224 each of your places an e-mail from Mrs. Starr. Mrs. Starr is here if you have
1225 questions.

1226
1227 Ms. Harris - All right. We thank you for the staff report. I know you
1228 did a lot of work and you did your homework. I didn't know if you wanted to share
1229 that with us for the benefit of the minutes.
1230
1231 Mr. Blankinship - No ma'am. I think the statutory definitions are there
1232 for you to look at and arrive at your own conclusions. Mr. Wright and I kind of
1233 independently arrived at more or less the same conclusion. I think the Board
1234 should either approve a conditional use permit to keep animals on the property
1235 or not approve a conditional use permit. I wouldn't want to see you in that in-
1236 between place where I felt you were last month.
1237
1238 Ms. Harris - All right. Are we ready to vote? All in favor of
1239 dismissing this case say aye. All opposed say no. The ayes have it; the motion
1240 passes.
1241
1242 After an advertised public hearing, **CUP2011-00012, SUSAN W. MILLS**, has
1243 been **dismissed**.
1244
1245 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
1246 Negative: 0
1247 Absent: 0
1248
1249 Ms. Harris - Now let's look at the minutes from the last meeting.
1250 Though I was not here, I do have quite a few questions and maybe you can
1251 explain them. If you would take out your minutes and turn to the back pages.
1252 Look on page ten, line 440. Four hundred and thirty-nine says most of—should it
1253 be "us" use the driveway?
1254
1255 Mr. Bruce - I don't really recall what Mr. Fields said.
1256
1257 Ms. Harris - Do you think that's just a typo?
1258
1259 Mr. Bruce - Add us.
1260
1261 Ms. Harris - Add the word "us."
1262
1263 Mr. Wright - Clearly said that most of the people that live there.
1264
1265 Ms. Harris - It could. Anyway, there seems to be some—.
1266
1267 Mr. Blankinship - We'll go back and listen to the recording and see if
1268 we can pick it up.
1269
1270 Ms. Harris - Page sixteen, line 719. I just noticed a discrepancy
1271 between the address on Mechanicsville Pike and the address on 719. Now he

1272 might have said that. 3300 Mechanicsville Pike and in the transcript it said 5500.
1273 Are we there?
1274
1275 Mr. Witte - We're there.
1276
1277 Mr. Wright - You see 3300 in the motion.
1278
1279 Ms. Harris - Right. So 719 should probably be 3300, right? The
1280 next one is on page 774. I'm sorry; line 774, page 18. I'm sorry. Mr. Blankinship I
1281 think it's just a matter of having an inspector come out to make everything?
1282
1283 Mr. Wright - I think he said make sure everything.
1284
1285 Ms. Harris - I would think he said that, too. Page 25, line 1125.
1286 Take care of them you think?
1287
1288 Mr. Witte - Care of them.
1289
1290 Ms. Harris - Page 34, line 1125. The word, "here" was omitted. Do
1291 you see it? The word "take."
1292
1293 Mr. Witte - The first and second words.
1294
1295 Ms. Harris - Okay. On page 34, line 1498.
1296
1297 Mr. Wright - That's a typo.
1298
1299 Ms. Harris - Okay.
1300
1301 Mr. Wright - Car should be care.
1302
1303 Ms. Harris - Taking care.
1304
1305 Mr. Witte - Were you an English teacher and did you grade
1306 papers?
1307
1308 Ms. Harris - I graded papers.
1309
1310 Mr. Bruce - I think she was my teacher.
1311
1312 Ms. Harris - Well, I had instructions to read the minutes carefully,
1313 so....
1314
1315 Mr. Blankinship - Not that carefully.
1316

1317 Ms. Harris - So that's what I did. On page 36—almost done. Okay,
1318 line 1628. It should be "their" instead of "there." Page 38, line 1692. I think that
1319 should be a white cat rather than a wild cat.

1320
1321 Mr. Wright - It is a white cat. It was a white cat.

1322
1323 Ms. Harris - That's what I thought. And on the same page 38, line
1324 1706. At "even given time." I think it should be "any given time." See that? And
1325 page 39, line 1762 we have Mr. Wright and then Mr. Nunnally.

1326
1327 Mr. Nunnally - You were talking to me, weren't you.

1328
1329 Mr. Witte - I think that's correct.

1330
1331 Ms. Harris - Come on down to 1768. This is my last one. I think
1332 the word "at" —. All right, okay. Those were mine. Any more corrections? Can I
1333 have a motion to approve the minutes as corrected?

1334
1335 Mr. Witte - As corrected.

1336
1337 Mr. Bruce - Second.

1338
1339 Ms. Harris - Motion by Mr. Witte, second by Mr. Bruce. Any
1340 questions on the motion? All in favor of approving the minutes as corrected say
1341 aye. All opposed say no. The ayes have it; the motion passes.

1342
1343 On a motion by Mr. Witte, second by Mr. Bruce, the Board **approved as**
1344 **corrected** the **Minutes of the May 26, 2011** Henrico County Board of Zoning
1345 Appeals meeting.

1346
1347 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
1348 Negative: 0
1349 Absent: 0

1350
1351 Ms. Harris - Is there any more business before us today?

1352
1353 Mr. Wright - I move we adjourn.

1354
1355 Mr. Witte - I second that.

1356
1357 Ms. Harris - Motion by Mr. Wright, seconded by Mr. Witte that we
1358 adjourn. All in favor say aye. All opposed say no. The ayes have it; the motion
1359 passes.

1360
1361
1362

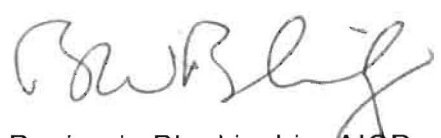
1363 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
1364 Negative: 0
1365 Absent: 0

1366
1367 The meeting is adjourned.
1368

1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383



Helen E. Harris
Chairman



Benjamin Blankinship, AICP
Secretary