

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY**
3 **ADMINISTRATION BUILDING IN THE GOVERNMENT CENTER AT PARHAM**
4 **AND HUNGARY SPRING ROADS, ON THURSDAY MARCH 23, 2017 AT 9:00**
5 **A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
6 **DISPATCH MARCH 6, 2017 AND MARCH 13, 2017.**
7

Members Present: Dennis J. Berman, Chairman
William M. Mackey, Jr., Vice Chairman
Gentry Bell
Helen E. Harris
James W. Reid

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

8
9 Mr. Berman - Good morning. Welcome to the March 23, 2017
10 meeting of the Henrico Board of Zoning Appeals. I ask for those who are able to
11 please stand and join us in the Pledge of Allegiance.

12
13 Thank you, please be seated. Our Board secretary, Mr. Blankinship, will now
14 read you our rules.

15
16 Mr. Blankinship - Good morning, Mr. Chair, members of the Board,
17 ladies and gentlemen, the rules for this meeting are as follows: Acting as
18 secretary, I'll call each case. And as I'm speaking the applicant is welcome to
19 come down toward the podium. We will then ask everyone who intends to speak
20 to that case to stand and be sworn in. Then a member of the staff will give a brief
21 introduction to the case. And then the applicant will present their case. Then
22 anyone who wishes to speak in favor will have an opportunity. And then anyone
23 who wishes to speak in opposition will have an opportunity. After everyone has
24 had an opportunity to speak, the applicant and only the applicant will have an
25 opportunity for rebuttal.

26
27 After the Board has heard each case, they will close that public hearing and
28 proceed to the public hearing on the next case. They will render all of their
29 decisions at the end of the meeting. So if you wish to hear their decision on a
30 specific case, you can either stay until the end of the meeting, or you can check
31 the Planning Department website—we usually get it updated within an hour or so
32 after the meeting—of you can call the Planning Department this afternoon.
33

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

37

38 Mr. Chairman, we do have one request for deferral this morning, which is
39 CUP2017-00011, Ronnie's BBQ.

40

41 **CUP2017-00011** **RONNIE'S BBQ** requests a conditional use permit
42 pursuant to Section 24-116(d)(1) of the County Code to hold a festival at 2097
43 New Market Road (Parcel 810-690-4480) zoned Business District (B-3) (Varina).

44

45 Mr. Blankinship - Would you like to hear from Mr. Logan on that?

46

47 Mr. Berman - Yes, please.

48

49 Mr. Logan - Ladies and gentlemen, good morning. My name is
50 Darryl Logan. *Logan* is L-o-g-a-n. I am with Ronnie's BBQ, the best barbecue in
51 I'd like to say Virginia. If you haven't tried us yet, come check us out.

52

53 I'd like to entertain any questions you guys may have, or would you like me to
54 kind of—

55

56 Mr. Blankinship - If you'd briefly explain the need for the deferral.

57

58 Mr. Logan - Okay. The need for the deferral is this is our first
59 festival that we're attempting to put on. In the process of doing that, we've run
60 into—not any obstacles, but learning lessons and things that we realize we need
61 more time for. So what we'd like to do is ask the Board if we can have some
62 additional time. We want to defer this to May 20th, which would actually be right
63 around our true two-year anniversary, which is May 15th when we opened up. So
64 our two-year anniversary would be May 20th, which is the date that we're asking
65 for continuance to, which I believe puts us on the docket for April 27th? I believe
66 that's the next date.

67

68 Mr. Blankinship - Unfortunately, we didn't get word of this until
69 yesterday, so we weren't able to notify the neighbors or anybody else. So if
70 anyone is here to speak, they may still want to have the opportunity to speak to
71 the case. I don't know if the Board wants to hold the public hearing and then just
72 defer everything until next month and then hold a second hearing.

73

74 Mr. Logan - I am prepared for any questions anybody in the
75 audience may have or as well as you guys.

76

77 Mr. Berman - Okay. Well thank you, Mr. Logan. Is anybody present
78 to speak on this application? With no one present, do I hear a motion for
79 deferral?

80
81 Ms. Harris - I have a question.
82
83 Mr. Berman - I'm sorry. Questions from the Board.
84
85 Ms. Harris - Mr. Logan, are you still planning to have it on April the
86 22nd?
87
88 Mr. Logan - No ma'am. We're going to defer that date so it's going
89 to be a different date, ma'am. It's be May the 20th.
90
91 Ms. Harris - May the 20th.
92
93 Mr. Logan - Yes ma'am.
94
95 Mr. Berman - Any further questions from the Board? Do I hear a
96 motion for deferral to our April session?
97
98 Mr. Bell - I move that we defer it to the April session.
99
100 Mr. Berman - We have a deferral from Mr. Bell. Do I hear a second?
101
102 Mr. Reid - Second.
103
104 Mr. Berman - All those in favor signify by saying aye. Any opposed?
105 None opposed; motion carried. You have your deferral Thank you, Mr. Logan.
106
107 Mr. Logan - Thank you guys for the opportunity. Look forward to
108 seeing you guys again on the twenty-seventh.
109
110 Mr. Berman - As do we. Thank you. Mr. Secretary, can we hear our
111 first case, please?
112
113 **CUP2017-00005 WESTWOOD RACQUET CLUB** requests a
114 conditional use permit pursuant to Section 24-12(b) of the County Code to add
115 lights to the existing tennis courts at 6200 West Club Lane (Parcel 769-740-6529)
116 zoned One-Family Residence District (R-3) (Brookland).
117
118 Mr. Blankinship - Would everyone who intends to speak to this case
119 please stand and be sworn in. Raise your right hands, please. Do you swear the
120 testimony you're about to give is the truth, the whole truth, and nothing but the
121 truth so help you God? Whoever is representing the applicant, if you would come
122 on down toward the podium. Mr. Gidley, you can begin.
123

124 Mr. Gidley - Thank you, Mr. Secretary. Good morning, Mr.
125 Chairman, members of the Board. Please bear with me. I've been under the
126 weather for most of the week.

127
128 The Westwood Club was established in 1956. Since this time, a total of eight use
129 permits have been approved for the improvements to the site. The club is
130 surrounded by a number of established single-family neighborhoods that together
131 comprise the Westwood community. The exception to this is the Richmond
132 Medical Park, which is located along the northeastern boundary of the club. You
133 can see the club here and the neighborhood around it. This is the Richmond
134 Medical Park here on the northeast side.

135
136 The Westwood Club currently has a total of 13 tennis courts, 6 of which are lit.
137 These six are located at the northeastern corner of the property. This is looking
138 north towards Broad Street up here. The six lit tennis courts are right here. As
139 you can see, a lot of them are up against the Richmond Medical Park, which is
140 located here.

141
142 The club is requesting permission today to place lights on four tennis courts that
143 are located at the southeast corner of the property. You can see those here. That
144 would be the four courts right here. These are beside South Crestwood Avenue,
145 which runs to the east and Fitzhugh which runs to the south of the site. And they
146 are close to five residential dwellings. The courts that are currently lit stay open
147 to 10 p.m., which is what the club is also requesting today with this request.

148
149 Evaluation. As far as the zoning, the property is zoned R-3, One-Family
150 Residence District, and it's designated semi-public on the Land Use Plan.
151 Private, non-commercial recreation areas are permitted in the R-3 District with a
152 conditional use permit and are consistent with the Land Use Plan's designation.

153
154 With regard to substantial detrimental impact on nearby property, as noted, six of
155 the club's courts are currently lit. The proposed lights are from a concealed
156 source fixture, a shoebox style, if you will, and are LED lights.

157
158 Is this the most up-to-date site plan?

159
160 Mr. Blankinship - There was one received yesterday. This is not the
161 one received yesterday.

162
163 Mr. Gidley - Okay. The Planning Department, typically against a
164 residential area, wants to have light be no more than a half a foot candle against
165 residences. We noted that in the staff report and conveyed that to the Westwood
166 Club. The electrician has worked quite a bit to try to bring the total down. As of
167 early this week, he had a new site plan where the total did come down quite a bit.
168 It wasn't at half a foot candle exactly on the property line, but it had been reduced
169 quite substantially. He indicated the only way to get it down to half a candle

170 would be to build an 18-foot tall wall or something like that, which he doubted the
171 neighbors wanted.

172
173 I indicated I that appreciated the effort that's been put in. As I said, it's come
174 down a substantial amount. There is a street here on the side before you get
175 over to the residences. With the new site plan for the lighting, given the street
176 next to it and the efforts they've made, I'm fairly comfortable with what's being
177 proposed at this point as far as the lighting levels. I think they've worked real
178 hard and done what they can to bring it down.

179
180 Several residents of the surrounding neighborhoods have contacted the Planning
181 Department to express concern over this request. While most residents of
182 Westwood would not see significant impact from this request, those who live
183 directly across the road would undoubtedly notice some change. Four e-mails
184 were included in your staff report, including one from the owner at 5912 Fitzhugh.
185 That's this house right here, which is arguably the most impacted of the
186 residences out there.

187
188 The resident here, she expressed concern over glare from the lights along with
189 yelling and cursing during certain matches. She also indicated the existing lighted
190 courts occasionally stay lit past the 10 p.m. shut-off time. She's requesting the
191 Board have the lights shut off at 9 p.m. each night.

192
193 Staff's position is, as noted in the staff report, we're not opposed to the request
194 as long as steps are taken to mitigate the impact on the residents from the
195 lighting, from its intensity. We made several suggestions. You should have the
196 latest copy before you where it's come down quite a bit. So I think they have
197 made a good faith effort there.

198
199 As far as the lights, staff is recommending they be allowed to stay on until 10
200 p.m. on Friday nights and Saturday nights, which are weekend nights in effect.
201 And then on Sunday nights through Thursday nights have the lights go out at 9
202 p.m. because those nights are when people have to get to bed, they have to get
203 their children to bed early and so on. To me, when you're bringing the lights
204 down into an area away from an office park and into a residential area, arguably
205 that's a good compromise and balance between two appropriate interests there.
206 So that's what was recommended in the staff report.

207
208 In conclusion, the Westwood Club has been at this location since 1956. With the
209 growth of the club comes some challenges for both the club and the
210 neighborhood. As long as the club can stand by the proposed lighting change
211 and the hours are acceptable to the neighbors, staff can recommend approval of
212 this request.

213
214 Thank you for bearing with me.
215

216 Mr. Berman - Thank you, Mr. Gidley. And also thank you again for
217 coming in this morning; I know you don't feel well. We appreciate it. Are there
218 any questions for Mr. Gidley from the Board? I do have one. Do you have the
219 latest light study available?

220
221 Mr. Blankinship - We have it in the office, Mr. Berman. I'm sorry, I don't
222 think we printed it and brought it down this morning.

223
224 Mr. Berman - Okay, thank you. In the meantime, that lighting study,
225 what did they do to mitigate? Did they reposition the lighting or did they put the
226 shielding on the back?

227
228 Mr. Gidley - I'll let the electrician speak to that. He said they did
229 any number of things to try to get it down as much as humanly possible.

230
231 Mr. Berman - Okay. We'll ask them when they stand. If there are no
232 other questions, let's move on to the applicants, if you could please approach.
233 State your name into the mic.

234
235 Mr. Carleton - Good morning. My name is Blake Carlton. C-a-r-l-e-t-
236 o-n. I am the general manager of Westwood Club.

237
238 Mr. Berman - Good morning.

239
240 Mr. Matthews - I'm Ben Matthews. It's M-a-t-t-h-e-w-s. I'm with Metro
241 Electrical. We're the electrical contractor that will be installing the lights.

242
243 Mr. Berman - Thank you. Feel free to give us some info, and then
244 we're going to ask you some questions.

245
246 Mr. Carleton - I think Paul did a nice job. I appreciate Paul coming in
247 as well since he's been sick. Our membership has grown. We really feel the need
248 to provide some lights for our members to continue to participate in the activities
249 after hours. Primarily this will occur April through October, so it's not even the full
250 year. We've worked really, really hard to mitigate the lights and understand that
251 we are part of a community. We're doing our best to try to balance both the
252 needs of the residents and the needs of our members. I give Ben a lot of credit
253 for his work on constantly trying to get those foot candles in a space that's
254 acceptable to the County. I don't know if he wants to talk quickly about the
255 newest revision?

256
257 Mr. Matthews - The one that I think you guys saw, but were just
258 handed a copy, the difference in that lighting plan verses the other one that we
259 put out was, there's an existing fence along the board in the courts that has a
260 windscreen on it. That windscreen is fairly—it's very see-through. That change
261 there would require Westwood Club to install a black opaque windscreen. And

262 that's how we were able to get those light levels down so far. That's the
263 difference from the other plans that we'd come up with.

264
265 The only other thing I would add to that is kind of the function of the lights. I think
266 you guys have copy of the little brief description that I gave. We'll have a timer to
267 set at 9 p.m. or 10 p.m., whatever time that the lights will turn off. But the lights
268 will only be on when players are present on the courts. There is an individual
269 timer on the courts. So if only one of those courts is being used, only one of the
270 courts will be lit. It's not like they come on at 7 p.m. every night and turn off at 9
271 or 10 p.m. It would only be when they're being used.

272
273 Mr. Berman - Thank you. Questions from the Board?

274
275 Ms. Harris - Yes. Mr. Matthews, you mentioned the opaque
276 screens. Are they an eyesore to the community?

277
278 Mr. Matthews - It's a dark black mesh that will go over the existing
279 chain link fence.

280
281 Mr. Carleton - We currently have a black—it's more of a gray so it
282 still can be seen. So I don't think it would be that much of a change in terms of an
283 eyesore.

284
285 Ms. Harris - Okay.

286
287 Mr. Blankinship - How tall is that screen?

288
289 Mr. Carleton - The screen or the fence?

290
291 Mr. Blankinship - Both.

292
293 Mr. Carleton - The fence is ten.

294
295 Mr. Matthews - The fence is ten feet. The existing screen is seven
296 feet. So we're proposing to change the screen to a darker color that will block
297 more light as well as it will go the full height of the fence.

298
299 Mr. Blankinship - Okay. So the residents will see some change from
300 seven feet to ten feet.

301
302 Mr. Matthews - Yes. I mean the seven feet is centered on the fence
303 right now, so you have about a foot and a half at the top and a foot and a half at
304 the bottom that has no screen.

305
306 Mr. Blankinship - And is that right at the property line?
307

308 Mr. Matthews - No. It's set back from the property line quite a bit. On
309 that drawing, they kind of show where the existing fence is and where that screen
310 is. It's right on the edge of the court.
311

312 Mr. Blankinship - Paul do you have a photo? Oh, okay.
313

314 Mr. Matthews - Yes.
315

316 Mr. Blankinship - Where you see a gap between the top of that screen
317 and the top of the fence, you'd just be filling that in and it would be a little darker.
318

319 Mr. Matthews - As you can see in the picture, it's pretty see-through.
320 So it would be obviously less see-through and a little bit darker.
321

322 Mr. Blankinship - Okay. Thank you.
323

324 Ms. Harris - Mr. Carleton, do you have some tennis courts that are
325 not going to be receiving lighting?
326

327 Mr. Carleton - Yes ma'am.
328

329 Ms. Harris - I think there are three, right?
330

331 Mr. Carleton - Yes ma'am.
332

333 Ms. Harris - Okay. Why did you leave those out?
334

335 Mr. Carleton - From a budgetary standpoint. And at the same time,
336 we also wanted to be mindful to take small steps. We know we need some more,
337 but we don't know if we need all of them. So this felt like a nice, happy medium,
338 in terms of being a member of that community, adding these, and leaving the
339 others as they are.
340

341 Ms. Harris - I have one more question. We received letters from
342 the neighbors. Some of them are against the entire idea and some who are
343 opposed to 9:00 on Monday through Thursday and then 10 for Friday and
344 Saturday. But in one of the letters or a couple of the letters, they talked about the
345 loud music and the language, the foul language. You know the conditional use
346 permit, if we do get complaints it might cause us to have to revisit this permit. So
347 we do encourage you to be good neighbors. So what do you do to kind of—
348

349 Mr. Carleton - When we get those complaints, we address those
350 directly with the members. Because of our court reservation system, we know the
351 members that were on those courts. So if it continues to be a problem—
352 oftentimes other members don't want to hear that language primarily. So we'll get
353 complaints. And so we have, to my knowledge—I'm relatively new in this role, but

354 to my knowledge, if it continues to occur we will ask members to terminate their
355 membership or put them on some sort of court suspension where they can't
356 participate in the court activities. And that usually nips it right in the bud. People
357 sometimes will be people, but we work really hard to be proactive when those
358 things are brought to our attention to deal with them.

359

360 Mr. Berman - Any other questions?

361

362 Mr. Bell - She covered several things that I was going to ask,
363 but I'm going to add to them a little bit. What's the reason you want the lights now
364 instead of leaving it like it is?

365

366 Mr. Carleton - Again, at this point we need the extra court space for
367 our members. We have a waiting list, so we have members that can't participate
368 because of the time. And so by adding these lights, we'll be able to add two to
369 three hours' worth of playing time per day, which is really, really good for our
370 members. And it alleviates a problem that we're having in that our courts are all
371 full.

372

373 Mr. Reid - What time of the year are you most active?

374

375 Mr. Carleton - Yes sir. It's April/May through October/November in
376 Richmond just because of the weather and the temperature. So now is when
377 people really start to get the bug to get back out and play, especially to play
378 outside. A lot of people grew up playing outside. So this is when our busiest
379 season occurs.

380

381 Mr. Bell - In terms of complaints, are you aware of any
382 complaints from the neighbors around there?

383

384 Mr. Carleton - I don't know if I'm to speak to that. John?

385

386 Mr. Blankinship - No. I'm sorry, sir, were you sworn in at the beginning?

387

388 Mr. Jennings - Yes I was.

389

390 Mr. Blankinship - You were. Oh, okay.

391

392 Mr. Jennings - John Jennings. I'm the maintenance director at
393 Westwood Club. Last name is J-e-n-n-i-n-g-s. Could you repeat the question one
394 more time?

395

396 Mr. Bell - Are you aware of any complaints from the neighbors
397 in the area? To you all, not to us.

398

399 Mr. Jennings - I'm not aware of any other than what you have
400 received.

401
402 Mr. Bell - Have you made any attempt, any of you, to contact
403 the neighbors other than the signs that were put up.

404
405 Mr. Carleton - I know we participate in one of the Westwood, I think,
406 community groups. They hold their meetings in our club. We have a staff
407 member who's not here this morning that is a part of that group. Again, it's part of
408 my plan as being the new guy—this is my fourth day, so. Nothing like being
409 thrown to the wolves. I really appreciate that. They didn't tell me that in the
410 interview process.

411
412 But one of my plans is to find out some of those neighbors that sent those
413 e-mails and go have some conversations with them. So that is an active step I'm
414 going to take in the next few weeks. But as of right now, obviously, I haven't
415 heard any complaints and I also haven't had any conversations with the
416 neighbors.

417
418 Mr. Bell - Thank you.

419
420 Mr. Mackey - Since you're so new, Mr. Carleton, I'll direct my
421 questions to Mr. Jennings. I noticed in the paperwork that you said the new
422 lighting is going to look very similar to the existing lighting?

423
424 Mr. Jennings - Yes.

425
426 Mr. Mackey - That shoebox style. I'm not very familiar with the
427 lighting, but when I went out there I saw them. Do they have any type of shielding
428 on them? Is it on the lens or is this something that will come down from the
429 edge?

430
431 Mr. Jennings - They don't have any on them, do they?

432
433 Mr. Matthews - No, the existing lights do not have any shields on
434 them. The proposed lights, if you look at that plan—let me look at my copy so I
435 can reference it correctly. The lights that are in purple are the lights that border
436 that road, and those would have the shields on them which will help prevent light
437 from going back onto the road. The other lights, if we put shields on them, it
438 really wouldn't do any good. It only prevents light from coming from the back of
439 the fixture.

440
441 Mr. Mackey - I got you. Okay. Thank you.

442

443 Mr. Berman - Any other questions from the Board? I have a few
444 quick ones. With regards to shielding, is it on the back of each of the lights and/or
445 sides?

446
447 Mr. Matthews - It is on the back of the lights.

448
449 Mr. Berman - And these new measurements are based on the back
450 shielding.

451
452 Mr. Matthews - Yes. It will probably be hard to do with that small
453 copy, but the purple lights, if you were to look over to the right, they have a
454 legend. If you look at that purple light and that catalogue number it has the shield
455 listed. I apologize.

456
457 Mr. Berman - Okay. I see it. On the timer, can it be overridden by
458 the people on the courts?

459
460 Mr. Matthews - No. There are two timers that we're referring to. The
461 timer on the court is you press it one time and it will turn the lights on for two
462 hours. If you press it again, it will turn the lights off. The 24-hour timer which will
463 control that 10 p.m. or 9 p.m. shutoff, that is located in the storage shed with the
464 electrical panels, and they won't have access to that.

465
466 Mr. Berman - Very good. And you can handle different times for
467 each day of the week?

468
469 Mr. Matthews - Yes.

470
471 Mr. Berman - Do you have a sign posted with court rules?

472
473 Mr. Carleton - Yes we do.

474
475 Mr. Berman - Does it have anything about foul language on there or
476 excessive noise.

477
478 Mr. Carleton - Yes it does.

479
480 Mr. Berman - All right, great. Mr. Gidley may have to address this
481 one, but maybe you'll know. We are guided by our Chapter 24 for the lighting in
482 our Code. I know that the staff had a preference of the one foot candle. But in my
483 experience in similar cases, I thought it was more of a measurement of the one
484 foot candle at ten feet beyond the boundary or a 5 percent bleed back. Is that no
485 longer the case for the measurement? I want to make sure we're using the right
486 measurement.

487

488 Mr. Blankinship - I'm not familiar with either of those standards. We
489 usually use a half a foot candle at the property line.
490

491 Mr. Berman - At the property line. Okay. If there are no other
492 questions . . .
493

494 Mr. Matthews - I did have two more things. The first thing is the time
495 line of this project. I don't think it's ever been mentioned. But the time line of this
496 project is going to be next winter. We can't do it while they're using the courts in
497 the summertime. So our project timeline will be next winter when this project will
498 actually occur.
499

500 The second thing is I have another lighting plan. The lighting plan that I just
501 handed you guys, which I think you guys have, that is our conservative lighting
502 plan. That's kind of our worst case scenario over light levels. There are a lot of
503 things that you can take into account with the elevation changes, reflecting off the
504 boards. I have another copy that I haven't shown anybody, but it's kind of a best-
505 case scenario and our light levels are much lower. So I don't know if you guys
506 want a copy of that. It's one of those things where the projections are computer
507 generated and they're a best guess. That's kind of a worst case and I have also a
508 best case as well.
509

510 Mr. Berman - What's the likelihood that the best case will be reality?
511

512 Mr. Matthews - It's hard to say. I think in the end we're going to end
513 up somewhere in the middle.
514

515 Mr. Blankinship - These things are always approximations.
516

517 Mr. Matthews - Yes.
518

519 Mr. Bell - Have you read the conditions and agree to all of them
520 if this is passed?
521

522 Mr. Carleton - Yes sir, we have.
523

524 Mr. Bell - Thank you.
525

526 Mr. Berman - How tall is the light pole?
527

528 Mr. Matthews - The pole itself is 20 feet. If you can look and see how
529 the arm kinda goes up and then out. That puts us at a total height of 22 feet,
530 which will match the existing poles.
531

532 Mr. Berman - Isn't Chapter 24 citing a 20-foot limit?
533

534 Mr. Blankinship - No sir, it's done case by case.
535

536 Mr. Berman - Okay.
537

538 Mr. Bell - How far apart are each of the poles, roughly. You
539 don't need to be exact.
540

541 Mr. Carleton - I think they would mirror the picture, just to give you
542 an idea. I don't know if we have the measurements laid out.
543

544 Mr. Blankinship - About the length of a tennis court.
545

546 Mr. Bell - I was out there and I saw the height. So that will
547 continue with the same distance all the way around. There won't be any
548 changes.
549

550 Mr. Matthews - Correct, yes. The exact same layout that's on the
551 existing courts, that will go on the lighted courts.
552

553 Mr. Berman - If the lights are 20 feet high, how will putting
554 screening below them block light?
555

556 Mr. Matthews - Our light bleed is not coming from the lights that are
557 directly above the fence. Our light bleed is coming from the lights that are in the
558 center. So as you kind of come out—we're on I think our 18th lighting plan. I have
559 a lighting plan that demonstrates that, but I don't have a copy of it with me. But
560 we pretty much removed the lights along the roadway. We were just trying to
561 mess around with it and see. And we still had that light bleed. So our light bleed
562 is coming from the lights in the middle of the court shining toward the road, not
563 the lights that are actually on the edge of the court because those shine towards
564 the club. By having a taller block on the fence, that's where we're able to cut the
565 lighting down.
566

567 Mr. Berman - Condition 5, is that necessary? Is that not for profit?
568

569 Mr. Blankinship - When we do these use permits that cover a big facility
570 like this, we like to carry forward all the conditions from all the previous
571 approvals. That way when you're doing research on, is there a condition that
572 regulates their hours of operation, you don't have to go through all of the use
573 permits that have ever been approved. So we like to carry forward all of the
574 conditions for the site on each plan.
575

576 Mr. Berman - Ms. Harris?
577

578 Ms. Harris - Yes. Mr. Matthews, you mentioned that you have a
579 plan that no one else has seen?

580
581 Mr. Matthews - Correct.
582
583 Ms. Harris - Will the conditions that we approve, if we should
584 approve them today, cover that change?
585
586 Mr. Matthews - I don't understand that.
587
588 Ms. Harris - Okay. If you look at the conditions pertaining to the
589 lights—have you seen the conditions?
590
591 Mr. Matthews - Yes.
592
593 Ms. Harris - Okay. The new plan that you may propose that may
594 be used, will that be covered under these conditions?
595
596 Mr. Matthews - Yes.
597
598 Ms. Harris - Okay. Thank you.
599
600 Mr. Blankinship - I was going to suggest, Ms. Harris, that we just add
601 language saying—in condition #3, rather than that second sentence just say all
602 exterior lighting shall be shielded direct light away from adjacent property and
603 streets as provided in the lighting study dated yesterday. I'm not sure what this
604 date was. March 22nd.
605
606 Ms. Harris - Mr. Blankinship, he said he has another plan too.
607
608 Mr. Matthews - I think it's more of a scenario. So we ran two different
609 scenarios, this being—what you guys have is the worst case. The best case,
610 obviously, gets us within those requirements just in a better position.
611
612 Mr. Blankinship - What changed it the reflectivity and things like that,
613 not the actual light.
614
615 Mr. Carleton - We didn't actually change anything except just the
616 settings in the program where we can say how much light's bouncing off the
617 ground. There are some elevation differences on the courts. Like you can see
618 there's a hump there. And when you get into trying to cut from .5 foot candles to
619 1 foot candle, that makes a huge difference. I know it's double, but.
620
621 Mr. Blankinship - The actual design of the light fixture has not changed
622 between the two plans.
623
624 Mr. Carleton - Correct.
625

626 Mr. Berman - But it did between the plan in the packet and then this
627 one you put the shielding on.

628
629 Mr. Carleton - Yes, correct.

630
631 Mr. Berman - Okay. Any other questions? Very good. Thank you
632 very much. At this time I'm going to ask if there's anybody who wants to speak to
633 the benefit of this application. Is there anybody who wishes to file a complaint
634 regarding this application?

635
636 Mr. Blankinship - Speak in opposition.

637
638 Mr. Berman - Thank you. Please approach.

639
640 Ms. Holperin-Terrell - Good morning. My name is Maria Holperin-Terrell. H-
641 o-p-e-r-i-n T-e-r-r-e-l-l. I'm a resident of Westwood. I live a few blocks away from
642 the club at 5813 West Club Lane. Although I'm here as a private citizen, I am
643 also vice chair of the Westwood Civic Association.

644
645 I'd like to start off by saying hello, Mr. Gidley. Thank you so much for your
646 information, and also I appreciate the help from the Planning Department.

647
648 I hesitate to say that I am standing here in opposition or want to speak negatively
649 about this request. However, I would like to point out a few things that are of
650 concern to the neighborhood and to many residents there. One you have already
651 addressed, the issues of the lighting and how lighting may bleed or negatively
652 impact the residents in the immediate neighborhood there. So we appreciate that
653 very much.

654
655 Two, noise. Noise has been a problem in the past. The neighborhood association
656 has reached out to the club on various times to talk with them about how we can
657 mitigate this noise that comes across. Mostly the problems occur during special
658 events or tournaments when you have people who are not members of the club. I
659 believe members from sister clubs, other clubs, who are attending these different
660 events at the Westwood Club.

661
662 I would also like to address the fact that there is another issue here which we
663 have worked with the club increasingly just over the past few months with
664 Mr. Brad Jones who was the beverage manager and was acting instead of the
665 general manager position. And that is considerations for parking and for traffic.
666 We have had issues with parking and traffic incidents, increased traffic, and
667 illegal parking that has been occurring. This mostly occurs during special events
668 and tournaments at the club. In fact, the civic association formed a traffic
669 subcommittee to look at this issue. We have worked with the police department
670 for some studies, safety studies, that were done primarily by Henrico County
671 Police and by our community police officer, Officer Bob Augustine. That has now

672 led us to a step which we are in the process of taking, which is requesting a
673 formal safety study.

674
675 So although we are not in opposition to this, we simply want to go on record that
676 we are concerned about any safeguards that might be put in place as far as
677 making sure that the conditions under which this permit is approved are
678 regarding the lighting, that there is respect, and there are safeguards in place for
679 any noise levels that might be occurring which could negatively impact the
680 neighborhood. And we want to point out that there are traffic and safety
681 considerations also that may very well come about because of this variance.
682 Thank you very much.

683
684 Mr. Berman - Thank you very much. Are there any questions from
685 the Board? Thank you.

686
687 Ms. Harris - Ms. Terrell, do you have a copy of the conditions?

688
689 Ms. Holperin-Terrell - No ma'am. I received a copy of the schematic.

690
691 Ms. Harris - Okay. She needs a copy of the conditions.

692
693 Mr. Berman - If there are no more questions, is there anybody else
694 who wishes to speak in opposition to this application? At the time of motion, we
695 would ask the Board later on in the session to entertain possibly another
696 condition in addition to the one Mr. Blankinship has already stated. So we'll
697 discuss that at that time. With regards to public safety. With that, can we please
698 move on to our next application.

699
700 **[After the conclusion of the public hearings, the Board discussed the case**
701 **and made its decision. This portion of the transcript is included here for**
702 **convenience of reference.]**

703
704 Mr. Berman - Do hear a motion?

705
706 Mr. Bell - I move that we accept the conditional use permit
707 based on the fact that the residents had problems with the lighting. I believe that
708 Planning tried to consider those people by adding changes/corrections to the
709 conditions that the recreation center will have to use. I believe the lighting
710 problem was looked at thoroughly and might meet the need. And hopefully they
711 will take care of the noise situation.

712
713 Mr. Berman - Do I hear a second?

714
715 Ms. Harris - I second the motion. And we said we wanted to add in
716 condition #3, as reflected in the plan submitted. Mr. Blankinship, was that
717 yesterday, on March the 22nd?

718

719 Mr. Blankinship - Yes ma'am.

720

721 Ms. Harris - We need to add that to condition #3. Is that okay with
722 Mr. Bell?

723

724 Mr. Bell - Yes, I second that.

725

726 Mr. Berman - In addition, would we want to consider #8 for traffic
727 parking safety compliance or temporary signs during events or something of that
728 nature? There was concern over public safety with traffic and illegal parking. Is it
729 within out boundary to condition it?

730

731 Mr. Blankinship - The only thing applied for were the lights. So I'm not
732 sure that really gives rise to that.

733

734 Mr. Berman - That's why I asked. All right.

735

736 Mr. Blankinship - It sounds like they were working on that.

737

738 Mr. Berman - It was in progress. Okay. So we have heard a motion
739 from Mr. Bell, a second from Ms. Harris including adding to condition #3 for
740 Mr. Blankinship's text. Any further discussion?

741

742 All those in favor signify by saying aye. Any opposed? None opposed; motion
743 carries 5 to 0.

744

745 After an advertised public hearing and on a motion by Mr. Bell, seconded by
746 Ms. Harris, the Board **approved** application **CUP2017-00005, WESTWOOD**
747 **RACQUET CLUB's** request for a conditional use permit pursuant to Section 24-
748 12(b) of the County Code to add lights to the existing tennis courts at 6200 West
749 Club Lane (Parcel 769-740-6529) zoned One-Family Residential District (R-3)
750 (Brookland). The Board approved the conditional use permit subject to the
751 following conditions:

752

753 1. This conditional use permit applies only to the lighting of the four tennis courts
754 along the western side of S. Crestwood Avenue, just north of Fitzhugh Avenue.
755 All other applicable regulations of the County Code shall remain in force.

756

757 2. Only the improvements shown on the lighting plan filed with the application
758 may be constructed pursuant to this approval. Any additional improvements shall
759 comply with the applicable regulations of the County Code. Any substantial
760 changes or additions to the design or location of the improvements shall require
761 a new conditional use permit.

762

763 3. All exterior lighting shall be shielded to direct light away from adjacent property

764 and streets as shown on the lighting plan submitted March 22, 2017.

765

766 4. The lights shall be on automatic timers that shut off at 9:00 p.m. Sunday night
767 through Thursday nights and at 10:00 p.m. on Friday and Saturday nights. The
768 lights shall not be on after these hours.

769

770 5. The recreation center shall be operated on a nonprofit basis and be open only
771 to members and their guests.

772

773 6. All trash shall be in closed containers with regular pickups, the containers shall
774 be properly screened, and the area shall be kept clean.

775

776 7. The row of Glossy Privet (*Ligustrum lucidum*) shown on the site plan for
777 conditional use permit UP-66-71 shall be filled in with new plantings, with the
778 exception of the existing paved walkway. All landscaping shall be maintained in a
779 healthy condition at all times. Dead plant materials shall be removed within a
780 reasonable time and replaced during the normal planting season.

781

782

| | | |
|------------------|------------------------------------|---|
| 783 Affirmative: | Bell, Berman, Harris, Mackey, Reid | 5 |
| 784 Negative: | | 0 |
| 785 Absent: | | 0 |

786

787

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

790

791 **CUP2017-00006 ASHLAND BERRY FARM** requests a conditional use
792 permit pursuant to Section 24-116(d)(1) of the County Code to allow a temporary
793 sales stand at 9782 Gayton Road (Parcel 745-745-5844) zoned Business District
794 (B-2C) (Tuckahoe).

795

796 Mr. Blankinship - Would everyone who intends to speak to this case
797 please stand and be sworn in. Raise your right hands, please. Do you swear the
798 testimony you're about to give is the truth, the whole truth, and nothing but the
799 truth so help you God? Thank you. You can come on down toward the podium if
800 you like. Mr. Gidley, if you would present the case.

801

802 Mr. Gidley - Thank you, Mr. Secretary.

803

804 The property in question is at the Gayton Crossing Shopping Center. It is zoned
805 B-2C, Business District (Conditional). It is located south of Quioccasin Road west
806 of Gaskins and north of Gayton.

807

808 The northwestern part of the shopping center, if you look here, this is the site of
809 the old Ukrop's and then Martin's. This is currently vacant right now. So Ashland

810 Berry Farm is requesting permission to operate a temporary sales stand. Its
811 dates would be from April 1st through July 1st, and the hours of operation would
812 be Monday through Saturday, 9 a.m. to 7 p.m., and Sunday 9 a.m. to 6 p.m.

813
814 The stand would consist of a fenced area measuring roughly 40 feet by 72 feet.
815 And it also would include a greenhouse building that's 18 by 40 feet. The
816 improvements would occupy a total of 14 parking spaces. That would leave 97
817 parking spaces for customers and staff. It should not interfere with the operations
818 of the shopping center with regard to parking or people driving through.

819
820 As I said, the main store here right now is currently vacant. The former Martin's
821 store that was also a former Ukrop's store.

822
823 With regard to the Comprehensive Plan and the Zoning Ordinance, a temporary
824 sales stand is first allowed in the B-3 District and must be located at least 200
825 feet from a residential district. The proposed location, as I noted, is zoned B-2,
826 which is one district less, and it is located just over 100 feet from the nearest
827 residential district. As a result, BZA approval is required and it must be a
828 temporary use. A permanent garden center, however, as a principal use, if it was
829 the main use of the property, that would be allowed in the district.

830
831 As far as detrimental impact on nearby property, as you can see here, the
832 parking lot over at this part of the shopping center is currently vacant. So with no
833 tenant in here, staff doesn't really anticipate any negative impact. It may in some
834 way benefit the overall shopping center as well. We have some indication that a
835 tenant will be going into this space eventually. But I've been assured by the
836 management that that would occur after the plant sale folks have department. So
837 there wouldn't be an overlap between the two businesses.

838
839 In conclusion, a garden center is a proposed use. And this portion of the
840 shopping center is vacant and under used at the present time. The proposed use
841 is consistent with the Comprehensive Plan and the Zoning Ordinance. Staff does
842 not anticipate any detrimental impacts. As a result, we can recommend approval
843 subject to the conditions found in the staff report.

844
845 That concludes my presentation. If you have any questions, I'll be happy to
846 answer them.

847
848 Mr. Berman - Thank you, Mr. Gidley. Any questions for Mr. Gidley
849 from the Board?

850
851 Ms. Harris - Mr. Gidley, do we know where the entrance and exit
852 would be?

853
854 Mr. Gidley - Let's see here. This is actually elevated, Ms. Harris.
855 This portion over—let me zoom in a bit too. This is like a terrace here. So when

856 you come into the site, you either come off of Gayton here and go down this
857 entrance and then come on over here. Or you have to come in off of Quioccasin
858 right here where it's much more level. Those are the two most likely places
859 people would enter the site.

860
861 Ms. Harris - Thank you.

862
863 Mr. Berman - Any other questions from the Board? Mr. Gidley, do
864 you know if there will be water supplied to this area to water the plants? I could
865 ask the applicant. I'll ask the applicant because I'm concerned about runoff. Any
866 other questions for Mr. Gidley? Not hearing any, thank you, sir.

867
868 Mr. Gidley - Thank you.

869
870 Mr. Berman - Can we please hear from the applicant. If you could
871 step forward and spell your name into the mic we'd appreciate it.

872
873 Ms. Roberts - Hi. My name is Jodi Roberts. J-o-d-i. Roberts. R-o-b-
874 e-r-t-s.

875
876 Mr. Gustafson - I'm Ken Gustafson. G-u-s-t-a-f-s-o-n.

877
878 Mr. Berman - What are your roles.

879
880 Ms. Roberts - I'm a retail manager.

881
882 Mr. Gustafson - I'm the owner of Ashland Berry Farm.

883
884 Mr. Berman - Thank you. Do you have anything to say to the
885 application?

886
887 Mr. Gustafson - The water, we use a meter off of a fire hydrant. So
888 we're very sensitive to how much water we use.

889
890 Mr. Blankinship - Greenhouses usually are.

891
892 Mr. Berman - Is there any concern for as you use the water that the
893 runoff could create any public hazard?

894
895 Mr. Gustafson - No, no. The parking lot's pretty well sloped, and
896 there's a drain right there. We're very sensitive to runoff.

897
898 Mr. Berman - Thank you. Does the Board have any questions?

899
900 Ms. Harris - Yes. Last year did you have something at Regency
901 Square at Parham Road?

902
903 Mr. Gustafson - Yes we did.
904
905 Ms. Harris - So how do you compare that to this plan?
906
907 Mr. Gustafson - They were different locations. Basically, we used—it's
908 a pole-frame greenhouse, temporary greenhouse and benches that we sit the
909 plants on.
910
911 Ms. Harris - Will it be larger? This one is definitely larger than the
912 other location.
913
914 Mr. Gustafson - This location is—they're pretty much the same size. I
915 think they're shaped different, but they're pretty much the same size.
916
917 Ms. Harris - We saw beautiful pictures in our handout.
918
919 Mr. Blankinship - Yes, put those pretty pictures up. There you go.
920
921 Ms. Harris - We saw beautiful pictures in our handout of just what
922 all can be done. This was not the one I had in mind. It was the one that had all
923 the flowers. I'm just wondering is this a plan or is the way it's going to look?
924
925 Mr. Gustafson - That's actually Chesterfield Towne Center. It is similar
926 to that. We use a little different benching system now.
927
928 Ms. Harris - Okay.
929
930 Mr. Blankinship - But if that's Chesterfield, then ours will be better than
931 this.
932
933 Mr. Reid - Was your location at Regency over there near the
934 Firestone store?
935
936 Mr. Gustafson - It was for two years, and then they moved us down
937 further. And now we're being shifted again.
938
939 Mr. Berman - Any other questions? Thank you very much. Anybody
940 here today to speak in support of the application? Anybody here to speak in
941 opposition to the application? Yes, please proceed. Sir, have you been sworn in?
942 We'll take care of that.
943
944 Mr. Blankinship - Raise your right hand, please. Do you swear the
945 testimony you're about to give is the truth, the whole truth, and nothing but the
946 truth so help you God? Thank you.
947

948 Mr. Graham - My name is Charles Graham. I live directly across the
949 street from this greenhouse proposal. I think this will be the third year that it's
950 been over there. I'm not really against them. The problem is this—it's either
951 Henrico's fence or Raintree's fence, the homeowner association. It's too short. I
952 can't have a barbecue or enjoy my backyard because you can see right into my
953 backyard. And my other neighbors as well. It's been going on for close to 25
954 years with a dispute with Raintree to get something done. They say it's not their
955 fence. It's Henrico's fence. Back and forth. And I'm at 1034 Teakwood Circle
956 there.

957
958 Mr. Blankinship - On the north side, okay.

959
960 Mr. Berman - With all due respect, I'm not sure if it's pertinent to this
961 application, while we're sensitive to your need. We could put you in touch with
962 the appropriate people at Henrico who could help ascertain the ownership of the
963 fence.

964
965 Mr. Graham - It's been going on for—I've been there for 25 years.
966 Been after the association with letters. It's almost to the point of going ahead and
967 getting the lawyer involved. The fence is leaning up against a tree, and a bunch
968 of the sections are all—it's was built in 1973. This is the first subdivision in the
969 West End, Raintree. I can't have a barbecue or have my dogs out, come home
970 from work, sit in the patio. They see all that. And so do my other three or four
971 neighbors right down through there. I'm not against their small business. I want to
972 go on record with that. They've been clean and orderly. No trouble. But it's just I
973 wanted to bring this up for the record.

974
975 Mr. Berman - Thank you, Mr. Graham. Before you leave, if
976 somebody from the Planning Department could please help with a contact, help
977 resolve. Or attempt. Thank you, sir.

978
979 Ms. Harris - Mr. Graham.

980
981 Mr. Berman - Mr. Graham? I'm sorry, Ms. Harris has a question for
982 you.

983
984 Ms. Harris - Hi. Did you have the same problem when Ukrop's
985 was there?

986
987 Mr. Graham - Yes.

988
989 Ms. Harris - Or Martin's? Okay.

990
991 Mr. Graham - When they expanded Ukrop's it got even worse.
992 There used to be—where the berry farm wants to put their place, originally there
993 was a beer and wine hut there. That parking lot used to get like a foot of water in

994 it. They went ahead and let Ukrop's expand completely over with no
995 consideration for us. And then further, either the County or the state drained that
996 whole parking lot across the street with probably—I don't know. I probably could
997 crawl it, the diameter of the concrete pipe going under the road. And it's like
998 World War I trenches back there. It's full of mosquitoes. It's pretty bad on that
999 side. I've taken several of the neighbors and walked from where it says Stone
1000 Mark Circle, all back through there. It's just neglected, and it continues and
1001 continues. The mosquitoes are getting out of control now. There's no relief to it.
1002 Like I said, the thing I think I'm going to have to wind up doing is getting my
1003 attorney involved in it, unfortunately, and spend some money on it.

1004

1005 Ms. Harris - So it's a subdivision problem not just—

1006

1007 Mr. Graham - On a short period of time I was on the board of
1008 Raintree. I specifically got on it to try to get remedy for it. And they don't want to
1009 do anything with it.

1010

1011 Ms. Harris - Okay.

1012

1013 Mr. Graham - They just recently claimed that they're a nonprofit.
1014 Then all of a sudden, the president of the association, they're all getting salaries
1015 now where before they were not. And then they promote his wife to being the
1016 property manager. She pulls down close to \$50,000 out of our association fees,
1017 we're out \$50,000 in the past four or five years to put a sound barrier fence up.
1018 That fence has been up since 1973.

1019

1020 Mr. Berman - Thank you, Mr. Graham. Again, in respect to the other
1021 people here, this is not the right venue. But we'll help you find some information.

1022

1023 Mr. Graham - I just wanted to—that is a distraction when they're
1024 over there. They're going to have more of a problem when a storm comes
1025 through and wipes it out again this summer.

1026

1027 Mr. Berman - Thank you, sir.

1028

1029 Mr. Graham - They have not been a problem for me or the other
1030 neighbors.

1031

1032 Mr. Berman - I hope we can help you out. Thank you very much.
1033 Anyone else speaking in opposition to the application? Hearing none, we'll move
1034 on to the next application.

1035

1036 **[After the conclusion of the public hearings, the Board discussed the case**
1037 **and made its decision. This portion of the transcript is included here for**
1038 **convenience of reference.]**

1039

1040 Mr. Berman - Do I hear a motion? Tuckahoe Magistrate.
1041
1042 Ms. Harris - I move that we approve this conditional use permit. I
1043 think that it does not adversely affect the health, safety, or welfare of the
1044 community. In fact, it might even beautify the community. The problem that we
1045 heard expressed seemed to have been a subdivision problem, not one that
1046 [unintelligible]. So that's my motion.

1047
1048 Mr. Berman - Thank you. We hear a motion from Ms. Harris. Do we
1049 hear a second?

1050
1051 Mr. Reid - Second.

1052
1053 Mr. Berman - I hear a second from Mr. Reid. Any further
1054 discussion? All those in favor of the motion signify by saying aye. Any opposed?
1055 None opposed; motion carries 5 to 0.

1056
1057 After an advertised public hearing and on a motion by Ms. Harris, seconded by
1058 Mr. Reid, the Board **approved** application **CUP2017-00006, ASHLAND BERRY**
1059 **FARM's** request for a conditional use permit pursuant to Section 24-116(d)(1) of
1060 the County Code to allow a temporary sales stand at 9782 Gayton Road (Parcel
1061 745-745-5844) zoned Business District (B-2C) (Tuckahoe). The Board approved
1062 the conditional use permit subject to the following conditions:

1063
1064 1. This conditional use permit applies only to a temporary sales stand for the sale
1065 of plants and related merchandise. All other applicable regulations of the County
1066 Code shall remain in force.

1067
1068 2. Only the improvements shown on the plot plan filed with the application may
1069 be constructed pursuant to this approval. Any additional improvements shall
1070 comply with the applicable regulations of the County Code. Any substantial
1071 changes or additions to the design or location of the improvements shall require
1072 a new conditional use permit.

1073
1074 3. Hours of operation shall be limited to Monday-Saturday, 9:00 am to 7:00 pm,
1075 and Sunday, 9:00 am to 6:00 pm. A sign shall be posted on the greenhouse
1076 stating the hours of operation, prohibiting trespassing and loitering, and providing
1077 emergency contact information.

1078
1079 4. This approval is subject to the conditions proffered with rezoning case
1080 C-079C-79 and the conditions of approval of plan of development POD-094-80
1081 except as modified by this conditional use permit.

1082
1083 5. The temporary sales stand shall be removed from the property no later than
1084 July 1, 2017, at which time this permit shall expire.

1085

| | | | |
|------|--------------|------------------------------------|---|
| 1086 | Affirmative: | Bell, Berman, Harris, Mackey, Reid | 5 |
| 1087 | Negative: | | 0 |
| 1088 | Absent: | | 0 |

1089
1090
1091
1092
1093
1094

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

1095 **CUP2017-00007** **ELLEN BEAZLEY** requests a conditional use permit
1096 pursuant to Section 24-95(i)(4) of the County Code to allow a pool in the side
1097 yard at 2300 Arrington Road (Parcel 760-749-8230) zoned One-Family
1098 Residence District (R-3) (Three Chopt).

1099
1100 Mr. Blankinship - Would everyone who intends to speak to this case
1101 please stand and be sworn in. Do you swear the testimony you're about to give is
1102 the truth, the whole truth, and nothing but the truth so help you God? Thank you.
1103 Come on down towards the podium, if you like. Mr. Madrigal, you may begin.

1104
1105 Mr. Madrigal - Thank you, Mr. Secretary, Mr. Chair, members of the
1106 Board. Good morning.

1107
1108 Before you is a request to allow an inground swimming pool in the side yard of a
1109 one-family dwelling. The subject property is located at the southwest corner of
1110 Arrington and Gunston Road adjacent to the Sweetbrier Park subdivision. The
1111 property is bordered by Interstate 64 on the west and the Three Chop Recreation
1112 complex on the east and south. You can see that here.

1113
1114 The property is an acreage parcel that is not part of the Sweet Briar Park
1115 subdivision, but it is part of the neighborhood. The two-acre lot is improved with
1116 an existing one-story, 1200-square-foot dwelling with open parking, constructed
1117 in 1985. In addition to the dwelling, there's a small shed located in the rear yard.
1118 The remainder of the lot is predominately wooded. Access to the property is by
1119 way of a gravel driveway located off of Arrington Road.

1120
1121 The applicant would like to add approximately 3,000 square feet to the existing
1122 residence and a four- to five-stall attached garage. Their improvement plans
1123 include an approximately 600-square-foot inground swimming pool in the side
1124 yard and volleyball court in the rear yard. Here's the proposed pool and here's
1125 the proposed volleyball court. The addition is all right here. It kind of wraps
1126 around the house.

1127
1128 The property is zoned R-3 and is designated as SR-2 on the 20206 Land Use
1129 Plan. A one-family dwelling is consistent with both the zoning and the
1130 Comprehensive Plan designations. Swimming pools are customary and
1131 incidental to one-family dwellings, although they are typically located in a rear

1132 yard. No detrimental impacts are anticipated with the approval of the applicant's
1133 request.

1134
1135 The property is bounded by Interstate 64 on the west and then the recreation
1136 complex on the east and south. The proposed pool will not be visible from the
1137 public right of way or the adjoining home to the north since it will be located
1138 behind the existing residence and the proposed addition. Although the most
1139 affected property will be the recreation complex, the proposed pool will have
1140 negligible effects on it due to the amount of existing landscaping between the
1141 home and recreation facility.

1142
1143 In conclusion, the proposed use is consistent with the zoning and
1144 Comprehensive Plan designations. No detrimental impacts are anticipated if the
1145 applicant's request is approved. Specific conditions of approval have been
1146 prepared to mitigate any potential detrimental impacts.

1147
1148 Based on the facts of the case, staff recommends approval subject to conditions.
1149 This concludes my staff presentation. I'll be happy to answer any questions.

1150
1151 Mr. Berman - Thank you, Mr. Madrigal. Any Board questions? I
1152 have one. The plat shows that it will be fenced. Is that enough to enter into the
1153 record that it has the required fencing?

1154
1155 Mr. Madrigal - We have a condition that it satisfy Building Code
1156 requirements, I believe, for the fencing.

1157
1158 Mr. Berman - Okay. Thank you. No further questions? Thanks
1159 again. Will the applicants please approach? Good morning.

1160
1161 Mr. Beazley - Hello, good morning. My name is John Beazley. B-e-
1162 a-z-l-e-y.

1163
1164 Ms. Beazley Ellen Maxine Beazley. B-e-a-z-l-e-y.

1165
1166 Mr. Beazley - We're hoping to get this conditional use permit. I don't
1167 think the pool will hinder anybody's view or anybody. My only neighbor is 64 and
1168 a public pool. So I don't think I'm really going to infringe on anybody. And
1169 everything will be fenced in according to standards, actually. So hopefully we'll
1170 have your blessing and we'll get the permit.

1171
1172 Mr. Berman - Thank you. Questions for them from the Board?

1173
1174 Ms. Harris - I was happy to see you address the issue. Normally
1175 we say why put the pool in the side yard. Surely there must be other places. But
1176 with the conservation of the trees, it's a very wooded lot, and the privacy issue, I
1177 can see why you're going this direction.

1178
1179 Mr. Beazley - Yes ma'am, thank you.
1180
1181 Mr. Berman - No further questions? Thank you.
1182
1183 Mr. Beazley - Thank you.
1184
1185 Mr. Berman - Is anybody here today to speak in support of the
1186 applicants? Anybody in opposition to this application wishing to speak? Hearing
1187 none, Mr. Secretary.
1188
1189 **[After the conclusion of the public hearings, the Board discussed the case**
1190 **and made its decision. This portion of the transcript is included here for**
1191 **convenience of reference.]**
1192
1193 Mr. Berman - I move that we approve this conditional use permit for
1194 the pool in the side yard. As per staff it does not impact nearby yards. That's my
1195 motion. Do I hear a second?
1196
1197 Mr. Bell - I second it.
1198
1199 Mr. Berman - We have a motion by Mr. Berman, a second by
1200 Mr. Bell. Any further discussion? No further discussion. All those in favor of the
1201 motion signify by saying aye. Any opposed? None opposed; motion carries 5 to
1202 0.
1203
1204 After an advertised public hearing and on a motion by Mr. Berman, seconded by
1205 Mr. Bell , the Board **approved** application **CUP2017-00007, ELLEN BEAZLEY's**
1206 request for a conditional use permit pursuant to Section 24-95(i)(4) of the County
1207 Code to allow a pool in the side yard at 2300 Arrington Road (Parcel 760-749-
1208 8230) zoned One-Family Residence District (R-3) (Three Chopt). The Board
1209 approved the conditional use permit subject to the following conditions:
1210
1211 1. This conditional use permit applies only to the installation of an in-
1212 groundswimming pool in the sideyard. All other applicable regulations of the
1213 County Code shall remain in force.
1214
1215 2. Only the improvements shown on the plot plan filed with the application may
1216 be constructed pursuant to this approval. Any additional improvements shall
1217 comply with the applicable regulations of the County Code. Any substantial
1218 changes or additions to the design or location of the improvements shall require
1219 a new conditional use permit.
1220
1221 3. The pool shall maintain a minimum 10-foot setback from the existing home
1222 and proposed addition.
1223

1224 4. All exterior lighting shall be shielded to direct light away from adjacent property
1225 and streets.

1226
1227 5. The applicant shall apply for and obtain a building permit prior to starting
1228 construction.

1229
1230
1231 Affirmative: Bell, Berman, Harris, Mackey, Reid 5
1232 Negative: 0
1233 Absent: 0

1234
1235
1236 **[At this point, the transcript continues with the public hearing on the next**
1237 **case.]**

1238
1239 **CUP2017-00008 GILLIES CREEK INDUSTRIAL RECYCLING, LLC**
1240 requests a conditional use permit pursuant to Sections 24-89(c) and 24-103 of
1241 the County Code to develop a wetlands mitigation bank at 5500 White Oak Drive
1242 (Parcels 860-709-5622, 863-706-3470 and 864-704-2093) zoned Agricultural
1243 District (A-1) and Conservation District (C-1) (Varina).

1244
1245 Mr. Blankinship - Would everyone who intends to speak to this case
1246 please stand and be sworn in. Raise your right hands, please. Do you swear the
1247 testimony you're about to give is the truth, the whole truth, and nothing but the
1248 truth so help you God? Thank you. Mr. Gidley.

1249
1250 Mr. Gidley - Thank you, Mr. Secretary.

1251
1252 This is the Gillies Creek site over on the border with New Kent County, just south
1253 of U.S. Route 60. They are developing it currently as a wetlands mitigation bank.
1254 The property at one point was a sand and gravel borrow pit, back in the 1970s.
1255 The first conditional use permit for the current project was issued in 2006, and it's
1256 been renewed a total of five times since. The latest renewal was in March of
1257 2015.

1258
1259 Following internal road improvements, material was extracted from mine #1 and
1260 mine #2. Let's see if I can get that on here. Again, this is north going up here.
1261 The Chickahominy River runs along here, so this is New Kent over here and
1262 Henrico on the west side. Material has been extracted from mines #1 and #2.
1263 These mines have been reclaimed as wetlands.

1264
1265 Plans now call for work to begin on mine #3, located right here, in the next three
1266 to four months. Two years from now, the applicant anticipates this mine will be 75
1267 percent complete. At the present time, there is no timetable for mine #4, so this is
1268 an oncoming project, as it has been for the last several years.

1269

1270 As far as the Comprehensive Plan and the Zoning Ordinance's handling of the
1271 site, it's predominately zoned C-1 Conservation along with A-1 Agricultural
1272 District. The Land Use Plan designation is predominately EPA, Environmental
1273 Protection Area. The wetlands mitigation bank is consistent with both the
1274 Comprehensive Plan and the Zoning Ordinance. Once construction is completed
1275 there should be no substantial detrimental impact on the property or surrounding
1276 property as the site will be preserved as wetlands in the future.
1277

1278 Access to the site is from New Kent County. This is Route 60, otherwise known
1279 as Pocahontas Trail. Patriots Landing subdivision is over here. Access to the site
1280 comes in off Route 60 and crosses a bridge here. When the proposal initially
1281 came forward, there was some concern in New Kent County about truck traffic on
1282 Route 60. Since that time, Henrico, VDOT, and the applicant have worked with
1283 New Kent. The changes made have been in place for a number of years, and
1284 staff is not aware of any complaints since this time.
1285

1286 In conclusion, the work on creating a wetlands mitigation site has been ongoing
1287 since 2006. Two of the four mines have been mined and converted into wetlands.
1288 Work on mine #3 should begin this summer. The proposed use is consistent with
1289 both the Zoning Ordinance and Comprehensive Plan. Staff is unaware of any
1290 complaints regarding this use. As a result, we can recommend approval subject
1291 to the conditions found in your staff report.
1292

1293 This concludes my presentation. If you have any questions, I'll be happy to
1294 answer them.
1295

1296 Mr. Berman - Thank you, Mr. Gidley. Any questions from the
1297 Board?

1298
1299 Mr. Mackey - Yes. Mr. Gidley, I think you've already answered my
1300 question, but you said this is the same type work that has been already done on
1301 mine 1 and mine 2 as far as mitigation?
1302

1303 Mr. Gidley - Yes sir.
1304

1305 Mr. Mackey - And you said you were not aware or have not
1306 received any complaints thus far.
1307

1308 Mr. Gidley - No sir, not since the initial concerns about traffic years
1309 ago.
1310

1311 Mr. Mackey - Okay. All right, thank you.
1312

1313 Mr. Gidley - It's pretty isolated. This is a very large, lowland area.
1314 It takes some doing to get to.
1315

1316 Mr. Mackey - Right. Thank you, Mr. Chair.
1317
1318 Mr. Berman - No further questions. Thank you, Mr. Gidley. Could
1319 the applicant please approach. Say your name into the mic and spell, please.
1320
1321 Mr. Hooker - Good morning, Board members. My name is Randy
1322 Hooker. H-o-o-k-e-r. I'm here today requesting consideration of this use permit.
1323 We're here again asking for renewal. Progress continues at the site. I anticipate
1324 the mining and reclamation of mine 3 will be completed and work may begin on
1325 mine #4 during this term.
1326
1327 We reviewed the 28 conditions set forth in this renewal and have no objections. If
1328 you have any questions regarding the mine operations or the wetland creation,
1329 members of Gillies Creek are here with me today. They can answer any specific
1330 questions you may have.
1331
1332 Mr. Blankinship - Just for the benefit of the new members on the Board,
1333 could you describe the process of converting from the pond to the wetlands?
1334
1335 Mr. Hooker - I can't. I have to defer that to Kelby Morgan. Kelby
1336 can handle that one.
1337
1338 Mr. Berman - Would you like to do that at this time? Thank you.
1339
1340 Mr. Mackey - I had a quick question. I'm new to the Board. There
1341 are a lot of conditions. Are these pretty much the same conditions as you had on
1342 the previous two?
1343
1344 Mr. Hooker - There was one additional condition set forth in this
1345 renewal. It's condition #26. It was regarding trash and debris. We take no
1346 exception to that.
1347
1348 Mr. Mackey - You say you take no exception to removing all the
1349 trash and debris.
1350
1351 Mr. Hooker - Correct. That condition is required to be addressed,
1352 basically, at the closing of this project. So it's not that there's immediate action
1353 required, but they will maintain the site throughout the project.
1354
1355 Mr. Mackey - All right. Thank you, Mr. Hooker. Thank you,
1356 Mr. Chairman.
1357
1358 Mr. Berman - I have one more question. I'm sorry. For condition 22
1359 regarding if there are any problems/cost with the water table, would you take any
1360 exception if we added that it would be at the operator's expense to remediate?
1361

1362 Mr. Hooker - I'll defer that to Gillies Creek and let them answer that
1363 question.
1364
1365 Mr. Berman - Okay, thank you. Good morning.
1366
1367 Mr. Liesfeld - Good morning. My name is Chris Liesfeld. I'm the
1368 general manager at Gillies Creek.
1369
1370 Mr. Mackey - Could you spell that, please?
1371
1372 Mr. Liesfeld - Yes. It's L-i-e-s-f-e-l-d. There was a question about
1373 the operation with filling and the process. What we do is we have—obviously we
1374 have these ponds that we want to fill. The material that we bring in is coming
1375 from contractors. It's material that is generally dirt, concrete, sand, gravel.
1376 Perishable materials as in what the permit says. That material is brought in,
1377 brought to a specific grade. Then from that point, the wetland operation begins,
1378 the actual construction of the wetland project.
1379
1380 Mr. Bell - Then you can sell what's developed, right?
1381
1382 Mr. Liesfeld - Excuse me?
1383
1384 Mr. Bell - Don't you sell once it's developed?
1385
1386 Mr. Blankinship - Sell the credits?
1387
1388 Mr. Bell - The credits?
1389
1390 Mr. Liesfeld - Correct. That's correct.
1391
1392 Mr. Blankinship - Can you explain a little bit about how that works?
1393
1394 Mr. Liesfeld - Right. I'll explain to you the best I can. I may ask
1395 Kelby to come.
1396
1397 Mr. Blankinship - Somebody must know how this works.
1398
1399 Mr. Liesfeld - Right. His expertise is there. Essentially, we are
1400 building wetland credits. Let's say a developer in the area wants to build on a site
1401 which has wetlands on that site. They can purchase wetlands from our
1402 locations—and there's a ratio that's set—in order for that developer to take those
1403 wetlands off of that site. So it's just a take-and-replace. Usually the ratio is more
1404 than what they're taking. We provide a bank. Those wetlands will stay there
1405 forever.
1406
1407 Mr. Berman - So they don't own the land. They just own the credits.

1408
1409 Mr. Liesfeld - Correct.
1410
1411 Mr. Bell - One quick question. It's been answered, I think, but I'll
1412 ask it again. Are you aware of any complaints since the last time?
1413
1414 Mr. Liesfeld - No sir. Only the issue that was brought up about the
1415 entrance.
1416
1417 Mr. Bell - Thank you.
1418
1419 Mr. Reid - Let me ask a quick question. The material that we
1420 had, it mentioned that once you're finished, the site it must be graded to promote
1421 the growth of hydrophilic vegetation. What is hydrophilic vegetation, just out of
1422 curiosity?
1423
1424 Mr. Liesfeld - I will have to defer that to Kelby. It's a technical
1425 question and I think he would be able to answer that.
1426
1427 Mr. Morgan - Kelby Morgan. M-o-r-g-a-n. So when we bring the site
1428 back up, we're converting it to wetlands. That is just simply plants, herbaceous
1429 stuff that grows in a wetlands. Anything you see in a wetlands, that's herbaceous
1430 material that we're creating. That's how we plant it back. So at that end of the
1431 day, the whole site is a conservation easement, and it's all water quality stuff.
1432
1433 Mr. Blankinship - It literally means "plants that love water." *Hydro* is
1434 water.
1435
1436 Ms. Harris - Mr. Chairman, I do have some questions. I thought I'd
1437 give you guys a chance to ask your questions before I asked mine. What is the
1438 average of the—well you said the average depth of the excavation is 15 feet. So
1439 what is the deepest excavation?
1440
1441 Mr. Morgan - The average dept of excavation of 15 feet is
1442 probably—I would say that's from the water surface, so take 8 feet off of that.
1443
1444 Ms. Harris - I mean the deepest.
1445
1446 Mr. Morgan - Probably no deeper than 16 or 17 feet. It's fairly
1447 consistent.
1448
1449 Ms. Harris - Okay. The height of the stockpile, what is the
1450 maximum height of a stockpile? Do you have some stockpile materials on this
1451 site?
1452

1453 Mr. Morgan - We currently do have a little bit of material that's been
1454 taken out that is stockpiled. The height of that is maybe 8 to 10 feet right now. I'm
1455 not sure—we don't stockpile very much. I'm not sure there's any limitation in our
1456 conditions on what the height of a stockpile can be.

1457
1458 Ms. Harris - Right. I know there's no limitation, but in comparing it
1459 to other sites in Varina, we almost can see a mountain of stockpile material. So I
1460 want to be sure that you don't fall into that category. Okay. How far does third-
1461 party offsite debris originate? There are guidelines that you cannot bring it in,
1462 except from so many miles to serve the sites. And I was wondering do you know
1463 the origination of the debris that's coming in?

1464
1465 Mr. Morgan - The origination is not going to be typically any further
1466 than say the city of Richmond just purely because of economics.

1467
1468 Ms. Harris - What we found out to get around that, some people
1469 will bring something to a third-party site and then be in compliance with the
1470 guidelines that we have. So that's why I asked you about the origination. Not
1471 where did it come from, but where did it actually originate. And you're saying
1472 from the city of Richmond.

1473
1474 Mr. Morgan - That's about the furthest distance that anything would
1475 originate that's coming there. Now it could have gotten to the city of Richmond
1476 from somewhere else and we're not aware of that.

1477
1478 Ms. Harris - Okay. Why is it necessary to increase the number of
1479 truck trips for three months? I know you said it might be as many as 56 truck trips
1480 per day for three months. Why is it different from the rest of the year?

1481
1482 Mr. Morgan - When we originally set up this conditional use permit,
1483 we worked with Mr. Blankinship and the Planning Department and we jointly set
1484 up that because the nature of this is periodically there are no trucks coming in for
1485 extended periods of time. And then periodically there's a fair amount of trucks
1486 coming in if someone's bringing a large amount of material in or it's going out. So
1487 that's how we set up that originally to account for that different traffic at different
1488 periods.

1489
1490 Ms. Harris - So there actually days where you do have 56 trips
1491 from trucks?

1492
1493 Mr. Morgan - Yes ma'am.

1494
1495 Ms. Harris - And they still travel according to the guidelines, no
1496 more than two?

1497
1498 Mr. Morgan - Yes ma'am.

1499
1500 Ms. Harris - Okay. All right. Looking at the guidelines, if you come
1501 across any cultural or historical resources or an endangered species, you have to
1502 report it. Have you come across any of those?
1503
1504 Mr. Morgan - We have not.
1505
1506 Ms. Harris - Okay.
1507
1508 Mr. Morgan - We have done a nationwide 27, which kicks off—we
1509 did a historical study on the property originally as part of the core permitting.
1510
1511 Ms. Harris - Okay. And this is my last question. The fencing, does
1512 it go around the entire parcel?
1513
1514 Mr. Morgan - There is no fencing on the parcel.
1515
1516 Ms. Harris - You have no fencing at all.
1517
1518 Mr. Morgan - No ma'am.
1519
1520 Ms. Harris - Okay. Thank you.
1521
1522 Mr. Berman - Thank you, Ms. Harris. Any other questions from the
1523 Board? Hearing none, thank you very much. Is anyone here today to speak in
1524 support of this application? Anyone here today to speak in opposition to this
1525 application? Yes, please approach. Good morning. If you could please say your
1526 name and spell it.
1527
1528 Mr. Cable - My name is Dean Cable. C-a-b-l-e. I live at 5815
1529 White Oak Road. I have two questions. I own the farm there, which is about 100
1530 acres. It runs right to the Chickahominy River. Is this project going to back up any
1531 water onto my farm?
1532
1533 Mr. Blankinship - Did you have other questions besides that one?
1534
1535 Mr. Cable - The other question is, is it going to change the
1536 floodplain, because I have two houses on this piece of property that are this time
1537 not in the floodplain. If you back water on me, I'm afraid that these two places
1538 may end up in the floodplain. That's my concern.
1539
1540 Mr. Blankinship - All right.
1541
1542 Mr. Berman - Thank you, Mr. Cable. Let's see if we can get some
1543 answers to that.
1544

1545 Mr. Morgan - Much like any floodplain. We are responsible. We
1546 cannot increase the floodplain. We cannot fill a floodplain. We will not be backing
1547 up any water. Our next section we're going in now—as you all may be aware—
1548 there are two ponds in the middle. We're not changing the elevation. The water
1549 elevation as it exists currently is our finished grade for the wetlands mitigation
1550 bank. So we are creating wetlands. We are leaving the thing flat. We want it to
1551 stay just like it is now. I don't control the beavers. Other than the beavers, we
1552 have no intent to change the floodplain.

1553
1554 Mr. Cable - Okay. Can I get that in writing?

1555
1556 Mr. Berman - I may address that during motions. But thank you,
1557 Mr. Cable. Do you have any other questions or opposition?

1558
1559 Mr. Cable - That's it.

1560
1561 Mr. Berman - Thank you. Any questions for Mr. Cable from the
1562 Board? Okay, thank you. Any others here to speak in opposition to the
1563 application? I do have one more question, though, Mr. Morgan. For condition #22
1564 I had mentioned earlier, would you have any issue if the Board approved a
1565 modification to include that you would correct any of these problems at your
1566 expense. Right now that's silent.

1567
1568 Mr. Blankinship - That's if your excavation disturbed any water wells of
1569 any of the surrounding properties.

1570
1571 Mr. Morgan - Yes. For some reason I feel like through all the
1572 permits that I have that I'm liable for that somewhere along the way anyway. We
1573 have several permits down there.

1574
1575 Mr. Blankinship - That's the intent of that language, but it's not stated
1576 explicitly.

1577
1578 Mr. Morgan - We would be liable for that.

1579
1580 Mr. Berman - And in addition, alluding to Mr. Cable's opposition,
1581 would you be agreeable to being responsible for any floodplain modification that
1582 would be detrimental to the surrounding area? Exclusive of beavers.

1583
1584 Mr. Morgan - I would not want to add that into any conditions that
1585 we have currently. We are permitted. We have plans from Henrico County to
1586 construct what we're constructing. We have approval through DEQ, through the
1587 Corps of Engineers. Through every agency that there is we have a permit with.
1588 We're using those as our guidelines. So if anything backs up on his property, not
1589 that I think it ever will—there's a swamp between us and him that we can't even
1590 touch. So I can't control anything that happens there. I don't think that we want to

1591 add a condition saying that we're responsible for any floodplain changes on his
1592 property. Just because.

1593
1594 Mr. Berman - Things that could be out of your control.

1595
1596 Mr. Morgan - It could be out of my control or it—yes. We're doing
1597 everything. We're complying with every government agency to do what we're
1598 doing.

1599
1600 Mr. Berman - Okay. Any further questions? Thank you very much.

1601
1602 Mr. Morgan - Yes sir. Hearing none, Mr. Secretary if we could move
1603 on to the next case.

1604
1605 **[After the conclusion of the public hearings, the Board discussed the case**
1606 **and made its decision. This portion of the transcript is included here for**
1607 **convenience of reference.]**

1608
1609 Mr. Berman - Do I hear a motion?

1610
1611 Mr. Mackey - Yes, Mr. Chairman. I move that we approve
1612 CUP2017-00008 for Gillies Creek on the conditional use permit. It seems like
1613 they've been a good environmental steward and haven't had any complaints.
1614 That's my reasoning for making my motion.

1615
1616 Mr. Berman - Thank you. We have a motion from Mr. Mackey. Do I
1617 hear a second?

1618
1619 Ms. Harris - I second the motion. I thought we were going to add
1620 to it about—

1621
1622 Mr. Mackey - Oh yes.

1623
1624 Ms. Harris - —at the owner's expense.

1625
1626 Mr. Berman - At #22, tacking onto the end of the paragraph at the
1627 operator's expense or the owner's expense.

1628
1629 Ms. Harris - And I think that when it comes to the checklist of what
1630 we expect, I think they pass the test.

1631
1632 Mr. Berman - Okay, very good. So that is a second by Ms. Harris
1633 with an addition to condition #22. Any further discussion? All those in favor of the
1634 motion signify by saying aye. Any opposed? None opposed; motion carries 5 to
1635 0.

1636

1637 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
1638 Ms. Harris, the Board **approved** application **CUP2017-00008, GILLIES CREEK**
1639 **INDUSTRIAL RECYCLING, LLC's** request for a conditional use permit pursuant
1640 to Sections 24-89(c) and 24-103 of the County Code to develop a wetlands
1641 mitigation bank at 5500 White Oak Drive (Parcels 860-709-5622, 863-706-3470
1642 and 864-704-2093) zoned Agricultural District (A-1) and Conservation District (C-
1643 1) (Varina). The Board approved the conditional use permit subject to the
1644 following conditions:

1645
1646

1647 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24
1648 of the County Code. The operation shall be conducted in accordance with the
1649 plans and narrative approved with the use permit, except as noted below.

1650

1651 2. The applicant shall provide an updated financial guaranty in an amount of
1652 \$3,000 for each acre of land to be disturbed, for a total of \$204,000,
1653 guaranteeing that the land will be restored to a safe, stable, and usable condition,
1654 consistent with its elevation before excavation.

1655

1656 3. Throughout the life of the operation, the applicant shall continuously satisfy the
1657 Department of Public Works that erosion and sedimentation control is performed
1658 and maintained in accordance with the approved plan. The erosion control bond
1659 shall remain active throughout the life of the project.

1660

1661 4. The applicant shall maintain all necessary permits from the United States
1662 Army Corps of Engineers and the Virginia Department of Environmental Quality.

1663

1664 5. The applicant shall comply with the Chesapeake Bay Preservation Act and all
1665 state and local regulations administered under such act applicable to the
1666 property, and shall furnish to the Planning Department copies of all reports
1667 required by such act or regulations.

1668

1669 6. Hours of operation shall be limited to 6:00 am to 6:00 pm when Daylight
1670 Saving Time is in effect, and 7:00 am to 5:00 pm when Eastern Standard Time is
1671 in effect. No operations of any kind are to be conducted at the site on Saturdays,
1672 Sundays, or national holidays.

1673

1674 7. All means of access to the property shall be from the established entrance
1675 onto U.S. Route 60 in New Kent County. This condition shall be enforced in
1676 cooperation with the Virginia Department of Transportation and New Kent
1677 County.

1678

1679 8. The applicant shall maintain all necessary approvals for the access road from
1680 the Virginia Department of Transportation (VDOT) and New Kent County. These
1681 shall include, but shall not be limited to, site plan approval of the road, including

1682 stormwater management and erosion and sediment control, County land
1683 disturbance permit and VDOT Land Use Permit.

1684 9. The applicant shall maintain the 30-foot wide entrance, right turn lane with 200
1685 feet of taper and 100 feet of storage, and left turn lane with 200 feet of taper and
1686 200 feet of storage, all to VDOT specifications.

1687
1688 10. The applicant shall maintain gates at all entrances to the property. These
1689 gates shall be locked at all times, except when authorized representatives of the
1690 applicant are on the property. This condition shall be enforced in cooperation with
1691 VDOT and New Kent County.

1692
1693 11. The applicant shall maintain the sign at the entrance to the site stating the
1694 use permit number, the name of the operator, and the telephone number of the
1695 operator.

1696
1697 12. The applicant shall maintain "No Trespassing" signs every 250 feet along the
1698 perimeter of the property. The letters shall be 3 inches in height. The applicant
1699 shall furnish the Chief of Police a letter authorizing the Virginia State Police, the
1700 New Kent County Sheriff's Office, and the Henrico County Division of Police to
1701 enforce the "No Trespassing" regulations, and agreeing to send a representative
1702 to testify in court as required or requested.

1703
1704 13. The applicant shall maintain standard "Truck Crossing" signs (MUTCD W8-6)
1705 on U.S. Route 60 on each side of the entrances to the property, at locations
1706 approved by VDOT. This condition shall be enforced in cooperation with VDOT
1707 and New Kent County.

1708
1709 14. The applicant shall maintain the entrance road, which shall be paved for a
1710 distance of 300 feet from its intersection with U.S. Route 60 and a width of 24
1711 feet. All roads used in connection with this use permit shall be effectively treated
1712 with calcium chloride or other wetting agents to eliminate any dust nuisance.
1713 Wash racks shall be installed as necessary to prevent the tracking of mud onto
1714 any public street. This condition shall be enforced in cooperation with VDOT and
1715 New Kent County.

1716
1717 15. Trucks leaving the site shall travel at reasonable intervals and not in groups
1718 of three or more.

1719
1720 16. For nine months of each year, the average number of trucks entering and
1721 leaving the site shall not exceed 28 per day. For three months of each year, the
1722 average number of trucks entering and leaving the site shall not exceed 56 per
1723 day. This condition shall be enforced in cooperation with VDOT and New Kent
1724 County. The applicant shall maintain records on site documenting all trucks
1725 entering or leaving the site. Such records shall be available to staff of Henrico
1726 County, New Kent County, and VDOT during normal hours of operation. At the
1727 request of the New Kent County Zoning Administrator, the Henrico County

1728 Director of Planning may approve increases in the volume of trucks allowed by
1729 this condition. All requests for exceptions shall contain the reason, duration, and
1730 magnitude of the exception requested.

1731
1732 17. To limit the total number of truck trips into and out of the site, no truck shall
1733 be allowed to haul material away from the site unless that truck was also used to
1734 haul a full load of material to the site.

1735
1736 18. Trucks shall be loaded in a way to prevent overloading or spilling of materials
1737 of any kind onto any public road. This condition shall be enforced in cooperation
1738 with VDOT and New Kent County.

1739
1740 19. The applicant shall maintain the property, fences, roads, and bridge in a safe
1741 and secure condition indefinitely, or convert the property to some other safe use.

1742
1743 20. If, in the course of its operations, the applicant discovers evidence of cultural
1744 or historical resources, or an endangered species, or a significant habitat, it shall
1745 notify appropriate authorities and provide them with an opportunity to investigate
1746 the site. The applicant shall report the results of any such investigation to the
1747 Planning Department.

1748
1749 21. If water wells located on surrounding properties are adversely affected, and
1750 the operations on this site are suspected as the cause, the affected property
1751 owners may present to the Board evidence that the operation is a contributing
1752 factor. After a hearing, the Board may revoke or suspend this use permit, and the
1753 operator may be required to correct the problem at the operator's expense.

1754
1755 22. No offsite-generated materials shall be deposited on the mining site without
1756 prior written approval of the Director of Planning. To obtain such approval, the
1757 operator shall submit a written request stating the origin, nature and quantity of
1758 material to be deposited. The material to be deposited on the site shall be limited
1759 to imperishable materials such as stone, bricks, tile, sand, gravel, soil, concrete
1760 and like materials, and shall not include any hazardous materials as defined by
1761 the Virginia Hazardous Waste Management Regulations.

1762
1763 23. A superintendent, who shall be personally familiar with all the terms and
1764 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the
1765 terms and conditions of this use permit, shall be present at the beginning and
1766 conclusion of operations each work day to see that all the conditions of the Code
1767 and this use permit are observed.

1768
1769 24. A progress report shall be submitted to the Board, with a copy to the New
1770 Kent County Zoning Administrator, on or about April 30, 2018. This progress
1771 report must contain information concerning how much rehabilitation has been
1772 performed, when and how the remaining amount of land will be rehabilitated, and

1773 any other pertinent information about the operation that would be helpful to the
1774 Board.

1775
1776 25. Operations shall be discontinued by April 30, 2019, and restoration
1777 accomplished by not later than April 30, 2020 unless a new permit is granted by
1778 the Board of Zoning Appeals. Restoration shall not be considered completed until
1779 the disturbed area is approved as a wetlands mitigation bank by the U. S.
1780 Environmental Protection Agency and U. S. Army Corps of Engineers Mitigation
1781 Bank Review Team.

1782
1783 26. All trash, abandoned vehicles and the office trailer shall be removed from the
1784 site prior to the release of the financial guarantee.

1785
1786 27. Failure to comply with any of the foregoing conditions shall automatically void
1787 this permit.

1788
1789
1790 Affirmative: Bell, Berman, Harris, Mackey, Reid 5
1791 Negative: 0
1792 Absent: 0

1793
1794
1795 **[At this point, the transcript continues with the public hearing on the next**
1796 **case.]**

1797
1798
1799 **CUP2017-00009 C. T. PURCELL, INC.** requests a conditional use
1800 permit pursuant to Section 24-116(d)(1) of the County Code to allow a temporary
1801 storage yard at 5715 Staples Mill Road (Parcel 774-745-8775) zoned Light
1802 Industrial District (M-1) (Brookland).

1803
1804 Mr. Blankinship - Would everyone who intends to speak to this case
1805 please stand and be sworn in. Raise your right hands, please. Do you swear the
1806 testimony you're about to give is the truth, the whole truth, and nothing but the
1807 truth so help you God? Thank you. Mr. Madrigal?

1808
1809 Mr. Madrigal - Thank you. Mr. Chairman, members of the Board.
1810 Before you is a request for a temporary storage yard in a Light Industrial District.
1811 The applicant has been contracted by the County to replace approximately 2-1/4
1812 miles of sanitary sewer piping in the Pinehurst Gardens neighborhood. As part of
1813 that project, they would like to use the subject property as a temporary laydown
1814 yard. In addition to the storage of job materials, they will have some unloading
1815 equipment and gravel at the yard. The gravel will be used to continually refresh
1816 the gravel base of the storage yard and the driveway leading to the yard.

1817

1818 The proposed storage yard will be located on an unimproved, landlocked, two-
1819 acre gravel lot, located behind an existing warehouse building. You can see the
1820 lot here. Site access is by way of a shared driveway located at the terminus of
1821 School Avenue and runs along the western boundary of the warehouse property
1822 of the subject lot. Here is that driveway leading to the lot in the back.
1823

1824 The subject property is bordered by the existing warehouse on the north. Light
1825 industrial uses are on the south, offices and a residence are on the west, and the
1826 CSX rail line is on the east side. The project's neighborhood is to the east of the
1827 subject property, just beyond the rail line. And you can see the edge of it here.
1828

1829 The use of the site would commence immediately and extend until the end of the
1830 year. The proposed hours of operation would be from 7 a.m. to 6 p.m. No night
1831 work is anticipated for the project. The property is zoned M-1 and is designated
1832 as Light Industry on the 2026 Land Use Plan. Although the use is not permitted in
1833 the M-1 District and is inconsistent with the Comprehensive Plan designation, it
1834 will be a temporary use that facilitates a sanitary sewer project with direct
1835 correlation to the health, safety, and welfare of the surrounding community.
1836

1837 Of two remnant R-2 parcels bordering on the west of the subject lot, only one of
1838 them contains a single-family dwelling, and that is this parcel right here. This
1839 residential lot abuts the southwest corner of the subject property, and the home
1840 is 175 feet from the proposed storage yard. Additionally, there is approximately
1841 100 feet of landscaping between the house and the lot, which will serve to screen
1842 the proposed storage yard.
1843

1844 Surrounding residential districts are well over 300 feet from the proposed use.
1845 Based on the mix of non-residential uses in the immediate area, it does not
1846 appear that the proposed use will rise to the level of substantial detrimental
1847 impact on nearby property.
1848

1849 In conclusion, the proposed use will be temporary in nature, operated between
1850 March and the end of the year. The predominant non-residential nature of the
1851 surrounding area will be minimally impacted. Although the proposed use is not
1852 permitted in the Light Industrial District and is inconsistent with the land use
1853 designation, it qualifies as a public necessity. To mitigate any potential
1854 detrimental impacts on nearby property, staff has developed specific conditions
1855 of approval for the Board's consideration. Based on these facts, staff
1856 recommends approval subject to the conditions.
1857

1858 This concludes my staff presentation.
1859

1860 Mr. Berman - Thank you, Mr. Madrigal. Anybody from the Board
1861 have questions? Thank you, sir.
1862

1863 Mr. Madrigal - Thank you.

1864
1865 Mr. Berman - Would the applicant please approach?
1866
1867 Mr. Hooker - Good morning, again, Board members. My name is
1868 Randy Hooker. H-o-o-k-e-r. I'm here today requesting your consideration of this
1869 use permit. As presented by Miguel, this use permit is for a temporary laydown
1870 yard. The purpose is to store materials associated with the Pinehurst Garden
1871 Sanitary Rehab Project. Materials will be delivered to this site to utilize within
1872 three to five business days. The project completion date is December 31st, 2017.
1873
1874 Ms. Purcell has done her homework on this project. The subject site is mostly
1875 within this industrially zoned area. She contacted the Environmental Division of
1876 Public Works and received confirmation that the site is a gravel pad and that
1877 neither a land disturbance nor an erosion sediment control plan will be required.
1878
1879 We reviewed the six conditions of this use permit and have no objections.
1880
1881 If you have any questions, Ms. Purcell or I will be happy to try to address those.
1882
1883 Mr. Berman - Thank you. Questions from the Board?
1884
1885 Ms. Harris - Mr. Hooker, what is your official position in this case?
1886
1887 Mr. Hooker - Consultant.
1888
1889 Ms. Harris - Consultant. I'm so used to seeing you with the
1890 landfills.
1891
1892 Mr. Hooker - It's just a coincidence that these two cases are at the
1893 same time. The Purcells are a client of ours also, so we're just trying to assist
1894 them.
1895
1896 Ms. Harris - Okay.
1897
1898 Mr. Berman - I apologize if I missed it, but what is the fencing that's
1899 going to be done here?
1900
1901 Mr. Hooker - Fencing?
1902
1903 Mr. Berman - Is there a need?
1904
1905 Mr. Hooker - I'm unaware of any fencing.
1906
1907 Mr. Berman - In similar laydown areas we've required fencing
1908 because we were concerned about the area if children especially that would play
1909 in the area and possibly get hurt.

1910

1911 Mr. Hooker - I don't recall that as a condition.

1912

1913 Mr. Blankinship - How are you going to make sure none of your
1914 material walks off?

1915

1916 Mr. Berman - They're very heavy.

1917

1918 Ms. Purcell - Good morning. I'm Sagel Purcell. Last name P-u-r-c-
1919 e-l-l. I am CEO of C. T. Purcell. The first question was about the fencing. There is
1920 an existing buffer at this location. In terms of the material, as you kind of jokingly
1921 admitted, this is pipe. It is very hard to remove. We are there on a daily basis. I'm
1922 not trying to say that—but if something happens, that's obviously our liability. And
1923 I don't anticipate with the uses around the property an attractive nuisance for
1924 children to come and play. Again, CSX is currently right there, as you can see.
1925 And there is the residential neighbor. I'm not quite sure who lives there. I don't
1926 anticipate any security fencing to secure. And there are manholes there, and they
1927 are extremely heavy.

1928

1929 Mr. Berman - Are there any "no trespassing" signs clearly marking
1930 the area?

1931

1932 Ms. Purcell - No, but we can put those put. That is a good idea.

1933

1934 Mr. Berman - Thank you. Any questions from the Board? Thank you
1935 very much.

1936

1937 Ms. Purcell - Thank you.

1938

1939 Mr. Berman - Is anybody here today to speak in support of this
1940 application? Is there anybody here today to speak in opposition of the
1941 application? Hearing none, Mr. Secretary, will you move on please.

1942

1943 **[After the conclusion of the public hearings, the Board discussed the case**
1944 **and made its decision. This portion of the transcript is included here for**
1945 **convenience of reference.]**

1946

1947 Mr. Berman - Do I hear a motion? Brookland Magisterial District.

1948

1949 Mr. Bell - I move that we accept it. It's an area that is M-1 in
1950 classification that allows it to store pipes. Therefore, I don't think it will be
1951 detrimental to the area since it is a business area with other warehouses in the
1952 area.

1953

1954 Mr. Berman - Mr. Bell has made a motion. Do we hear a second?

1955

1956 Mr. Mackey - Second.
 1957
 1958 Mr. Berman - Is that Mr. Mackey?
 1959
 1960 Mr. Mackey - Yes sir.
 1961
 1962 Mr. Berman - Yes. We have a second. Any further discussion?
 1963 Hearing none, all those in favor of the motion signify by saying aye. Any
 1964 opposed? None opposed; motion carries 5 to 0.
 1965

1966 After an advertised public hearing and on a motion by Mr. Bell, seconded by
 1967 Mr. Mackey, the Board **approved** application **CUP2017-00009, C. T. PURCELL,**
 1968 **INC.'s** request for a conditional use permit pursuant to Section 24-116(d)(1) of
 1969 the County Code to allow a temporary storage yard at 5715 Staples Mill Road
 1970 (Parcel 774-745-8775) zoned Light Industrial District (M-1) (Brookland). The
 1971 Board approved the conditional use permit subject to the following conditions:
 1972

1973 1. This conditional use permit applies only to the use of the property as a
 1974 temporary storage yard for materials and equipment to be used in the Pinehurst
 1975 Gardens Sanitary Sewer Rehabilitation Project. All other applicable regulations of
 1976 the County Code shall remain in force.
 1977

1978 2. Only the improvements shown on the plot plan filed with the application may
 1979 be constructed pursuant to this approval. Any additional improvements shall
 1980 comply with the applicable regulations of the County Code. Any substantial
 1981 changes or additions to the design or location of the improvements shall require
 1982 a new conditional use permit.
 1983

1984 3. Hours of operation shall be limited to 7:00 am to 6:00 pm Monday – Saturday.
 1985 There shall be no activity permitted on Sundays or national holidays.
 1986

1987 4. The applicant shall maintain the property so that dust, noise, and odors are
 1988 controlled. The site and all roads and driveways used in connection with this use
 1989 permit, shall be effectively treated with calcium chloride or other wetting agents to
 1990 eliminate any dust nuisances. The streets shall be kept free from mud, gravel,
 1991 and dust at all times.
 1992

1993 5. The existing tree line along the western and southern property boundaries
 1994 shall be protected and maintained. Any trees or shrubs substantially damaged
 1995 due to the temporary storage yard shall be immediately replaced.
 1996

1997 6. All equipment, materials, and supplies shall be removed from the property on
 1998 or before December 31, 2017, at which time this permit shall expire.
 1999

2000
 2001 Affirmative: Bell, Berman, Harris, Mackey, Reid 5

2002 Negative: 0
2003 Absent: 0

2004

2005

2006 **[At this point, the transcript continues with the public hearing on the next**
2007 **case.]**

2008

2009

2010 **CUP2017-00010 SHRI RAM CHANDRA MISSION** requests a
2011 conditional use permit pursuant to Section 24-116(d)(1) of the County Code to
2012 hold a festival at 2230 E Parham Road (Parcels 775-758-3658 and 775-758-
2013 5763) zoned General Residence District (R-6C) (Fairfield).

2014

2015 Mr. Blankinship - Would everyone who intends to speak to this case
2016 please stand and be sworn in. Raise your right hands, please. Do you swear the
2017 testimony you're about to give is the truth, the whole truth, and nothing but the
2018 truth so help you God? Thank you. Come on down toward the podium if you like.
2019 Mr. Madrigal, you may begin.

2020

2021 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chairman, members of
2022 the Board. Before you is a request to hold a festival at a place of worship. The
2023 applicant is proposing to host a one-day festival at the Natural Path Meditation
2024 Center. The event is scheduled for Saturday, August 26, 2017, from 9 a.m. to 7
2025 p.m. with an alternate rain date of Saturday, September 9, 2017.

2026

2027 The emphasis of the event is to bring people together and celebrate peace and
2028 harmony, explain the mental and health benefits associated with meditation, and
2029 provide a venue for local health-related businesses and organizations to promote
2030 their goods and services. This will be a free event for the general public and is
2031 expected to draw up to 1,500 people throughout the day.

2032

2033 The event will take place on a 3.89-acre parcel with meditation sessions and
2034 expert discussion occurring within the existing 8,300-square-foot building. Food
2035 and vendor displays will occur on the adjacent wooded lot east of the building.
2036 Limited parking will be provided on site with much of it being provided on
2037 neighboring lots to the west and across the street at the adult daycare center.

2038

2039 There are approximately 56 onsite parking stalls of which 42 are required.
2040 Access to the site is by way of a shared driveway used by the applicant, the
2041 adjacent daycare center, and a county office. This will be the applicant's third
2042 annual festival at this location.

2043

2044 Staff is not aware of any complaints resulting from the last two events. The
2045 property is zoned R-6C and is designated as Office and SR-2 on the 2026 Land
2046 Use Plan. A place of worship is a permitted use in an R-6 District and is
2047 consistent with the Comprehensive Plan designation. With the exception of

2048 parking, the property is sufficiently sized to host the proposed event. Because
2049 outreach is customary and incidental to a place of worship, the festival is
2050 considered an accessory use. As such, it is also consistent with the zoning and
2051 Comprehensive Plan designations.

2052
2053 Staff does not anticipate any lasting impact to adjoining properties or the
2054 community at large.

2055
2056 The closest homes are 300 feet to the north of the site. Adjacent businesses are
2057 either closed or have limited hours on the day of the event. Although there is not
2058 sufficient onsite parking for the proposed event, parking has been procured on
2059 adjacent and nearby property by way of shared parking agreements, and you
2060 have copies of those agreements in your packets.

2061
2062 To mitigate any potential safety issues with the guests parking across the street,
2063 the organization will be shuttling visitors across Parham Road between
2064 properties, and this is something they did last year as well. Additionally,
2065 pedestrian traffic across Parham Road is prohibited the day of the event as an
2066 added layer of safety and as a condition of approval.

2067
2068 In conclusion, the applicant's request is consistent with both the zoning and
2069 Comprehensive Plan designations. There appears to be no lasting or substantial
2070 detrimental impacts associated with the one-day festival. Similar events have
2071 been held the last two years resulting in no complaints that staff is aware of. And
2072 finally, specific conditions of approval have been prepared to mitigate any
2073 adverse impacts on the adjacent homes and businesses and to ensure public
2074 safety. For these reasons, staff recommends approval subject to conditions.

2075
2076 This concludes my presentation.

2077
2078 Mr. Berman - Thank you, Mr. Madrigal. Any questions from the
2079 Board? Thank you, sir.

2080
2081 Mr. Madrigal - Thank you.

2082
2083 Mr. Lodha - My name is Tanmay Lodha. Last name L-o-d-h-a.
2084 Good morning, Board members and everybody here. I'm just representing the
2085 group that's organizing the festival.

2086
2087 The objective of the festival is primarily to get the community together for one day
2088 and just sort of retreat from daily activity. The activities that we're going to have
2089 up there are going to be natural healers, wellness centers, those [unintelligible]
2090 service. We're going to have demos on yoga, qigong, tai-chi, and meditation.
2091 There are going to talks by experts, by doctors, and other inspirational experts.

2092

2093 The festival is going to be free, so there's going to be no charge to people
2094 attending the festival. Last year the festival was inaugurated by the Henrico
2095 County manager, and we had about 1,100 people that came by all throughout the
2096 day. So this year we just want to continue organizing that same festival. In fact, I
2097 invite everybody because it's free and there's no charge. I would love for
2098 everybody to attend the festival.

2099

2100 I just had a couple of comments from the festival on the Facebook that I would
2101 like read. We have put blanks on the last names. Brittany on Facebook said, "I
2102 really enjoyed the festival. Thanks so much for providing the community with
2103 such an interactive and well thought-out event. It's appreciated." And there are a
2104 few other comments, but I won't go into details. I'm ready to answer any
2105 questions.

2106

2107 Mr. Berman - Thank you. Any questions from the Board?

2108

2109 Ms. Harris - Yes. Mr. Lodha, do you have a permission slip to use
2110 the parking lot of KinderCare? I noticed that you had signed permission
2111 agreements from three places, but you did not have KinderCare. You do have it?
2112 Okay. That was question number one.

2113

2114 In the Henrico Police Division report, they question using the Blessings for Care
2115 parking. In fact, they said they did not support that. However, they said if you
2116 must use that, then you're got to ensure that the patrons do not cross Parham
2117 Road. How are you going to ensure that patrons do not cross Parham Road?

2118

2119 Mr. Lodha - We will be putting up "Do Not Cross" signs across the
2120 road. In addition, we're going to have two stops, one at that site and one where
2121 the festival is going to be. There will be shuttles that will be driven by our
2122 volunteers. We have done that in the past. We actually just shuttle them from that
2123 place to this so that they don't have to cross the road. And it is throughout the
2124 day. There is actually no gap in between. In fact last year when we did it, we
2125 hardly had people on the other side because we had so much parking on this
2126 side. We rarely had to even use the shuttle. Because people were coming and
2127 going. As it's a festival, we don't expect everybody to stay that long.

2128

2129 Ms. Harris - Okay. The volunteers who will shuttle the patrons
2130 across Parham Road, will they use their own vehicles?

2131

2132 Mr. Lodha - Yes. They'll be using their own vehicles to shuttle the
2133 people across the parking lots.

2134

2135 Ms. Harris - So their insurance will cover that.

2136

2137 Mr. Lodha - Yes, it should be covered.

2138

2139 Ms. Harris - Okay, thank you.
2140
2141 Mr. Berman - Thank you, Ms. Harris. Any other questions from the
2142 Board? Thank you very much.
2143
2144 Mr. Lodha - Thank you. I look forward to seeing you all there.
2145
2146 Mr. Berman - Thank you for your community outreach. I remember
2147 it from last year. Is anybody here today to speak in support of this application? Is
2148 there anybody here today to speak in opposition of the application? Hearing
2149 none, Mr. Secretary, if we could move to the next application.

2150
2151 **[After the conclusion of the public hearings, the Board discussed the case**
2152 **and made its decision. This portion of the transcript is included here for**
2153 **convenience of reference.]**
2154

2155 Ms. Harris - Mr. Chairman, I move that we approve this conditional
2156 use permit. I don't think it adversely affects the health, safety or welfare of the
2157 community. In fact, I think the community benefits health-wise from this event. It's
2158 been sponsored in previous years with no incidents. This is my motion that we
2159 approve.

2160
2161 Mr. Berman - Thank you, Ms. Harris. Do we have a second?

2162
2163 Mr. Bell - I'll second the motion.

2164
2165 Mr. Berman - Mr. Bell has seconded the motion. Do we have further
2166 discussion? All those in favor of the motion signify by saying aye. Any opposed?
2167 None opposed; motion carries 5 to 0.

2168
2169 After an advertised public hearing and on a motion by Ms. Harris, seconded by
2170 Mr. Bell, the Board **approved** application **CUP2017-00010, SHRI RAM**
2171 **CHANDRA MISSION's** request for a conditional use permit pursuant to Section
2172 24-116(d)(1) of the County Code to hold a festival at 2230 E Parham Road
2173 (Parcels 775-758-3658 and 775-758-5763) zoned General Residence District (R-
2174 6C) (Fairfield). The Board approved the conditional use permit subject to the
2175 following conditions:

2176
2177 1. This conditional use permit is for the approval of a one-day festival to be held
2178 on Saturday, August 26, 2017, between the hours of 9:00 am to 7:00 pm, at the
2179 Natural Path Meditation Center. In case of event cancelation due to inclement
2180 weather, a "rain" date is scheduled for Saturday, September 9, 2017. All other
2181 applicable regulations of the County Code shall remain in force.

2182
2183 2. The special event shall be limited to the main building and the 1.22-acre,
2184 undeveloped lot to the east (identified as Parcel C on the site plan). Set-up shall

2185 commence on Friday August 25, 2017, between the hours of 7:00 am to 7:00 pm.
2186 Breakdown can commence immediately after the event and conclude on
2187 Monday, August 28, 2017, at 7:00 pm. If the festival is held on the "rain" date,
2188 set-up shall commence on Friday, September 8, 2017, between the hours of 7:00
2189 am and 7:00 pm. Breakdown can commence immediately after the event and
2190 conclude on Monday, September 11, 2017, at 7:00 pm.

2191

2192 3. Parking for the temporary event shall be provided on-site and at the following
2193 properties: 2240 E. Parham Road (day care center), 2250 E. Parham Road
2194 (accounting office), 9023 Woodman Road (veterinary clinic), 2231 E. Parham
2195 Road, (adult day care). Guests parking at 2231 E. Parham Road shall be shuttled
2196 between the sites. Pedestrian traffic across E. Parham Road shall be prohibited
2197 during the event.

2198

2199 4. The applicant shall establish temporary pedestrian loading and unloading
2200 zones on parcel B (of the site plan), and at 2231 E. Parham Road. The loading
2201 and unloading zones shall occur within the property boundaries and shall not
2202 impede traffic circulation on the shared access road or public right-of-way.

2203

2204 5. Only the temporary improvements shown on the plot plan filed with the
2205 application may be erected pursuant to this approval. Any additional
2206 improvements shall comply with the applicable regulations of the County Code or
2207 as specified in the conditions of approval.

2208

2209 6. The applicant shall obtain necessary building permits for items including large
2210 tents (over 900 square feet), temporary stairs, platforms, elevated stages, and
2211 electrical generators to be used during the event. The applicant shall request
2212 building permits no later than two weeks prior to the event and shall schedule
2213 required inspections no later than 8:00 am on the day of the event.

2214

2215 7. Temporary tents shall maintain the following setbacks from property lines:
2216 35-foot front setback, 30-foot rear setback, and 20-foot side setbacks. Temporary
2217 tents shall also maintain a minimum 10-foot setback from buildings. All temporary
2218 tents shall be properly tethered as required by the Building Inspections
2219 Department and the Division of Fire.

2220

2221 8. Food trucks shall be parked in designated parking stalls on Parcel B or in
2222 designated areas on Parcel C, subject to minimum required setbacks.

2223

2224 9. The applicant shall provide adequate restroom facilities and handwashing
2225 stations as required by the Building Inspections Department.

2226

2227 10. The applicant shall maintain the property so that noise and debris are
2228 controlled. The site shall be kept clean and adequate trash receptacles shall be
2229 provided during the event.

2230

2231 11. This approval is subject to the conditions of plan of development
2232 POD2014-00088.

2233
2234 12. On-site landscaping planters shall be kept free and clear of vehicles, trailers,
2235 equipment, and displays. All approved landscaping shall be maintained in a
2236 healthy condition at all times. Dead plant materials shall be removed within a
2237 reasonable time and replaced during the normal planting season.

2238
2239 13. Emergency preparedness protocols shall be developed in accordance with
2240 the requirements of the Division of Fire.

2241
2242 14. Event parking on the shared internal access road shall be prohibited. All on-
2243 site fire lanes shall remain open and accessible during the temporary event.

2244
2245 15. Speakers for amplified sound and music shall be directed toward the main
2246 event to limit its impact on adjoining businesses and residential neighborhoods
2247 and shall not exceed 65 dB at the property line.

2248
2249 16. Security and safety requirements shall be provided in accordance with the
2250 written requirements of the Division of Police (see memo dated March 9, 2017).

2251
2252 17. The sale of alcoholic beverages shall be prohibited at the event.

2253
2254 18. The applicant shall prohibit loitering on the property.

2255
2256
2257 Affirmative: Bell, Berman, Harris, Mackey, Reid 5
2258 Negative: 0
2259 Absent: 0

2260
2261
2262 **[At this point, the transcript continues with the public hearing on the next**
2263 **case.]**

2264
2265 Mr. Blankinship - CUP2017-00011, Ronnie's BBQ, has been deferred
2266 to next month's meeting.

2267
2268
2269 **CUP2017-00012 REGENCY SQUARE** requests a conditional use
2270 permit pursuant to Section 24-116(d)(1) of the County Code to hold a car show
2271 and sale at 1420 N Parham Road (Parcels 752-743-9774 and 753-743-9242)
2272 zoned Business District (B-3) (Tuckahoe).

2273
2274 Mr. Blankinship - Would everyone who intends to speak to this case
2275 please stand and be sworn in. Raise your right hand, please. Do you swear the

2276 testimony you're about to give is the truth, the whole truth, and nothing but the
2277 truth so help you God? Mr. Madrigal.

2278
2279 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, members of the
2280 Board. Before you is a request to hold a car show and sale at a regional
2281 shopping center. iHeartMedia and Regency Square Mall are proposing to host a
2282 three-day temporary event scheduled Friday through Sunday, April 21st through
2283 the 23rd, from 10 a.m. to 9 p.m. with an alternate rain date of April 28th through
2284 the 30th.

2285
2286 The event will host several local car dealers who will supply approximately 375
2287 new and used vehicles for sale on the property in addition to the car dealers that
2288 will be financing and insurance services provided for the convenience of
2289 customers. Setup will occur one day before the event and breakdown will occur
2290 the day after the event.

2291
2292 The car sale will occur on the southern portion of the property atop the former
2293 Macy's parking deck and at the at-grade parking lot at the corner of Holly Hill and
2294 North Parham Roads. Here is the parking deck and then this is the lot here at the
2295 corner.

2296
2297 Temporary fencing will be set up around the event area, and 19 temporary tents
2298 will be erected. A 65,000-watt generator will be used along with portable
2299 restrooms and a mobile DJ station to supply music and broadcast the event. This
2300 will be the second time this event will be held at the location. The last event
2301 occurred in 2014 and no complaints were generated by this activity. Although
2302 tent sales are a permitted use in the B-3 District, they are generally allowed for
2303 existing onsite merchants. Since this is a large three-day temporary sales event
2304 for off-site dealerships, a conditional use permit is required.

2305
2306 The property is zoned B-3 and is designated as Urban Mixed-Use on the 2026
2307 Land Use Plan. Automobile sales is a permitted use in the B-3 District. Although
2308 the proposed use is inconsistent with the intent of the UMU designation, it is a
2309 temporary use that will occur at a regional scale shopping center.

2310
2311 In recent years, the enclosed mall has been in transition due to changes in the
2312 retail market. Recently, the Board of Supervisors approved a revised master plan
2313 for the shopping center. The plan calls for the addition of 44,000 square feet of
2314 retail space to the mall envelope, four new outparcels, and construction of a
2315 separate 12,000-square-foot building to help revitalize the center. Most of this
2316 develop will occur on the northern portion of the property while the proposed
2317 event will occur on the southern side of the mall.

2318
2319 Because of the temporary nature of the event, the regional scale of the shopping
2320 center, and the ample amount of existing parking, staff does not anticipate any
2321 substantial detrimental impacts if the applicant's request is approved.

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In conclusion, the existing property is improved as a regional scale shopping center with an abundant amount of parking. Although the proposed use will temporarily displace approximately 600 parking stalls, it should not negatively impact the shopping center due to its current underutilization and limited occupancy. The proposed use is consistent with the underlying zoning designation and commercial use of the property, and no lasting detrimental impacts are anticipated. Based on these facts, staff recommends approval subject to conditions.

This concludes my presentation.

Mr. Berman - Thank you again, Mr. Madrigal. Questions from the Board?

Ms. Harris - One question. Condition #11 tells us that the amplified sound and music will not exceed 65 decibels at the property line. How is this monitored or how is that measured?

Mr. Madrigal - In reality, the way it's going to be monitored is by complaint. So if the neighbors start complaining across the street, then they'll be sure to contact the mall property and they'll handle it accordingly. And they have designated specific people for the event.

Ms. Harris - Okay. So the individual patrons actually or the property owners actually measure?

Mr. Madrigal - Oh, as far as the measuring. I guess staff could go out. We can measure that. Usually that would occur—I guess they typically like to do that certain parts of the day for ambient noise. But they'll take the reading when the complaint is received.

Ms. Harris - Okay, thank you.

Mr. Berman - Any further questions? Thank you.

Mr. Madrigal - Thank you.

Mr. Berman - Would the applicant please state your name and spell your last name?

Ms. Gordon - Hello, my name's Julie Gordon. G-o-r-d-o-n. I'm the marketing director for Regency Square.

We had this event in 2014. Currently, the parking lot behind the former Macy's location is not being used. Those spaces are sometimes roped off where we do

2368 not designate parking for the individual customers to come through. So we'd like
2369 to hold the mega car sale with iHeartMedia. They are responsible for soliciting
2370 the different car dealers to come on board and participate in the event.

2371
2372 There are two entrances there so traffic can go in and out of the parking deck as
2373 far as loading and unloading of the vehicles for sale. We are not allowing any
2374 customer traffic to drive onto the deck while the event is occurring. All of our
2375 lanes for fire will be open. We will have water access for the bathrooms that we'll
2376 have on the property. We'll also have different bathroom facilities within the mall
2377 that our customers can go in and out of. I was not there in 2014 and I understand
2378 it was a very successful event.

2379
2380 Mr. Berman - Thank you. Any questions from the Board?

2381
2382 Ms. Harris - Yes, I do have a question. What are the car
2383 dealerships that you're going to use?

2384
2385 Ms. Gordon - iHeartMedia is actually selling that space to the
2386 different car dealers. In the past it's been West Broad Honda, Sheehy Ford,
2387 those that are permitted to sell within the West End district. So they are waiting
2388 upon approval to firm up those individuals who are going to be there.

2389
2390 Ms. Harris - Okay, thank you.

2391
2392 Ms. Gordon - You're welcome.

2393
2394 Mr. Berman - Any further questions?

2395
2396 Mr. Mackey - I just have one. Ms. Gordon, I know you said you
2397 weren't there in 2014, but with condition #12, "testing driving of vehicles shall not
2398 occur in residential neighborhoods adjoining this shopping center." How would
2399 you go about—would you just request that they not go through the
2400 neighborhood?

2401
2402 Ms. Gordon - iHeartMedia knows specifically they are not allowed to
2403 promote that to the dealers who are coming on board. We have also told them
2404 that they have to drive Holly Hill Road, Starling Drive, or Parham Road.

2405
2406 Mr. Mackey - Okay. All right. Thank you.

2407
2408 Ms. Gordon - You're welcome.

2409
2410 Mr. Berman - Thank you. Any others? Thank you very much.

2411
2412 Ms. Gordon - Thank you.

2413

2414 Mr. Berman - Is anybody here today to speak in support of this
2415 application? Is there anybody here today to speak in opposition of the
2416 application? Hearing none, this brings us to the end of our conditional use
2417 permits. We have one variance, Mr. Secretary.

2418
2419 **[After the conclusion of the public hearings, the Board discussed the case**
2420 **and made its decision. This portion of the transcript is included here for**
2421 **convenience of reference.]**

2422
2423 Mr. Berman - CUP2017-00011 has been deferred, as previously
2424 discussed, and the deferral was approved. That brings us to CUP2017-00012,
2425 Regency Square. Do I hear a motion? Tuckahoe Magisterial District.

2426
2427 Mr. Reid - I make a motion that we approve the request. They've
2428 had the event there before and it's been successful. And I don't think there have
2429 been any complaints.

2430
2431 Mr. Berman - Thank you. Mr. Reid has made a motion. Do we hear
2432 a second?

2433
2434 Ms. Harris - Second.

2435
2436 Mr. Berman - Ms. Harris has seconded. Do we have any further
2437 discussion? All those in favor of the motion signify by saying aye. Any opposed?
2438 None opposed; motion carries 5 to 0.

2439
2440 After an advertised public hearing and on a motion by Mr. Reid, seconded by
2441 Ms. Harris, the Board **approved** application **CUP2017-00012, REGENCY**
2442 **SQUARE's** request for a conditional use permit pursuant to Section 24-116(d)(1)
2443 of the County Code to hold a car show and sale at 1420 N Parham Road
2444 (Parcels 752-743-9774 and 753-743-9242) zoned Business District (B-3)
2445 (Tuckahoe). The Board approved the conditional use permit subject to the
2446 following conditions:

2447
2448 1. This conditional use permit is for the approval of a three-day temporary
2449 outdoor event to be held according to the following schedule. Setup shall not
2450 begin before 7:00 am, Thursday, April 20, 2017. The sales event shall take place
2451 Friday through Sunday, April 21 - 23, 2017, from 10:00 am to 9:00 pm. All
2452 vehicles and items appurtenant to the event shall be removed from the property
2453 no later than 9:00 pm, Monday, April 24, 2017, at which time this permit shall
2454 expire. If the event is held on "rain" date, set-up shall not begin before 7:00 am,
2455 Thursday, April 27, 2017. The event shall be held on April 28 - 30, 2017, from
2456 10:00 am to 9:00 pm. All vehicles and items appurtenant to the event shall be
2457 removed from the property no later than 9:00 pm, Monday, May 1, 2017, at which
2458 point this permit expires. All other applicable regulations of the County Code shall
2459 remain in force.

2460

2461 2. Only the temporary improvements shown on the layout plan filed with the
2462 application may be erected pursuant to this approval. Any additional
2463 improvements shall comply with the applicable regulations of the County Code or
2464 as specified in the conditions of approval.

2465

2466 3. The applicant shall clearly delineate the perimeter (footprint) of the event area
2467 with temporary fencing and shall install traffic barriers at affected parking drive
2468 aisle entrances to block vehicular traffic from entering the event area. Main traffic
2469 drive aisles (providing general internal traffic circulation) leading in or out of the
2470 shopping center shall be kept free and clear of equipment, vehicles, and
2471 obstacles associated with the event. Fire lanes shall be maintained in
2472 accordance with the Fire Prevention Code. Access to on-site fire hydrants and
2473 fire department connections shall not be impaired.

2474

2475 4. The applicant shall obtain all necessary building permits for items including but
2476 not limited to tents (in excess of 900 square feet), elevated stages, inflatable or
2477 mechanical amusement devices, electrical generators and electrical connections
2478 to be used during the event. The applicant shall request building permits no later
2479 than two weeks prior to the event and shall schedule required inspections no
2480 later than 8:00 am on the commencement day of the event.

2481

2482 5. The applicant shall provide adequate restroom facilities and hand wash
2483 stations as required by the Building Inspections Department.

2484

2485 6. The proposed event shall comply with all requirements of the 2012 Virginia
2486 Statewide Fire Prevention Code.

2487

2488 7. Safety and security protocols shall be developed in accordance with the
2489 requirements of the Division of Police.

2490

2491 8. On-site landscaping planters shall be kept free and clear of equipment and
2492 displays. All approved landscaping shall be maintained in a healthy condition at
2493 all times. Dead plant materials shall be removed within a reasonable time and
2494 replaced during the normal planting season.

2495

2496 9. The applicant shall maintain the property so that debris is controlled during the
2497 event. Adequate trash receptacles shall be provided throughout the site during
2498 the event.

2499

2500 10. The applicant shall prohibit loitering on the property.

2501

2502 11. Speakers for amplified sound and music shall be directed toward the main
2503 event to limit its impact on adjoining properties and shall not exceed 65 dB
2504 measured at the property line.

2505

2506 12. Test driving of vehicles shall not occur in residential neighborhoods adjoining
2507 the shopping center.

2508

2509

2510 Affirmative: Bell, Berman, Harris, Mackey, Reid 5

2511 Negative: 0

2512 Absent: 0

2513

2514

2515 **[At this point, the transcript continues with the public hearing on the next**
2516 **case.]**

2517

2518

2519 **VAR2017-00005 ADANA INVESTMENTS, LLC** requests a variance
2520 from Sections 24-9 and 24-94 of the County Code to build a one-family dwelling
2521 at 7721 Yester Oaks Lane (Parcel 836-690-1480) zoned Agricultural District (A-
2522 1) (Varina). The public street frontage requirement and lot width requirement are
2523 not met. The applicant proposes 99 feet lot width and 0 feet public street
2524 frontage, where the Code requires 150 feet lot width and 50 feet public street
2525 frontage. The applicant requests a variance of 51 feet lot width and 50 feet public
2526 street frontage.

2527

2528 Mr. Blankinship - Would everyone who intends to speak to this case
2529 please stand and be sworn in. Raise your right hands, please. Do you swear the
2530 testimony you're about to give is the truth, the whole truth, and nothing but the
2531 truth so help you God? Mr. Gidley, you may begin.

2532

2533 Mr. Gidley - Thank you, Mr. Secretary.

2534

2535 This variance request is for the property located at 7721 Yester Oaks Lane,
2536 which is located just off of the southern terminus of Kambis Drive, as you can see
2537 here. Kambis Drive is a public street while Yester Oaks Lane, which runs
2538 immediately in front of the property, is a private street. And it runs basically from
2539 Darbytown Road north and it stops just shy of Kambis Drive, although technically
2540 it's—property boundaries run up to Kambis.

2541

2542 The subject property contains an acre of land but lacks adequate lot width and
2543 public street frontage. A variance was approved here back in 2014, but it expired
2544 without any action being taken.

2545

2546 The surrounding area consists of the Yahley Mill Estate subdivision to the north,
2547 while to the south there are six single-family dwellings that front Yester Oaks
2548 Lane. For the record, although the lot has a Yester Oaks address, the applicant
2549 does not plan on utilizing Yester Oaks Lane, but instead will connect his driveway
2550 directly to the terminus of Kambis Drive, which again is a paved public street.
2551 This is Kambis Drive, and the applicant's property directly abuts the terminus

2552 here. So he can go directly from his property to County right-of-way on Kambis
2553 Drive and not go across Yester Oaks Lane at all.

2554
2555 Evaluation. The lot was created in 1950. At the time, public street frontage was
2556 not a requirement of the Zoning Ordinance. The establishment of this
2557 requirement ten years later in 1960 made the lot unbuildable. Acquiring additional
2558 land to the north would be complicated because the adjoining land is in a
2559 recorded subdivision. In addition, the land to the south, like the applicant's, lacks
2560 public street frontage. So there's not really much opportunity for him to acquire
2561 additional property. Thus, absent a variance, there is no reasonable beneficial
2562 use of the property. That would constitute a hardship.

2563
2564 As far as the five subtests, the property was acquired in good faith by the owner.

2565
2566 Substantial detriment. You can see the proposed elevations. The applicant is
2567 proposing to build a 1,880-square-foot dwelling with wood or vinyl siding and a
2568 brick foundation. This is similar to many of the surrounding homes to the north in
2569 the subdivision up there. As a result, staff does not anticipate a substantial
2570 detrimental impact to nearby property from this dwelling. It should fit in quite well
2571 to the surrounding area.

2572
2573 Staff has received input from property owners along Yester Oaks Lane who have
2574 indicated a desire to not have this lane connect through to Kambis, which could
2575 make it a thoroughfare between Darbytown and Kambis. Again you can see here
2576 kind of barely—Darbytown Road is down here and Kambis is up here. So there is
2577 a tendency, I guess, for some people to want to be able to cut through here. So
2578 the owners have a concern to avoid having that come to fruition.

2579
2580 I just want to reassure people that this variance really has nothing to with the
2581 future use of Yester Oaks Lane. So long as the owners of Yester Oaks Lane
2582 choose not to improve this section of the road, it should remain unimproved. It's
2583 really secondary to this request since the applicant's going to go ahead and
2584 directly access Kambis Drive. Yester Oaks really shouldn't be impacted by this
2585 variance at all. And since it's a privately owned road, it comes back to a property
2586 rights issue. If you own it, you determine the future course of that road. If you
2587 want to leave it overgrown or if you want to put gravel down or what have you,
2588 you have a certain ownership right. The applicant here is not proposing to do
2589 anything with the road. I remember during the last variance, that applicant was
2590 unsure of any rights that may have existed with regard to this road. Anyway, the
2591 future of Yester Oaks will be determined by the property owners and really is a
2592 separate issue from this variance.

2593
2594 This is looking south down Yester Oaks Lane. As you can see, the property in
2595 question is kind of back here to the left. And as you can see, it starts to wind
2596 down here and become a natural area.

2597

2598 As far as a recurring or a general situation, the Board has received six requests for
2599 variances related to lack of public street frontage over the past two years. Due to
2600 public safety issues, it's unlikely the County will adopt any change to this
2601 requirement. Especially for those lots that were in existence prior to the adoption
2602 of the public street frontage requirement in 1960, really the only option for these
2603 people to make use of their property is through the variance process.

2604
2605 This is not a change in the use of the property. It's zoned A-1 Agricultural District.
2606 A single-family home, the proposed use, is a permitted use in the A-1 Agricultural
2607 District. A special exception or modification is not an option in this case.

2608
2609 The property is zoned A-1 Agricultural District. It complies with the one-acre
2610 minimum lot size requirement. Although it does not meet the 150-foot lot width
2611 requirement—its 109 feet of lot width—is certainly wide enough to accommodate
2612 a dwelling and meet the required side yard setbacks.

2613
2614 A driveway access would be directly to Kambis Drive. And again, you can see
2615 right here this property directly abuts Kambis Drive so they have direct access to
2616 it.

2617
2618 Finally, because the proposed dwelling is consistent with the surrounding homes,
2619 staff does not anticipate it being a detrimental impact to nearby property. As a
2620 result, we can recommend approval of this request subject to the conditions in
2621 the staff report.

2622
2623 This concludes my presentation. I will be happy to answer any questions you
2624 may have.

2625
2626 Mr. Berman - Thank you, Mr. Gidley. Questions from the Board.

2627
2628 Ms. Harris - Yes. Mr. Gidley, you said that the lot to the south also
2629 lacks public frontage. Is that correct?

2630
2631 Mr. Gidley - Yes ma'am. This, again, is a private street, Yester
2632 Oaks Lane. So these homes here, if they were built after the 1960 public street
2633 frontage requirement, they would have had to have received variances to be
2634 built.

2635
2636 Ms. Harris - Right. So if the applicant actually acquired the lot to
2637 the south, would there still be a need for a variance?

2638
2639 Mr. Gidley - Yes ma'am. There are two lots to the south. One's
2640 actually built on. You can only have one home on one lot. Then there is a lot
2641 here, which is wooded lot and where a lot of drainage just kind of naturally flows
2642 back here. But it has no public street frontage. So the applicant has no ability to
2643 really acquire additional land to meet this requirement.

2644

2645 Ms. Harris - Okay, thank you.

2646

2647 Mr. Gidley - Yes ma'am.

2648

2649 Mr. Berman - Any other questions for Mr. Gidley? Mr. Gidley,
2650 there's a similar situation at 9490 Broad Street, the Lowe's. I don't know if you're
2651 familiar with it. But there's a neighborhood that if you had let the road go all the
2652 way through, it would create a thoroughfare to Broad Street.

2653

2654 Mr. Gidley - I used to go through there, I think.

2655

2656 Mr. Berman - It used to, but then there was public concern and a
2657 barrier was set up. Is there a way that we could condition this such that there
2658 could be no trespassing, or a barrier to prevent it? I don't know if the onus is on
2659 the County or on the private road owners or the applicant. But is there a way to
2660 condition it so that we could belay those concerns?

2661

2662 Mr. Gidley - The condition would have to relate to his request and
2663 this property. There is a somewhat related condition in the staff report that says
2664 the applicant shall access the property directly from the terminus of the Kambis
2665 Drive right-of-way. So that keeps the property owner from putting a driveway into
2666 Yester Oaks and attempting to utilize it.

2667

2668 As far as other people in the future who may just want to cut through, we can't
2669 condition the variance here in that the applicant doesn't own the property on
2670 Yester Oaks Lane. He doesn't have any jurisdiction over that as such. So it
2671 would be up to the private property owners. And again, as a property right I
2672 would think they could put a barrier up or some sort of sign saying it's private
2673 property, no trespassing.

2674

2675 The property owner of the lot subject to this request wouldn't have any authority
2676 to do anything with that.

2677

2678 Mr. Berman - Would the County? It's a private road.

2679

2680 Mr. Gidley - At the terminus of Kambis Drive, perhaps the County
2681 could, but certainly not on private property, which was my point. Yester Oaks
2682 Lane being privately owned, it's the owners who ultimately determine its future
2683 course.

2684

2685 Mr. Berman - Okay.

2686

2687 Mr. Gidley - Not this applicant. So that was kind of my point.

2688

2689 Mr. Berman - Okay. You answered my question. Thank you.

2690
2691 Mr. Gidley - Thank you.
2692
2693 Mr. Berman - Any other questions? Thank you, Mr. Gidley.
2694
2695 Mr. Gidley - Thank you, Mr. Chairman.
2696
2697 Mr. Berman - Is anybody here today to speak in support of this
2698 application? Good morning.
2699
2700 Mr. Wolcott - Good morning. My name is Phil Wolcott. W-o-l-c-o-t-t.
2701 I'm representing the land owner, which is Gary Duncan and Adana Investments,
2702 LLC, as the company that I work for. We're wanting to purchase this land to build
2703 a spec home on, as you saw in the drawings.
2704
2705 Basically, what I'm hearing is about using Yester Oaks Lane. We have no
2706 intention of using Yester Oaks Lane. The end of Kambis Drive has already
2707 installed a culvert to access this property. So we're not even going to develop the
2708 front part of that lot as a drive. I know we own that and we have every right to,
2709 but we have no intention of doing that. The reason we wanted to do Kambis
2710 Drive is because it's a paved road as opposed to a rock road and a private road.
2711
2712 As far as the lot width and stuff, Agriculture requires one acre plus lot width.
2713 That's why we're seeking the variance, the lot width. If you look at the preliminary
2714 plans, you'll see the driveway doesn't even go through Yester Oaks Lane. So we
2715 have no intentions of doing that at all. Where you see Yester Oaks Lane, we
2716 have no intensions of even putting gravel there or any access to that. That will be
2717 the front yard. Yester Oaks Road will stop exactly where it's at now or whatever
2718 the property line is. But we'd rather not put a sign up or anything saying the end
2719 of the road.
2720
2721 Mr. Berman - I understand. On your property.
2722
2723 Mr. Wolcott - Right.
2724
2725 Mr. Berman - But you understand that it may not be under your
2726 control.
2727
2728 Mr. Wolcott - Yes, if they want to do it, that's fine.
2729
2730 Mr. Berman - Okay. Anything else to say?
2731
2732 Mr. Wolcott - No sir.
2733
2734 Mr. Berman - Thank you. Are there any questions?
2735

2736 Ms. Harris - Yes. Mr. Wolcott, I noticed a mailbox saying 25. You
2737 can probably see it on the visual that we just put up. I was wondering where is
2738 that property on Kambis. May we see the picture that showed us the property
2739 before? Not this one, the one that has a closer view.

2740

2741 Mr. Berman - With the cul-de-sac?

2742

2743 Ms. Harris - With the cul-de-sac, yes please. See this mailbox
2744 right here? That had 25 on it. I drove by there. Do you know where that
2745 property—

2746

2747 Mr. Wolcott - I have no idea what that mailbox is for.

2748

2749 Mr. Blankinship - I can tell you where that is. Mr. Gidley, if you can go
2750 back to the aerial and then zoom showing—yes, a little bit to the—well you can
2751 almost see it here. Can you slide that a little bit to the right so you can see just off
2752 to the west? Yes, that house there at the west side. Yes. Where he's indicating
2753 with the cursor, that is 25 Kambis Drive. And it has a driveway that goes up and
2754 snakes up to the end of the cul-de-sac.

2755

2756 Ms. Harris - Okay, thank you.

2757

2758 Mr. Berman - Thank you. Any further questions? Is anybody here
2759 today to speak in support of this application? Is there anybody here today to
2760 speak in opposition of the application? I'll let you approach. Good morning. If you
2761 could state your name.

2762

2763 Mr. Barry - My name is Douglas R. Barry. I live at 25 Kambis
2764 Drive.

2765

2766 Mr. Berman - Would you please spell your last name for the record?

2767

2768 Mr. Barry - B-a-r-r-y. This application presents many problems to
2769 us. I'm a retired builder and general contractor from a class A company that
2770 maintained a license in Henrico and the five surrounding counties for 37 years. I
2771 managed site work for many projects with varying complexities.

2772

2773 The property in question presents a number of unanswered questions. Our
2774 primary concern is the potential change in the existing runoff drainage that would
2775 impact every property surrounding the lot in question. In construction terms, this
2776 is a low water lot. The property as it exists serves as a natural drainage buffer for
2777 two established subdivisions: Yester Oaks Lane and Yahley Mill Estates. The lot
2778 in question is the lower point in the terminus of Yester Oaks Lane and Kambis
2779 Drive.

2780

2781 Nearly all the drainage of both of these right-of-ways flows to that lot. The root
2782 system of the existing trees, scrub, and underbrush serves to slow the water and
2783 absorb the water from the runoff. To build a house on this property with proper
2784 drainage of its own, the lot would have to be cleared, meaning trees and scrub
2785 and root balls removed. The property would then need to be built up with tons of
2786 dirt, fill dirt, to fill the holes from the roots and to build up the lot so that it has its
2787 own natural drainage. This fill dirt would have to be compacted to a buildable
2788 condition for PSI to be able to build on. So much is necessary it would create an
2789 earthen dam to the existing drainage from both right-of-ways. Therefore, it would
2790 back up existing runoff water and change the drainage for surrounding properties
2791 which have no current drainage problems. On the Kambis Drive side of the
2792 property, the water would back up creating ponding on our property,
2793 Mrs. Hacker's property, and Ms. Burnette's property. Those are to the north and
2794 to the west.

2795
2796 On the Yester Oaks side, the water would be directed to existing lots owned by
2797 Mr. Wilson, Ms. Hacker, and Mr. Burke. This could create problems for those
2798 three, particularly Mr. Burke since his lot over on Dowdy is already subgrade. A
2799 buildup of fill dirt on this property would likely lead to ponding since he would
2800 receive most of the water, which may create another longstanding water
2801 problem.

2802
2803 Long before the 1960 ordinance change, the original owners of this property
2804 recognized that the lot was unbuildable and un-farmable. Therefore, they used
2805 the lot as a landfill for their trash and broken-down equipment and farm
2806 implements. No one has attempted to use this lot ever since the land existed
2807 because they recognize it as an unbuildable lot.

2808
2809 In the 1970s, Mitchell Kambis purchased land from the original owners,
2810 Mr. Martin—I believe it was the Martin Estates—to put in Yahley Mill Estates. He
2811 stopped short of the development of this lot because it was judged by him a low-
2812 water lot.

2813
2814 In my conversation with Mr. Gidley, he mentioned the constitutional right of the
2815 owner to use the property. We would like to know how this balances with the civil
2816 rights of the owners of the seven existing properties.

2817
2818 Granting this single property owner a variance to build on this lot could effectively
2819 create significant problems for the existing owners, infringing upon their property
2820 rights. Under these circumstances, how can Henrico County grant this variance?
2821 We're asking you to consider the civil rights as existing property owners and
2822 dismiss this application to build on an unbuildable lot.

2823
2824 Mr. Berman - Thank you, Mr. Berry. Does the Board have any
2825 questions for Mr. Berry?
2826

2827 Mr. Mackey - Yes, I have a question. I think Mr. Gidley may need to
2828 answer it. If they were granted a variance, they would have to get all the
2829 applicable building permits. Wouldn't those address all of the concerns of
2830 Mr. Berry?

2831
2832 Mr. Gidley - Yes sir, Mr. Mackey, that's correct. After some
2833 concern was expressed, I actually took the application over to the Permit Center
2834 to the staff member who would review for drainage. Essentially, if fill had to be
2835 placed to raise the house itself up, the drainage— just like with a lot of houses,
2836 the drainage would go around the side of the house. Due to the topography, it
2837 would then reemerge behind the house into basically the same drainage area as
2838 exists at the present time. So instead of going straight down through the lot, the
2839 drainage would just go around the house, reemerge, and the pattern would
2840 continue as it does today. Basically, that continues on down here into this
2841 wooded lot back here.

2842
2843 Public Works would review it to make sure it wouldn't negatively impact the
2844 drainage on adjacent properties. So you're correct on that. Any change in the
2845 pattern would occur on the property itself and basically, as I said, reemerge at
2846 the back of the lot into its current pattern.

2847
2848 Mr. Mackey - Mr. Chairman, I have one other question. Mr. Berry
2849 referred to the lot as unbuildable. The way you see it, is it only unbuildable due to
2850 the lack of the frontage, not having enough frontage?

2851
2852 Mr. Gidley - From a zoning perspective it needs public street
2853 frontage, which it doesn't have. And also it's zoned A-1, so it needs 150 feet of
2854 lot width and it has 109 feet of lot width.

2855
2856 Mr. Mackey - So they're asking for 41 feet for the variance?

2857
2858 Mr. Gidley - Yes sir, that's correct.

2859
2860 Mr. Blankinship - I understood your question to be is that only reason
2861 it's unbuildable. That's certainly not the case. This Board can't guarantee that this
2862 lot can be built on.

2863
2864 Mr. Mackey - Exactly, exactly.

2865
2866 Mr. Blankinship - They may not be able to get a perk site for a septic
2867 system. And if they can't get a septic system to work, then the lot is unbuildable.

2868
2869 Mr. Mackey - Right. That refers to my first question. That's what I'm
2870 saying. Just by us giving them the variance doesn't guarantee that they can build
2871 on it. If they can't meet all of the requirements of the permits, then they would not
2872 be able to build on it.

2873
2874 Mr. Gidley - Yes sir, that's correct.
2875
2876 Mr. Mackey - Okay. Mr. Berry had a question about their civil rights,
2877 but I don't think that would be addressed to us.
2878
2879 Mr. Berman - Yes.
2880
2881 Mr. Blankinship - Well the balance there is the test that this Board
2882 needs to find that there would be no substantial detrimental impact on
2883 surrounding properties. One test is does he have any other reasonable use of the
2884 property, but that's not the only test. In addition to the others, you will have to
2885 determine whether there is substantial detrimental impact on the surrounding
2886 property before you decide how to act on it.
2887
2888 Mr. Gidley - I've spoken to a number of people. One of the people
2889 I spoke with basically said they preferred it to stay the way it was in general. You
2890 know how it is sometimes when development occurs on property that's been
2891 wooded and abuts your property. I indicated I can appreciate that, but obviously
2892 each owner has a constitutional right to make reasonable use of the property as
2893 well.
2894
2895 Mr. Bell - In other words, are you saying that if we were to
2896 approve it, he would have the property. He would go through the County, and
2897 they would determine if there was a drainage problem that would affect the
2898 surrounding area.
2899
2900 Mr. Gidley - Yes sir.
2901
2902 Mr. Bell - And not until that was done could they do anything
2903 with it.
2904
2905 Mr. Gidley - Correct.
2906
2907 Mr. Bell - Thank you.
2908
2909 Mr. Berman - So given that, you don't see an ability to add a
2910 condition to compel that? Or is that just . . .
2911
2912 Mr. Blankinship - That's covered by condition #4, which is "Before
2913 beginning any clearing, grading or other land-disturbing activity, the applicant
2914 shall submit an environmental compliance plan to the Department of Public
2915 Works." That's the step where they will require whatever they deem necessary.
2916
2917 Mr. Berman - Very good.
2918

2919 Ms. Harris - Mr. Berman, question. Is there flooding already on
2920 that property? Have you noticed any flooding?

2921
2922 Mr. Blankinship - This question is for the applicant.

2923
2924 Ms. Harris - Okay.

2925
2926 Mr. Berry - I have never walked the property because it's not my
2927 property. But I have spoken to residents who have walked the property. I know
2928 Ms. Hacker, who owns the vacant lot to the south, has expressed that the back
2929 end of that property is a swamp. Which indicates to me that because the front of
2930 the property is slightly higher, the water, as I said, with the natural buffer and the
2931 root systems does not flood through that property, but it seeps through the
2932 property and sits at the back end of the property. Any change to that situation, in
2933 my opinion, will shed the water over to the north on Mrs. Burnette and back onto
2934 Kambis Drive. It'll have nowhere to go.

2935
2936 On the Yester Oaks side, it will seriously affect the Wilsons. Mrs. Hacker's vacant
2937 lot is buildable now, but if it's flooded it may not be buildable. Mr. Burke, who is
2938 already subgrade and below that swampy area right now, if more water is shed
2939 that direction—and should be shed that direction, if you'll go with on the idea that
2940 the root system acts as a natural buffer—his property is liable to become a
2941 swimming pool, if you will, because all of the drainage that is now being buffered
2942 is going to end up on his lower lot. His back door is directly below the eastern
2943 end of this property.

2944
2945 I see disastrous water effects for at least five of the seven properties. And I didn't
2946 mention Mr. Ryan Hacker across from there, because right now his property is
2947 just barely above the property in question. If that property was built at all with fill
2948 dirt and compaction, then it's going to throw more water back onto his lot.

2949
2950 I see this as a very difficult situation. Once again, and let me clarify, historically
2951 the former owners of this land—and I know this from researching a problem with
2952 the ownership of Yester Oaks Road two years ago for a court case—the owners
2953 of Yester Oaks Road originally never disturbed that lot because it was a low-
2954 water lot and it serves as funnel for all the runoff from all the pasture land that
2955 was there before and now from all of the properties. Kambis Drive is significantly
2956 higher at the middle.

2957
2958 The other four properties up there drain directly down into that culvert that
2959 Mr. Gidley mentioned already exists. We also have a problem with that, if you
2960 would indulge me. When the other variance was issued, we never saw any
2961 evidence that anyone from the County approved that culvert. If you'd give me a
2962 second, I have pictures that show that culvert may have been improperly
2963 installed. Before it was there, we never had any standing water in the ditch from
2964 the other existing culverts from the other driveway around the circle. Now we

2965 have standing water that exists. Even in dry periods it still sits there. The culvert
2966 has been installed too high.

2967
2968 Mr. Blankinship - That's not before the Board this morning, but staff
2969 would be happy to discuss that with you after the meeting.

2970
2971 Mr. Berry - Okay. But like I said, I think that any development is
2972 going to have a disastrous effect. I understand the process; I've been through it
2973 many times. Part of the supposition for me of being here is to try to get you folks
2974 to realize that this is an unbuildable lot and it's useless to take up the County's
2975 time for any more studies. The lot, by the way, another confusion we have is how
2976 you can have a Yester Oaks address and a Kambis Drive access. Just from the
2977 point of the mail. The lady at the end mentioned my mailbox. Just from the point
2978 of the mail, all Yester Oaks mailboxes are down on Darbytown Road because the
2979 federal post office doesn't come up Yester Oaks Lane. So to get his mail, if he's
2980 not going to have a post office box or whatever, theoretically he would have to go
2981 all the way around Yahley Mill Road and back in and come in Yester Oaks to
2982 access his mailbox. Minor point.

2983
2984 One of the other problems that we have is that when the original variance was
2985 granted, none of us were notified, as far as we can tell.

2986
2987 Mr. Blankinship - Are you talking about the 2014 variance?

2988
2989 Mr. Berry - Yes. We've discussed this among all of us, and none
2990 of us were informed that we know of. I spoke to I believe Mr. Duncan the day that
2991 culvert was put in. His stated use to me was that he wanted a place to bring his
2992 children in the country for a picnic. At that time he said there was going to be no
2993 development. He also spoke to Jim Marr, another Yester Oaks resident, and told
2994 him that he might put some of his trailers and equipment in there. And there is a
2995 trailer sitting there now. But at that time, if we had known, we probably would
2996 have shown up then. I'd like you to consider that variance to be null and void
2997 because the Wilsons didn't even live there then. Mr. Hacker's house was vacant.
2998 And as I said, none of us were informed. Carolina has some other points to make
2999 here.

3000
3001 Mr. Berman - I'd like to first ask you a question. What is your
3002 profession?

3003
3004 Mr. Berry - I was a registered general contractor and builder with
3005 a class A construction company here in Henrico and the five surrounding
3006 counties.

3007
3008 Mr. Berman - Okay. So you're obviously much more qualified than
3009 me as an engineer. But can you state with certainty that there is any possibility
3010 that developing this lot could actually improve the situation?

3011
3012 Mr. Berry - Well, general contractors always defer to engineers. I
3013 would defer to you or another engineer because mostly it's my job to run the
3014 project. The engineers give the engineering parameters, as I said the PSI for the
3015 building. You'd probably need a P.E. to lay out some kind of different drainage
3016 plan. I don't know exactly what you could come up with unless you came up with
3017 some kind of a holding pond at the back.

3018
3019 Mr. Berman - I was going state a BMP (best management practice),
3020 or a collection pond that would be aerated. That's what I was going to allude to.

3021
3022 Mr. Berry - Right. As I said, there are many facets to this thing.
3023 Carolina has several more. I'm basically asking you why even let this ball get
3024 rolling because you can stop it right here. The lot is unbuildable. If you look on
3025 the topo at the top, I hit the measurement button on there. And it actually says on
3026 the Henrico County website that this lot is only .93 acres. And part of the reason I
3027 did that was that I've looked at many plots, and I rarely ever see a plot that is
3028 written out with 1.001 all the way to the thousandth to make the lot qualify. We're
3029 talking about a space of only 45 square feet, which is probably the size of that
3030 wall right there, for this to possibly not qualify. That would be a third parameter as
3031 to why this lot would be unbuildable.

3032
3033 I could probably go on because I'm very interested in this from the standpoint
3034 that first of all we weren't notified the first time around. And second of all that all
3035 of these people are going to me, in my opinion, drastically affected. We're down
3036 there. We see what the runoff is. Occasionally with heavy storms there is
3037 puddling at the end of Kambis Drive now that slowly works its way through this
3038 buffer, which is a funnel for all that water. Unless someone comes up with a
3039 major plan to handle that, maybe underground piping or something—and then I
3040 think you'd get into some of these land-disturbance problems that are going to be
3041 qualified under the water acts, the environmental acts, the Chesapeake Bay Act.

3042
3043 I've probably been on here too long.

3044
3045 Mr. Berman - We appreciate the information, Mr. Berry.

3046
3047 Mr. Berry - I'll get Carolina have her shot.

3048
3049 Mr. Berman - Thank you. Please approach. I ask that you only
3050 please cover new ground. No pun intended.

3051
3052 Ms. Wilson - Carolina Wilson. W-i-l-s-o-n. Piggybacking off of what
3053 he was talking about with the conservation issues. I had found the 2026
3054 Comprehensive Plan for that particular lot, and it's going to be zoned as Prime
3055 Agricultural, as stated in that plan. There are some things that I found specific for
3056 that.

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You'll see that plot is actually in the—it's kind of on the border of the Kempsville-Atlee-Duplin and the Ochrepts . . . I'm not even going to try to pronounce that—Norfolk-Caroline Soil Association area. And you'll also see that it is also on the James River-Turkey Island-Four Mile Creek Hydraulic Unit boundary. So we are pretty concerned about having this plot developed with a house because we need those trees. And it's also part of a wetland. So we are concerned.

You'll also see in one of the handouts there are pictures that earlier on the 19th and 20th when we had some rain, there's some flooding in our area now. The black-and-white pictures don't do it justice, but unfortunately I did not have a printer available that had color. So we're already kind of experiencing some of this runoff just sitting on our property. It's not consistent, but it's still a big concern for us because our plot actually kind of slopes down toward that lot. We're at 7735 Yester Oaks Lane. So we are the lot right next to it on Yester Oaks Lane. Yes, that's our house.

The lot actually slopes down back towards her lot and also over to the 7721 Yester Oaks Lane lot. We have a lot of concern because, as I said, we're already seeing some pockets of just sitting rainwater, which also is concerning for us for mosquitoes. Especially with all the health issues regarding Zika—not necessarily from this area, but it certainly concerns me. And West Nile also. Or malaria. We don't want that to be a problem because we have standing water which then attracts mosquitoes. That's also a concern for us.

We also had looked at Chapter 23. In regards to the well and septic system, it does require a 150-foot-wide lot. So our concern is where do they plan to put the septic system and a reserve drainage field. That's a major concern for us because our drainage field actually butts up to that lot right before the wooded area. We own some of that wooded part right there. If you're looking at it from this way, all the wooded part is what separates us from Kambis Drive. Yes, exactly. So our drainage field is right by that barn right there. So we're also concerned how it's going to impact where their septic system is located and also where their drainage field will be located. If it's going to be too close, that's a major concern for us also.

We just have a lot of concerns for the environmental aspect, the drainage aspect, the fact that the septic tank needs to be addressed, and also the fact that we saw a lot of discrepancies between what we were finding and what was provided to us in the packet that we received from Steven Price—.

We would like to voice our concerns. And we weren't even shown on the diagrams where the intention of the well and septic would be located. They might want to be very mindful of that being where our drainage field is located because it's close to that parcel of land. We certainly don't want to contaminate their water

3102 by having their well placed at a certain location. That's another concern from their
3103 standpoint.

3104

3105 That's really all new information in regards. We've been in contact a lot, and we
3106 both agree the drainage and septic, among other things, are huge problems for
3107 us. Even though it's not considered in an EPA Conservation Area, it is on a cusp
3108 of a Chesapeake Bay Resource Area. So we want you guys to be mindful of that
3109 little area. And also the other lot Ms Debbie owns. We see a lot of animals there,
3110 and I would hate to see them all gone. I love waking up and seeing deer in my
3111 yard. I love the bunnies hopping. We want them to have their space because that
3112 area is quickly developing. And it's providing fewer places for some of those
3113 animals to go.

3114

3115 That's really all I have in addition to things that he had discussed. And as I said, I
3116 have provided some of the pictures of some of our issues with the rainwater
3117 standing. Do you have anything else to add to that?

3118

3119 Mr. Berman - Well hold, please, Mrs. Wilson. Does the Board have
3120 any questions for Mrs. Wilson? Okay, none. Thank you. I just wanted to make
3121 sure they didn't have any questions. Is there any new opposition that has not
3122 already been covered? Yes, please approach.

3123

3124 Ms. Hacker - My name is Debbie Hacker. You can see from slide
3125 the house behind that. I actually grew up in the house that Carolina lives in, so I
3126 walk that long driveway. Anybody who has ever built on Yester Oaks Lane has
3127 gone to the door and knocked and said, you know, everyone on that driveway,
3128 they change that driveway. They're 7721. That's their lot address. Out of respect,
3129 that's what should have happened. You go and you knock on the door, and then
3130 you put your gravel, just like Carolina and Charles did, in front of your land.
3131 That's how you go. It's a Yester Oaks lot. That's what you would do. That's
3132 proper etiquette. So I walked that long driveway and I caught the bus.

3133

3134 Anyway, I've now moved into 17 Kambis Drive, so I'm right at the end of the
3135 street. The way our subdivision is, it goes down like this. So we do pool. But my
3136 concern is I recently acquired—my mom and my dad have passed. And so their
3137 house is that—can you go back to this one? No, 7741. Yes. Actually, it's one
3138 more above that. Go up one.

3139

3140 Mr. Blankinship - It might be easiest to see on the aerial photograph.

3141

3142 Ms. Hacker - I had papers; I left them in the jeep. I'm so sorry.
3143 Anyway, you see Dowdy right there? I am the lot that goes—on Yester Oaks
3144 Lane, see that lot that goes behind the one that's wanted to be purchased—well
3145 beside it?

3146

3147 Mr. Blankinship - Yes.

3148
3149 Ms. Hacker - All of that. Okay. I recently acquired that when my dad
3150 and passed. I have this two-story house. I'm by myself. I don't need that big
3151 house. Where am I'm going to build or where am I going to put my sewage lines
3152 for my 1.38 acres there? I also own this house right here at 7741. So I can
3153 extend that driveway. My son wants that because it was grandma's house. So
3154 I'm probably going to let my son buy that house. And then if I would build
3155 something, it would be back coming from that driveway.

3156
3157 That would also be more concern of how am I going to use my land if Carolina
3158 has her sewer, and there's another one, and then you have Dowdy that's low. I'm
3159 kind of in a bind too. I just acquired that. My mom passed a year ago in March.

3160
3161 Mr. Berman - Any questions for Ms. Hacker? Thank you very much.
3162 Is there anybody else wishing to add any new points to opposition?

3163
3164 Mr. Burke - Yes. I'm Steve Burke. B-u-r-k-e. I'm the property that
3165 everybody's worried about flooding. And so am I. I don't know how much new
3166 stuff I have. I don't have all the information they did. For some reason, I didn't get
3167 the last request for the rezoning and I got this one last Monday. But I didn't get
3168 any other information on anything. So I've been trying the last couple of days to
3169 do everything. I came to the County yesterday to try to see what package was
3170 available. Now I was told yesterday that they would come out and do all this
3171 research that seems to already be done if their variance was passed. What I'd
3172 like to go back to is the last variance and want to know how that was ever done
3173 without notifying the people that would be touching that land, which is my land. It
3174 seems a little disturbing that the County passed something and didn't make sure
3175 that all the County residents affected get the notice. Maybe the mailman lost it; I
3176 don't know. But that's concerning.

3177
3178 The other part to this is I was told—I moved in in the early '90s to my house. I
3179 researched the land that was available just to make my yard bigger. Found out
3180 that this lot was available but it was unbuildable back then. I was told that you
3181 can't build on this lot, it's landlocked. You have no have no frontage, it's not wide
3182 enough. At the time, I couldn't afford to buy it, so I just left it alone and went away
3183 from it.

3184
3185 Since then, I'm assuming it's been sold and now somebody wants to do that.
3186 Now I know the County, when they made their rules back in '70s, they landlocked
3187 this and made it you all's responsibility. If you can't build on it, you'd have to buy
3188 this land from these people. I understand that. But when you sell a lot that's
3189 unbuildable to a new party and they have to be notified that it's unbuildable, the
3190 County's no longer responsible for that. That person who bought it knowing it's
3191 unbuildable should have at the point said, "I don't know what I'm going to use it
3192 for, but I'm buying land I can't build on." Now somebody else has come along
3193 and wants to build on this land that they have no rights to build.

3194

3195 Their flier talks about the driveway's going to the wrong street from what they're
3196 asking for. They're asking for that to go off on the other road. Yester Oaks is
3197 where this says it's supposed to be going to. So I'm questioning why all of a
3198 sudden the driveway's coming out into Yahley Mill Estates when it was supposed
3199 to go to Yester Oaks. And that because they found they can't do that.

3200

3201 They've got other problems. My biggest concern is the drainage. If they come in
3202 and backfill that lot anybody—and I take it nobody has walked that lot. When I go
3203 out my backdoor and I go to the edge of my land, which I was doing Monday to
3204 try to research this, there's probably 20 feet of dry land behind my yard. Then it
3205 starts about six inches of your water and mud that goes probably 100 to 200 feet
3206 across the woods. That's the wetland. I call it a wetland, but it's not really labeled
3207 that. But any day you walk through there it's mud. I've had my lab in it. I've had
3208 my kids in there. When we have our big storms, that can be three feet deep
3209 across there. So I watch it go by my backyard all the time. We have these big
3210 rains. I mean sometimes it comes—it's two feet in my yard flowing through.

3211

3212 So I'm questioning now if they come in and backfill, which they'll have to backfill
3213 this to be able to build, what's it going to do to that natural drainage in the
3214 woods? If they can put a house on that lot and keep the drainage the way it is
3215 and guarantee us they're going to do that, I have no problem with them putting a
3216 house here, I really don't. But I want a guarantee. If you all are going to say we
3217 approve this, then you all are taking the responsibility for my yard. Not the
3218 builder, not the contractor. The County now has taken the rights of my yard into
3219 their hands. That's how I feel. I just wanted to make that point.

3220

3221 Mr. Berman - Thank you, Mr. Burke.

3222

3223 Ms. Harris - Mr. Burke, can you point out your property, please?

3224

3225 Mr. Burke - It's on the cul-de-sac on Yahley Mill Drive behind it to
3226 the south. That right there. That's my property.

3227

3228 Ms. Harris - Okay, thank you.

3229

3230 Mr. Berman - Any other questions for Mr. Burke? Thank you. Sir.

3231

3232 Mr. Burke - Thanks.

3233

3234 Mr. Berman - Anybody else here that has anything new to add in
3235 opposition to the application? Hearing none, any rebuttal?

3236

3237 Mr. Wolcott - I think it was brought to the attention of you guys that
3238 the County will require us to meet all the Health Department, environmental
3239 engineering, environmental planning—all that we have to go through that assures

3240 that none of these things are going to happen. We don't have intentions of
3241 impacting anybody there. We're not even going to clear the back part of that lot.
3242 We're going to clear as little as we can because it costs more to clear.

3243
3244 As far as building up dirt, I don't think that's going to be an issue. The
3245 requirement of the County is to have six inches of fall within the first ten feet off
3246 the foundation of the house. That will be the guidelines that we would be using.

3247
3248 Again, this variance has already been done once before. Again, we have to go
3249 through everything with the County. In fact, this contract between Mr. Duncan
3250 and us is subject to other things that have to come into alignment as well, which
3251 we haven't even started yet. Because if we didn't have the variance, there would
3252 be no need to go out there and have it perked and do the environmental things
3253 with it.

3254
3255 Mr. Berman - Thank you, Mr. Wolcott. Any questions?

3256
3257 Mr. Bell - I have a question. As we found out this evening
3258 talking about construction, both sides can sound right. With things such as wells
3259 and septic systems today, they are far more advanced than they were 30 years
3260 ago.

3261
3262 Mr. Wolcott - Correct.

3263
3264 Mr. Bell - But that advancement comes with a cost. So does
3265 your employer want to build on this regardless of the cost?

3266
3267 Mr. Wolcott - Not necessarily. We still have to do some homework
3268 of our own. If the variance is approved, I actually have it set up to do the perk test
3269 tomorrow. We're aware of surrounding wells and how far you have to be off this
3270 well, how far you have to be off this drainfield. We're aware of all that. We have
3271 an engineering firm that's going to do all this.

3272
3273 But no, nothing's nailed down for us. We approached Duncan about this
3274 property. What he told me—which all I can do is what he told me—was he was
3275 going to build his own house there. He lives in Southside Richmond, so he just
3276 decided not to. And I asked him about the culvert on Kambis Drive. And he said
3277 VDOT put that in. He requested to have his lot access. Like I said, a portion of
3278 that property does go to that road and is a public road. And he has that right to
3279 do that.

3280
3281 But we're not trying to ruffle anybody's feathers. And we don't know what's going
3282 to happen. But the variance has to be approved before we can go any further,
3283 obviously.

3284
3285 Mr. Bell - Thank you.

3286

3287 Mr. Berman - Any other questions for Mr. Wolcott? I have some
3288 questions, but I don't know if it's going to need you. Mr. Blankinship, a couple of
3289 quick ones here. With regards to the previous variance approvals, what is the
3290 recourse, if any? Is there a statute of limitations? Is there an appeals process if
3291 they feel that notification was compromised?

3292

3293 Mr. Blankinship - I'd have to look into that.

3294

3295 Mr. Berman - Okay.

3296

3297 Mr. Blankinship - We do have a process in place, as you know, that
3298 every application we follow the same procedure of notifying the adjoining
3299 property owners. Now sometimes mail does not get delivered, and there's
3300 nothing we can do about that. We did not, at that point, post the signs, and do
3301 that now as one additional way of making sure that at least the closest neighbors
3302 get a heads up.

3303

3304 Mr. Berman - Thank you. Another question. If this does get
3305 passed—if it does get passed by DPW and the septic field and runoff is
3306 compromising abutting neighbors, what is the recourse then?

3307

3308 Mr. Blankinship - That would depend on the specifics. It's impossible to
3309 answer that as a hypothetical. We would have to see the actual—who did what
3310 and what the cause was.

3311

3312 Mr. Berman - Okay, thank you. Thank you, sir.

3313

3314 Mr. Wolcott - Thank you.

3315

3316 Mr. Berman - I believe I already called for any further opposition.
3317 There was none. That brings us to the end of all of our applications. I want to go
3318 on record as stating for CUP2017-00005 and CUP2017-00006, while I did not
3319 verbally call for it, there was visual affirmation from the applicants that they had
3320 no need for rebuttal to the presented opposition.

3321

3322 Can we take a five-minute break? We will reconvene at 11:40. Thank you.

3323

3324 [Board takes a five-minute break.]

3325

3326 Mr. Berman - We are reconvening at 11:40 a.m. Mr. Secretary, we
3327 have heard all the applications. It is now time to do our motions. With that, the
3328 first is CUP2017-00005.

3329

3330 [After the conclusion of the public hearings, the Board discussed the case
3331 and made its decision. This portion of the transcript is included here for
3332 convenience of reference.]
3333

3334 Mr. Berman - Do I hear a motion?
3335

3336 Mr. Mackey - Yes, Mr. Chairman. We heard a lot of information
3337 today on this case. It appears that there was a hardship caused not by the
3338 applicant and it deemed that they could not build on the lot. I don't think it would
3339 be fair not to approve the variance. I would like to make a motion to approve the
3340 variance and let them go forward and determine if the lot is buildable with getting
3341 such said permits needed to build on the lot.
3342

3343 Mr. Berman - Thank you. Mr. Mackey. Do I hear a second?
3344

3345 Ms. Harris - Second.
3346

3347 Mr. Berman - Ms. Harris has seconded. Any further discussion?
3348

3349 Mr. Bell - There are several things that I would like to mention.
3350 What we are doing is creating a variance that allows them to look at building a
3351 home. The home will be built if it meets the requirements of the County building
3352 codes and other things. There was a lot of past history that I learned from this
3353 that is very concerning to me. However, we're a little premature in ruling that
3354 what hypothetically might happen would be the basis for turning something like
3355 this down. So I would say, as Mr. Mackey mentioned, that approving this is
3356 probably the best way to go.
3357

3358 Mr. Berman - Thank you. Any further discussion?
3359

3360 Ms. Harris - Yes. I'd like to say that Henrico County has a problem
3361 with flooding, especially in Varina. My son lives in Varina. I feel that, as
3362 Mr. Mackey said, with the necessary permits hopefully some of the fears of the
3363 neighborhood would be allayed. So hopefully we can go on from here deciding if
3364 truly it is an unbuildable lot.
3365

3366 Mr. Berman - Thank you. Anyone else? Discussion closed. All those
3367 in favor of the motion signify by saying aye. Any opposed? None opposed;
3368 motion carries 5 to 0.
3369

3370 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
3371 Ms. Harris, the Board **approved** application **VAR2017-00005, ADANA**
3372 **INVESTMENTS, LLC,'s** request for a variance from Sections 24-9 and 24-94 of
3373 the County Code to build a one-family dwelling at 7721 Yester Oaks Lane (Parcel
3374 836-690-1480) zoned Agricultural District (A-1) (Varina). The Board approved
3375 the variance subject to the following conditions:

3376

3377

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

3379

3380

3381

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

3382

3383

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

3388

3389

3390

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3392

4. Before beginning any clearing, grading, or other land disturbing activity, the applicant shall submit an environmental compliance plan to the Department of Public Works.

3393

3394

3395

3396

5. The applicant shall access the property directly from the terminus of the Kambis Drive right-of-way.

3397

3398

3399

3400

Affirmative: Bell, Berman, Harris, Mackey, Reid 5

3401

Negative: 0

3402

Absent: 0

3403

3404

3405

Mr. Berman - That brings us to the minutes. Do I hear a motion on the minutes?

3406

3407

3408

Ms. Harris - One correction. Line 1167. In the second sentence they have "the Fan is about six miles away." Should that be "farm?"

3409

3410

3411

Mr. Gidley - I think the Fan is right.

3412

3413

Ms. Harris - What did you say? "The Fan" is right?

3414

3415

Mr. Gidley - I think so. The Fan District.

3416

3417

Mr. Berman - Yes.

3418

3419

Ms. Harris - It should be "Fan?"

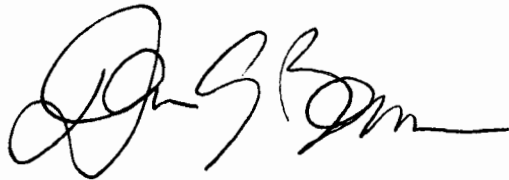
3420

3421

Mr. Berman - Fan. Yes.

3422
 3423 Ms. Harris - We're talking about the Fan District?
 3424
 3425 Mr. Gidley - Yes.
 3426
 3427 Mr. Berman - Did you want us to add "District"?
 3428
 3429 Ms. Harris - No, that's okay.
 3430
 3431 Mr. Berman - Okay.
 3432
 3433 Ms. Harris - I understand that now. I move the minutes be
 3434 accepted as presented.
 3435
 3436 Mr. Berman - So the motion is from Ms. Harris. Second?
 3437
 3438 Mr. Mackey - Second.
 3439
 3440 Mr. Berman - Second is from Mr. Mackey. Any further discussion?
 3441 No further discussion. All those in favor signify by saying aye. Any opposed?
 3442 None opposed; motion carries.
 3443
 3444 On a motion by Ms. Harris, seconded by Mr. Mackey, the Board **approved as**
 3445 **submitted the Minutes of the February 23, 2017**, Henrico County Board of
 3446 Zoning Appeals meeting.
 3447
 3448
 3449 Affirmative: Bell, Berman, Harris, Mackey, Reid 5
 3450 Negative: 0
 3451 Absent: 0
 3452
 3453

3454 Mr. Berman - There is no new business. We are adjourned.



Dennis Berman
 Chairman



Benjamin Blankinship, AICP
 Secretary