

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**  
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION**  
3 **BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY**  
4 **SPRING ROADS, ON THURSDAY, MAY 23, 2013 AT 9:00 A.M., NOTICE**  
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH MAY 6,**  
6 **2013, AND MAY 13, 2013.**

7  
Members Present: R. A. Wright, Chairman  
James W. Nunnally, Vice Chairman  
Greg Baka  
Gentry Bell  
Helen E. Harris

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

8  
9 Mr. Wright - Good morning, ladies and gentlemen. Welcome to  
10 the May meeting of the Board of Zoning Appeals for Henrico County. I would ask  
11 you to please stand and join me in pledging allegiance to the flag of our country.

12  
13 Thank you. Mr. Blankinship, would you please read our rules?

14  
15 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,  
16 ladies and gentlemen. The rules for this meeting are as follows. Acting as  
17 secretary, I will call each case. And while I'm speaking, the applicant should  
18 come down to the podium. We will then ask everyone who intends to speak to  
19 that case to stand and be sworn in. Then the applicant will present their  
20 evidence. Then anyone else who wishes to speak will be given the opportunity to  
21 do so. And after everyone has spoken, the applicant and only the applicant will  
22 have an opportunity for rebuttal.

23  
24 After everyone has had a chance to speak and the Board has asked any  
25 questions, they will take the matter under advisement and proceed to the next  
26 case. They will render all of their decisions at the end of the meeting. So if you  
27 want to hear their decision on a specific case, you can either stay until the end of  
28 the meeting, which probably won't be very long this morning, or you can check  
29 the Planning Department website—we usually get it updated within about an  
30 hour after the end of the meeting—or you can call the Planning Department this  
31 afternoon.

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

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And finally, there is a binder in the foyer containing the staff report for each case, which includes the conditions that have been recommended by the staff. It's very important that the applicants be familiar with those conditions.

Mr. Wright - All right, Mr. Blankinship. Are there any deferrals or withdrawals?

Mr. Blankinship - No sir.

Mr. Wright - None, okay. Would you please call the first case?

**CUP2013-00011 COLLEGIATE SCHOOL** requests a temporary conditional use permit pursuant to Section 24-116(c)(1) of the County Code to allow a temporary office trailer at 201 N Mooreland Road (Parcel 747-735-6082), zoned R-2, One-Family Residence District (Tuckahoe).

Mr. Wright - Will all persons who desire to speak with respect to this case, whether for or against it, please stand and be sworn.

Mr. Blankinship - Would you raise your right hand, please. Do you swear the testimony you're about to give is the truth and nothing but the truth so help you God?

Mr. Carson - I do.

Mr. Wright - All right, sir. Please state your name for the record and present your case.

Mr. Carson - Certainly. My name is Scott Carson. I'm with Collegiate School. My last name is spelled C-a-r-s-o-n.

Mr. Wright - All right, sir. Thank you.

Mr. Carson - You're welcome.

Mr. Wright - Please present your case.

Mr. Carson - Sure. Collegiate School requests a two-year conditional use permit for a small modular trailer to be used as office space within the central portion of our campus, as is stated in our case. We received a building permit for this trailer last June, and it's presently being occupied by three staff members of the Development Office due to a bit of a space crunch we have with our ongoing renovations of several buildings on campus. These three folks will be moving out of the trailer in August of this summer, and they will find new homes in the buildings that we're presently renovating. But we have plans for

82 further renovations that we've been discussing with the Planning Department to  
83 date, and we'll need this space to help three new people have temporary offices  
84 for up to two years, which is what we've requested in our CUP application. As  
85 you can see, the trailer exists. It's functioned very well on campus, fits well. We  
86 actually refer to it as our cottage now, not our trailer. You can go there and  
87 request a cup of sugar from your neighbor.

88  
89 Anyway, we're asking the Board's approval for a two-year extension of its  
90 lifespan on campus to accommodate our temporary needs.

91  
92 Mr. Wright - All right, sir, Have you read the conditions?

93  
94 Mr. Carson - I have.

95  
96 Mr. Wright - Mr. Blankinship, I'm just curious about Condition #4.

97  
98 Mr. Blankinship - Yes sir.

99  
100 Mr. Wright - We understand that this permit is only for two years.

101  
102 Mr. Carson - Correct. That's the maximum.

103  
104 Mr. Wright - We're not permitted to renew it after two years under  
105 the code. So I was just curious. Is this just to induce them to do what they're  
106 supposed to do?

107  
108 Mr. Blankinship - That's exactly right, Mr. Chairman. We have had  
109 cases in the past where we've gotten to the end of the two years and asked the  
110 applicant what they're going to do now. And they have said well, we'll just apply  
111 for an extension. And we try to remind them that two years ago we made it as  
112 clear as we could that there could not be an extension. So this is just a way of  
113 having the applicant on record halfway through the process that they are aware  
114 that they have one more year to go and that they have an idea of what they are  
115 going to do.

116  
117 Mr. Wright - Suppose they decide to remove it, they don't need  
118 another permit?

119  
120 Mr. Wright - They would be free to do that.

121  
122 Mr. Wright - Well this says they "shall submit a plan to the  
123 Planning Department showing how they intend to provide for" a permanent office  
124 space.

125  
126 Mr. Blankinship - Right. The applicant mentioned that he's preparing—

127

128 Mr. Wright - I understand that. I'm just being a devil's advocate.  
129  
130 Mr. Blankinship - Yes. All this letter would have to say is we're  
131 renovating space X and these people will move into that space as soon as it's  
132 complete.  
133  
134 Mr. Wright - But, I mean if they decide it's a temporary use and  
135 they just want to remove it, this says they shall submit a plan.  
136  
137 Mr. Blankinship - Right. For how they are going to accommodate these  
138 people. The plan could be these three positions were temporary, and we no  
139 longer need the people, so we no longer need space for them. Whatever it is, we  
140 just want a statement from them in writing making clear that they know the trailer  
141 has to go and that they have thought about that.  
142  
143 Mr. Carson - On Condition #4, that's for the three specific people  
144 who are in this temporary housing.  
145  
146 Mr. Blankinship - Right.  
147  
148 Mr. Carson - Okay.  
149  
150 Mr. Wright - I understand that this trailer is located sort of in the  
151 center of your facility.  
152  
153 Mr. Carson - Yes.  
154  
155 Mr. Wright - It's hardly seen from anywhere outside.  
156  
157 Mr. Carson - That's true.  
158  
159 Mr. Wright - Any questions from members of the Board?  
160  
161 Ms. Harris - Yes, I have a question. I noticed in the application you  
162 asked for this conditional use permit from September to August 2015. And the  
163 condition states that it should be removed on or before May 2015.  
164  
165 Mr. Carson - I noticed that, too, and I had a question about that.  
166  
167 Mr. Blankinship - Okay.  
168  
169 Mr. Carson - When we applied for and were granted the building  
170 permit for this last year, I had written to Kevin Wilhite of the Planning  
171 Department, and he agreed that the initial building permit was good up until  
172 August 15<sup>th</sup> of 2013, this summer. I think, Ben, you and I had spoken on the  
173 phone. We simply wanted two years after the building permit conditions were

174 terminated, two years after that. And that's why in our application for this trailer  
175 we had rounded that to September 1<sup>st</sup> of 2013 through August 31<sup>st</sup> of 2015.

176  
177 Mr. Wright - When will the use begin that requires this permit?

178  
179 Mr. Blankinship - That's a good point. Let me answer that question.  
180 They originally put this trailer there as part of a construction project right there.  
181 And because it was part of that construction project, it didn't require a use permit  
182 at that time. That's why the trailer is already there and their two years has not  
183 started running. They've completed that part of the construction, and now they're  
184 going to be working on another part of the site. So that's why the trailer, after  
185 August 31<sup>st</sup>, will no longer be part of an ongoing construction project where it is. So  
186 that's why that changeover. So yes, those two conditions, 3 and 4, should both  
187 reference August 31<sup>st</sup> rather than May 30<sup>th</sup>. Thank you for pointing that out.

188  
189 Mr. Wright - So we want to change that date to August 31<sup>st</sup>.

190  
191 Mr. Blankinship - Yes. Rather than May 30<sup>th</sup>, it should be August 31<sup>st</sup> in  
192 both Condition 3 and Condition 4. This permit will not begin running until the  
193 existing building permit runs out, which is August 31<sup>st</sup> of this year. Thank you for  
194 bringing that up.

195  
196 Mr. Wright - Thank you for catching that. Ms. Harris.

197  
198 Ms. Harris - Okay. One more question. With reference to the  
199 handicap access, we know that this trailer does not offer facilities for the  
200 handicapped. What are you all doing about the handicapped or do you need  
201 handicap accommodations?

202  
203 Mr. Carson - The occupants will not need that service. But if it's a  
204 condition of the County, we'll put a ramp in.

205  
206 Mr. Blankinship - There are many ways to comply with the act, and  
207 we're just pointing out that you have to comply with the act. It doesn't necessarily  
208 mean a ramp. If you've already got a building permit and you've already got  
209 people in there, you're probably already in compliance. There's probably a  
210 statement somewhere of how that's being complied with.

211  
212 Mr. Carson - Okay. So are you saying that we could simply extend  
213 it as it is?

214  
215 Mr. Blankinship - As far as I know, yes. We'll just need to check on the  
216 building permit.

217  
218 Mr. Carson - Sure.

219

220 Mr. Wright - But we're covered under Condition #2 in that respect,  
221 Ms. Harris.  
222  
223 Ms. Harris - Okay, thank you.  
224  
225 Mr. Wright - Any further questions?  
226  
227 Mr. Carson - Can I just ask a question? You say we're covered  
228 under Item 2. We won't have to apply for another building permit, will we?  
229  
230 Mr. Blankinship - No.  
231  
232 Mr. Carson - Okay.  
233  
234 Mr. Wright - Any further questions?  
235  
236 Mr. Baka - Just one question. This building is somewhat centrally  
237 located on campus and hidden or partially hidden by tall mature trees. Question  
238 for staff. Were any letters of objection received by the staff from any neighbors?  
239  
240 Mr. Blankinship - No sir.  
241  
242 Mr. Baka - Okay. No further questions.  
243  
244 Mr. Blankinship - Part of the reason for doing it this way rather than  
245 moving the trailer to the active construction project is that they were happy with  
246 the way it looked; everybody was happy with this situation. So it just made more  
247 sense to change approval processes rather than pick the trailer up and move it.  
248  
249 Mr. Wright - Any further questions? Is anyone here in opposition to  
250 this request? Hearing none, that concludes the case. Thank you very much for  
251 appearing.  
252  
253 Mr. Carson - Thank you. Have a good morning.  
254  
255 **[After the conclusion of the public hearings, the Board discussed the case**  
256 **and made its decision. This portion of the transcript is included here for**  
257 **convenience of reference.]**  
258  
259 Mr. Wright - Do I hear a motion on this case?  
260  
261 Mr. Baka - I make a motion that we approve CUP2013-00011  
262 with the understanding that this application will not adversely impact the health,  
263 safety, or welfare of the neighboring or adjoining properties.  
264

265 Mr. Blankinship - Mr. Baka, does your motion include amending the  
266 condition from May to August?  
267

268 Mr. Baka - Yes sir. And with amendment of the conditions, the  
269 dates that we spoke of previously. Thanks.  
270

271 Mr. Wright - Is there a second to that?  
272

273 Ms. Harris - I second it.  
274

275 Mr. Wright - Seconded by Ms. Harris. Is there any discussion on  
276 the motion? Hearing none, all in favor say aye. All opposed say no. The ayes  
277 have it; the motion passes.  
278

279 After an advertised public hearing and on a motion by Mr. Baka, seconded by  
280 Ms. Harris, the Board **approved** application, **CUP2013-00011, Collegiate**  
281 **School's** request for a temporary conditional use permit pursuant to Section 24-  
282 116(c)(1) of the County Code to allow a temporary office trailer at 201 N  
283 Mooreland Road (Parcel 747-735-6082), zoned R-2, One-Family Residence  
284 District (Tuckahoe). The Board approved this temporary conditional use permit  
285 subject to the following conditions:  
286

287 1. This conditional use permit is only to permit the proposed trailer as shown  
288 and described on this application. Any additional improvements shall comply with  
289 the applicable regulations of the County Code. Any substantial changes or  
290 additions to the design or location of the improvements will require a new use  
291 permit.  
292

293 2. The applicant shall apply for and obtain all necessary building permits no later  
294 than June 14, 2013. All trailers shall comply with the Americans with Disabilities  
295 Act (ADA). The trailers shall not be occupied until a certificate of occupancy has  
296 been issued.  
297

298 3. [AMENDED] The trailer shall be removed from the property on or before  
299 August 31, 2015, at which time this use permit shall expire. This use permit shall  
300 not be renewed.  
301

302 4. [AMENDED] On or before August 31, 2014, the applicant shall submit a plan  
303 to the Planning Department showing how they intend to provide for permanent  
304 office space at the school.  
305

306 5. All landscaping shall be maintained in a healthy condition at all times. Dead  
307 plant materials shall be removed within a reasonable time and replaced during  
308 the normal planting season.  
309

310

311	Affirmative:	Baka, Bell, Harris, Nunnally, Wright	5
312	Negative:		0
313	Absent:		0

314

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

317

318 **VAR2013-00002**                    **RANDY MCQUINN** requests a variance from Section  
 319 24-94 of the County Code to allow an addition to remain at 1304 Gilchrist Court  
 320 (NEW MARKET FARMS) (Parcel 803-703-0891), zoned R-3, One-Family  
 321 Residence District (Varina). The rear yard setback is not met. The applicant has  
 322 27 feet rear yard setback where the Code requires 40 feet rear yard setback.  
 323 The applicant requests a variance of 13 feet rear yard setback.

324

325 Mr. Wright -                    All persons desiring to speak with reference to this  
 326 case please stand and be sworn, whether you're for or against.

327

328 Mr. Blankinship -            Please raise your right hand. Do you swear the  
 329 testimony you're about to give is the truth and nothing but the truth so help you  
 330 God?

331

332 Mr. McQuinn -                Yes.

333

334 Mr. Wright -                Please state your name for the record, sir.

335

336 Mr. McQuinn -                Good morning, sir. My name is Randy McQuinn. The  
 337 spelling of my last name is M-c-q-u-i-n-n.

338

339 Mr. Wright -                All right, sir. Please present your case.

340

341 Mr. McQuinn -                Yes. Around about the summer of 2010, my wife and  
 342 I desired to have an addition built onto our home, adding two bedrooms and a  
 343 bathroom to the back. The purpose of the addition was to further what we  
 344 believe to be our life's purposes, which is foster parenting. We've been doing so  
 345 for six years, and in that time we've had the privilege to foster eleven children.  
 346 We've adopted one, and currently we have two children in foster care in our  
 347 home placed with us.

348

349 At that time, we met a gentleman by the name of Alfredo Salvador who seemed  
 350 to be credible as a contractor. We met him at Lowe's. He offered some  
 351 references. He presented himself well. And we called the references, and we  
 352 checked up on it, and everyone seemed to like the work that he had done for  
 353 them, so we decided to hire him. We were under the assumption, as he  
 354 presented himself, that he would take care of all of the necessary County things,  
 355 but we found out that wasn't the case. We were informed by the Building  
 356 Inspections Department that we had not obtained building permits and that we



357 were in violation. At that time, I attempted to get a building permit, but I was told  
358 that we did not meet the setback requirements. So I was advised to apply for a  
359 variance. And that is why we're here now.

360

361 Looking at the suggestions, I would like to draw your attention to suggestion #3,  
362 the applicant shall properly drain the existing pool no later than ten days from the  
363 approval of this permit if the committee chose to grant us the variance. We have  
364 drained the pool, and we're intending to dismantle and discard the pool.

365

366 And if I could draw your attention to #4, the applicant shall repair the existing  
367 side gate securing the entrance in the rear yard. We're in the process of securing  
368 that gate now. I bought the materials. I will repair that gate by the end of this  
369 week.

370

371 And also on condition #5, the applicant shall apply for a conditional use permit  
372 for the location of a two-car garage in the side yard no later than thirty days from  
373 the approval of this variance. I have a completed application for conditional use  
374 with me now, and I'm prepared to submit that at the conclusion of the meeting  
375 today.

376

377 Mr. Wright - Our problem is much more serious than that, Mr.  
378 McQuinn. There was a statement I believe you signed on April the 16<sup>th</sup> that we  
379 have a copy of that points out the situation with respect to the Virginia Supreme  
380 Court case, Cochran versus Fairfax County Board of Zoning Appeals. I've talked  
381 to Mr. Blankinship, and I think he explained to you the import of that. Did you  
382 understand that statement when you signed it?

383

384 Mr. McQuinn - Um...

385

386 Mr. Wright - Well, let me kind of review the situation. This puts the  
387 Board in a very difficult position here because of this case, Cochran versus  
388 Fairfax County Board of Zoning Appeals, which in effect holds that if you have  
389 reasonable beneficial use of your property before you put the addition on, then  
390 this Board has no authority to grant you any permission to add an addition which  
391 would violate the backyard setback. And what that case says is that this Board  
392 has no authority to even consider the case. The Supreme Court has ruled that,  
393 and we are forced to comply with that requirement. And what that says in  
394 particular would be that if you had come into this Board and filed an application  
395 for a variance before you built the addition, this Board would have had no  
396 authority to grant that variance, so you would not have been able to construct it.  
397 Our view is at this point, is we're not able to do anything more than we could  
398 have done at the time that you built it or you applied to build it. I just wanted to  
399 point that out to you. It's a difficult situation, but that's the position we are forced  
400 to be in, the legal position, and I wanted to explain that to you.

401

402 Mr. McQuinn - Thank you.

403  
404 Mr. Wright - Did you want to make any further statements with  
405 respect to this application?  
406  
407 Mr. McQuinn - Well, I really don't know what to say.  
408  
409 Mr. Wright - Well, let me explain your options, at least as I  
410 understand them. Mr. Blankinship may want to state something further.  
411  
412 One, you could appeal this case to the Circuit Court to see if the Court still holds  
413 to that position. Or if you don't do that, Mr. Blankinship, you might explain what  
414 would happen next if this Board does not grant this application for a variance.  
415  
416 Mr. Blankinship - If there is some way that you can find the contractor  
417 and get back in touch with him, I think the contractor's responsible for getting you  
418 into this position.  
419  
420 Mr. McQuinn - Okay.  
421  
422 Mr. Blankinship - And the Building Inspections Department may be able  
423 to help you with that.  
424  
425 Mr. Wright - Unfortunately, we've had this happen several times.  
426 Contractors are so anxious to get the work they kind of say well, do you want us  
427 to get a permit? Well, you don't know; you're leaving it up to them. And  
428 unfortunately, that puts you in a bad situation because he should have known  
429 better, that you cannot build a substantial building in the County—or any  
430 jurisdiction—without a building permit.  
431  
432 Mr. Blankinship - Technically, you can't swap out a light switch without  
433 an electrical permit. There's no question whether a permit was required.  
434  
435 Mr. McQuinn - Yes, yes.  
436  
437 Mr. Wright - That puts you in a terrible position. We empathize  
438 with you completely.  
439  
440 Mr. McQuinn - Thank you.  
441  
442 Mr. Baka - I have one question, if I may.  
443  
444 Mr. Wright - Yes.  
445  
446 Mr. Baka - If the state court case states the Board would not  
447 have any authority to grant a variance if there is beneficial use of the property  
448 taken as a whole, I guess my question would be if the homeowner has the use of

449 the property for a single-family use and also for use as a foster home, and that's  
450 necessary for that use, would there be any extra width or latitude to allow for  
451 hearing a variance based on the additional uses that are in the home, not only  
452 for a single-family residence, but also for existing as a foster home? A secondary  
453 use or ancillary use.

454  
455 Mr. Blankinship - In all three of the cases that were combined into the  
456 Cochran decision, the Supreme Court specifically said that each applicant had  
457 the option of abandoning the project, that they still had use—one of them was a  
458 garage, one of them was a storage building, and I don't remember offhand what  
459 the third one was. In each case, the Court said they had the choice of not  
460 building that garage or not building that—

461  
462 Mr. Wright - The fact is they were living in the premises, and that's  
463 a reasonable, beneficial use.

464  
465 Mr. Baka - That is a reasonable, beneficial use. I'm just  
466 wondering if—each zoning district tends to list the district and then one, two,  
467 three, four, all the permitted uses. Is a foster home, such as group homes for  
468 example, another beneficial use of property. Can this be construed as another  
469 beneficial use of the property so that the Board might have the authority to  
470 consider the case?

471  
472 Mr. Blankinship - It is a beneficial use, but what the Court said is that  
473 the only time the Board has the authority to grant a variance is if there is *no*  
474 beneficial use.

475  
476 Mr. Wright - No beneficial use.

477  
478 Mr. Baka - None at all.

479  
480 Mr. Wright - That's the real issue.

481  
482 Mr. Baka - Thank you.

483  
484 Mr. Wright - It really puts this Board in a bind insofar as  
485 applications for variances. We have no authority to even—in one of those cases  
486 in the Cochran case, they were only violating a foot. They needed one foot more  
487 on the side line, and the Court said that's immaterial. As long as there's a  
488 beneficial use, it can't be granted. It's a constitutional issue, is what it is. They  
489 interpreted it that way.

490  
491 Ms. Harris - I have a question. Even though we have no authority  
492 to grant you a variance based on the Cochran case, if you appeal this case to  
493 the Circuit Court, I think some things should go on the record, so I'm going to ask  
494 you a few questions.

495  
496 Mr. McQuinn - Okay.  
497  
498 Ms. Harris - Okay. In the report, the staff report, we noticed that  
499 you could have placed an addition some place other than twenty-seven feet from  
500 the rear line. Is that true?  
501  
502 Mr. McQuinn - Yes. Based on the information that I received from  
503 Zoning when I came in to get the proper building permit, then I became aware of  
504 what the actual setbacks were and what the dimensions were that I could have  
505 built an addition on. But that was after the fact.  
506  
507 Ms. Harris - Okay. Is that addition attached to your house?  
508  
509 Mr. McQuinn - Yes ma'am.  
510  
511 Ms. Harris - And you're aware that the garage, the pool, and the  
512 addition are all in violation of the code?  
513  
514 Mr. McQuinn - I was made aware of that. The garage and the pool  
515 were existing when we purchased the home.  
516  
517 Ms. Harris - Okay. If this variance is not granted, how do you  
518 propose to resolve the garage and the pool? I think you already told us about the  
519 pool; you're going to just take that down.  
520  
521 Mr. McQuinn - Yes. I also have a completed application for a  
522 conditional use permit for the garage.  
523  
524 Mr. Wright - Yes, he could do that.  
525  
526 Ms. Harris - Yes. I just wanted to know if you were just going to  
527 leave it right where it was.  
528  
529 Mr. Wright - The garage presents no problem.  
530  
531 Mr. Baka - Because it's detached.  
532  
533 Mr. Wright - We have the authority, if you come before us on a  
534 use permit, to consider approving your garage as it is. That's no problem. I would  
535 hope that somehow or another that contractor could be made to rearrange that  
536 addition in such a way that it didn't violate the code. I don't know if it can be  
537 done, but.  
538  
539 Mr. Baka - Can I ask a question, Mr. Chairman?  
540

541 Mr. Wright - Sure.  
542  
543 Mr. Blankinship - Are you finished, Ms. Harris?  
544  
545 Ms. Harris - Yes, thank you.  
546  
547 Mr. Baka - I know this may sound a little unusual. Since the  
548 garage would be potentially okay another month as a detached garage with a  
549 conditional use permit, as unusual as this sounds, is there any way to possibly  
550 remove the connecting wall between the addition and perhaps even shrink it  
551 slightly so that it's a detached structure?  
552  
553 Mr. Blankinship - It would have to be ten feet from the dwelling.  
554  
555 Mr. Baka - Oh, ten feet.  
556  
557 Mr. Blankinship - So you would have to detach a lot of building.  
558  
559 Mr. Baka - Okay. Sorry.  
560  
561 Mr. Nunnally - Mr. McQuinn, Mr. Blankinship has asked if you might  
562 try to get in touch with your contractor. Is this the same contractor that built your  
563 original home?  
564  
565 Mr. Wright - No, he bought this.  
566  
567 Mr. McQuinn - No. The home was constructed in 1974. We  
568 purchased it in two thousand two.  
569  
570 Mr. Nunnally - Oh, you purchased it—  
571  
572 Mr. Wright - Yes, he just purchased it a few years ago.  
573  
574 Mr. Nunnally - Thank you.  
575  
576 Mr. Wright - I just wanted, Mr. McQuinn, for you to understand that  
577 we would like to try to help you, if we could. This puts you in a terrible position.  
578 But our hands are tied. As I said, you do have the prerogative to appeal this to  
579 the Circuit Court, but that's going to cost you some money because you'll  
580 probably have to get a lawyer. And boy, when you get a lawyer—stay away from  
581 lawyers; I can tell you that.  
582  
583 Ms. Harris - And he's a lawyer.  
584  
585 Mr. Wright - I just hope that you can find this contractor. I think  
586 he'd be liable, I really do. I think you could ultimately be reimbursed for your

587 costs and so forth, but that doesn't help you with your addition. That's the real  
588 problem. Any further questions from members of the Board? Anyone here in  
589 opposition to this request? I have to say that. Thank you for coming down and  
590 telling us about your problem.

591

592 Mr. McQuinn - Thank you for your time and consideration.

593

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

597

598 Mr. Wright - Do I hear a motion on this case?

599

600 Mr. Nunnally - Mr. Chairman, I move we deny the variance request.  
601 We really don't have any authority according to Virginia law and the Cochran  
602 case to even consider it.

603

604 Mr. Wright - All right. Mr. Nunnally has made a motion. Do I hear a  
605 second?

606

607 Mr. Bell - Second.

608

609 Mr. Wright - Okay. Mr. Bell seconded. Is there any discussion on  
610 this? I wish there was some way we could find to approve this thing.

611

612 Mr. Baka - I do too.

613

614 Mr. Wright - There's no leeway, Mr. Blankinship, where the owner  
615 is not really at fault.

616

617 Mr. Blankinship - None that I'm aware of, Mr. Chairman.

618

619 Mr. Wright - The owner is an innocent victim here. But that doesn't  
620 change the law, unfortunately.

621

622 Ms. Harris - I think the only case that we had was the swimming  
623 pool case that was taken to the Board of Supervisors when we could not grant a  
624 variance. They changed that code to require a conditional use permit.

625

626 Mr. Wright - I've been pushing for this for some time. I think the  
627 ordinance could be amended or the statute could be amended. In the Cochran  
628 case they said there was a possibility to do the same thing with variances, if they  
629 wanted to, to give this Board more discretion. We don't have any discretion at all.  
630 All right. Motion's been made and seconded. All in favor of denying this  
631 application, please say aye. All opposed say no. The ayes have it; the motion  
632 passes. It's denied, regrettably.

633

634 After an advertised public hearing and on a motion by Mr. Nunnally seconded by  
635 Mr. Bell, the Board **denied** application **VAR2013-00002, Randy McQuinn's**  
636 request for a variance from Section 24-94 of the County Code to allow an  
637 addition to remain at 1304 Gilchrist Court (NEW MARKET FARMS) (Parcel 803-  
638 703-0891), zoned R-3, One-Family Residence District (Varina). The rear yard  
639 setback is not met. The applicant has 27 feet rear yard setback, where the Code  
640 requires 40 feet rear yard setback. The applicant requests a variance of 13 feet  
641 rear yard setback.

642

643

644 Affirmative:	Baka, Bell, Harris, Nunnally, Wright	5
645 Negative:		0
646 Absent:		0

647

648

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

651

652 **CUP2013-00012** **SONIA JOHNSTON** requests a conditional use permit  
653 pursuant to Section 24-12(g) of the County Code to operate a family day home  
654 with outside employees at 8104 Langley Drive (MOUNTAIN RIDGE) (Parcel 778-  
655 762-6020), zoned R-3, One-Family Residence District (Fairfield).

656

657 Mr. Wright - Anyone here interested in speaking with reference to  
658 this case please stand and be sworn.

659

660 Mr. Blankinship - Would you please raise your right hands? Do you  
661 swear the testimony you're about to give is the truth and nothing but the truth so  
662 help you God?

663

664 Ms. Johnston - Yes.

665

666 Mr. Wright - All right. Please—

667

668 Ms. Harris - Before you continue, I have to recuse myself from this  
669 case. They are my neighbors. I did receive a notice from Planning, so I think to  
670 avoid a conflict of interest I need to do that.

671

672 Mr. Wright - Thank you, Ms. Harris. All right, please state your  
673 name for the record.

674

675 Ms. Johnston - I'm Sonia Johnston. Last name is spelled J-o-h-n-s-t-  
676 o-n.

677

678 Mr. Wright - All right, ma'am, please present your case.

679  
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724

Ms. Johnston - Good morning. I'm here to please ask that my request for a conditional use permit be allowed. I'm the owner/operator of my own in-home daycare; we call it Smiling Faces Learning Center. I've been watching children over the last seventeen years. I've invested a lot of time and energy into creating and tweaking my curriculum. I have an established clientele, a host of resources, and I provide, I believe, a wonderful service to the community.

I am licensed by the Virginia Department of Social Services, and just recently I received a renewal for three years. A three-year license is a big deal in my world of daycare, as Social Services describes it as being issued to a facility with activities, services, management, and overall performance levels that routinely exceed the basic care, program, and services as required by minimum standards.

I take a great deal of pride in my business. It's small, but I think it has a mighty impact. We do a lot at Smiling Faces. I value my parents, and they value my services. I actually have a waiting list through the year 2015, and 90 percent of my families come via word of mouth and from referrals. Also, I want to add as I've been doing this for seventeen years, my first group entered college last year with at least one making the dean's list. Over the years since, I've had several children go into Henrico's IB program and fill various leadership opportunities within school.

At Smiling Faces, we have a mixed age group along with myself and two other assistants, and that is the reason why I'm here. We take children at one year old, and they stay with me until kindergarten. During that time, our days are filled with lots of fun and lots of hugs.

My program is a whole-child kindergarten preparatory. We teach the alphabet, numbers, colors, shapes, reading, addition, subtraction, along with a healthy dose of vigorous exercise and outdoor play. And when I say *teach*, I don't jest. We actually teach these concepts to these children. We take time and evaluate each child. I send home daily progress reports, semi-annual assessments. They have homework. I create individual review binders for each child.

By three years old, most children can randomly identify all of their numbers, letters, colors, and shapes. Just the other day we reviewed the letters A through Z in our theme with animals. I would call out a letter and its sound, and each child would give me an animal name. It's a wonderful sight to see two-, three-, and four-year-old children saying *bear* when I make the *b-ba* sound. I'm very proud of their efforts and enthusiasm. And even after seventeen years, it still makes me smile.

The other element that I'm very proud of is the fact that we get to know each child on an individual basis. That in itself builds their confidence. I fully believe



725 that a child learns best when they learn to trust. Research has also shown, and I  
726 quote, "numerous studies have demonstrated that higher quality childcare is  
727 predictive of a range of positive developmental outcomes for children." These  
728 findings have focused attention on the components of good quality care. Child-  
729 staff ratios have been identified as an important quality indicator. Substantial  
730 research has gone on to establish the relationship between a smaller child-staff  
731 ratio and a better social and cognitive outcome. Children in classrooms with  
732 smaller ratios display less distress, engage in more complex play, and  
733 demonstrate more secure attachments with their caregivers.

734

735 To keep the momentum of my program going, I must continue to have  
736 assistance, and that is what I request today. Currently, my ratio is four to one.  
737 That number affords us the opportunity to always stay compliant with state law  
738 and to always have a watchful eye over the children in our care, as safety is  
739 always the utmost concern. My assistants are wonderful people. And more  
740 importantly, they enjoy their job. Just recently I did evaluations, and they both  
741 told me how much they enjoy what they do. That speaks a lot to me, and I'm  
742 sure it speaks volumes to the parents whose children I provide care for.

743

744 As for safety or nuisance issues for my employees, I would never allow it. I've  
745 always done my best to instill the fact that they work in a residential  
746 neighborhood. And before I commit to hiring anyone, I do phone interviews, and  
747 our first and second meeting is off site. During that initial meeting, they must sign  
748 an affidavit attesting to the validity of any background checks that I run. I fully  
749 complete all reference checks, background checks, and have at least one  
750 meeting before I bring them into my home. During this time, they are acclimated  
751 to my house rules, and I let them know that no outside family or friends are  
752 allowed to drop by or visit. I remind them of neighborhood speed limits and there  
753 is absolutely no loitering at any time. I do this not only out of respect to my home,  
754 but to my neighbors. I'm also happy to report that my employees have always  
755 fully complied with my expectations.

756

757 While I was writing this, I was forced to face the possible reality of an undesired  
758 outcome, and it was a bit overwhelming to me, kind of like looking through a  
759 crystal ball at an altered reality, a place where I would have to explain to my  
760 parents and to their children that they could no longer come to my home and  
761 they would no longer see some of their friends. I would be forced to go through  
762 my roster and choose which families would stay and which would go. I'd have to  
763 let go of my staff. And honestly, I don't know where to begin with the legal  
764 ramifications of that with the Virginia Employment Commission. The parents on  
765 my waiting list would have to be notified to begin looking elsewhere. Most of  
766 these parents have wanted to come to me since they were pregnant and are just  
767 waiting for their time to get in.

768

769 I'd also have to reevaluate my program. I fully believe and have immersed myself  
770 into the each-one-teach-one philosophy; I know no other way. So much of my

771 curriculum is built on this low ratio and having assistance. And honestly, I'm not  
772 even sure if my parents would want to stay if I would have to alter my program.  
773 There would be no one to cover me on my sick days or personal time off. A lot of  
774 my activities would have to be scaled back. And then there's the impact it would  
775 have on my own family. I am a working mom although I work from home. And my  
776 household depends on a two-parent income. I have a stepdaughter that's getting  
777 married next year, a son going off to college this year, and one other child still in  
778 school. Not having two assistants would alter all of this for so many people. It is  
779 my sincere request that I ask that my permit be granted.

780  
781 I wasn't sure of my time allotment. This issue is so important to me that I could  
782 quite possibly go on and on and stage my own little miniature Zoning Board  
783 filibuster. I know we must all get on with our day. I know you all have received a  
784 staff report, but I also wanted to bring you pictures just so that you guys could  
785 have a glimpse of what we do during the course of the day. We're very, very  
786 busy. We have graduation programs as they go into kindergarten. Henrico  
787 County comes in to talk with us about fire safety. This picture over here where all  
788 the children are laughing is actually where we have Battle of Brains at the end of  
789 our school year. And that picture is all of them answering and knowing the  
790 questions at one time. Sometimes you just have to give them all awards because  
791 they always already know the answers.

792  
793 I do have some letters from parents on my behalf. I don't know if you have the  
794 time for me to go through a few of them. I could give you some excerpts. But I  
795 want to thank you for your time and for allowing me to plead for assistants and  
796 my daycare program.

797  
798 Mr. Wright - Have you read the conditions that are proposed by  
799 the staff? If this were approved, these conditions would apply.

800  
801 Ms. Johnston - Yes.

802  
803 Mr. Wright - What are your current hours?

804  
805 Ms. Johnston - Seven thirty to five thirty.

806  
807 Mr. Wright - So you have that made.

808  
809 Ms. Johnston - Yes sir.

810  
811 Mr. Wright - How many children do you have right now?

812  
813 Ms. Johnston - I'm allowed the maximum of twelve.

814  
815 Mr. Wright - Right. Excluding your children.

816

817 Ms. Johnston - Yes.  
818  
819 Mr. Wright - Also, do you have parking for your employees off of  
820 the street at your home.  
821  
822 Ms. Johnston - Kind of, sort of. They can. I have a two-car carport.  
823 And my husband, when he goes to work, then my assistants can pull in. But I  
824 have a singular driveway. I could make it work. They can park on the grassy part  
825 that's not a driveway yet, but that's something I can work on, making a double  
826 driveway.  
827  
828 Mr. Wright - You notice one of the conditions, #4, is they shall  
829 park on site and not on the street.  
830  
831 Ms. Johnston - Right. And that's what I was saying about making the  
832 singular driveway a double driveway.  
833  
834 Mr. Wright - And then #5, you shall install a six-foot-tall backyard  
835 privacy fence.  
836  
837 Mr. Blankinship - That is not a standard condition, as you know,  
838 Mr. Chairman, so I'm glad that you brought that up. Staff wanted to make sure  
839 the Board was comfortable with that condition before you proceed.  
840  
841 Mr. Wright - Do you have any problem with that condition? What  
842 do you have now?  
843  
844 Mr. Wright - I don't have a fence right now, but I do want one. It's  
845 a financial issue. It's one that I was working on anyway. Someone within the  
846 industry had given me a list of grants to apply for, but they all fell through. I  
847 wanted to come today and actually say hi, I've got my grant; I'm going to get my  
848 fence up right away. So now I'm going to work on—  
849  
850 Mr. Wright - So you think you can comply with that one all right—  
851  
852 Ms. Johnston - Absolutely.  
853  
854 Mr. Wright - —without much strain?  
855  
856 Ms. Johnston - Yes. It may take me some time, but I certainly will get  
857 to it. I mean, just for safety issues it makes sense anyway.  
858  
859 Mr. Wright - Right. And a trampoline is not allowed, evidently by—  
860  
861 Ms. Johnston - Well, actually, kind of, sort of. I have my paper right  
862 here. A trampoline is allowed as long as the children in daycare do not use it,

863 and as long as the children do not play on it during the day. And I actually have a  
864 paper here from Social Services where they state that they know that the  
865 trampoline is there, but it's okay because the children do not use it. And I have  
866 that with me if you'd like to see it.

867  
868 Mr. Wright - Well, shouldn't we modify #6 then?

869  
870 Mr. Blankinship - Perhaps we should. When we visited the site, the  
871 trampoline was disassembled and on the ground.

872  
873 Ms. Johnston - It's down anyway, and that's the reason why I'm okay  
874 with removing it. My daughter is thirteen now. We took it down for Hurricane  
875 Sandy.

876  
877 Mr. Blankinship - Oh, okay.

878  
879 Ms. Johnston - And she probably actually just jumped on the thing  
880 maybe three times out of the year. And it's so hard to put back up; we weren't  
881 going to put it back up anyway. So I don't have any problem with getting rid of it.  
882 But I did have the papers so that you all would know that it's not—

883  
884 Mr. Wright - Well, if you want to put it back up and it satisfies that,  
885 then we need to modify #6. That was my point.

886  
887 Mr. Baka - Do you want to or not want to put it up? No.

888  
889 Mr. Wright - So you're not going to put it back up?

890  
891 Ms. Johnston - I don't think so. She was doing it because she was  
892 doing gymnastics at the time.

893  
894 Mr. Wright - Then #6 would be all right because you have to  
895 remove it anyway.

896  
897 Mr. Blankinship - And we did not put a time limit on either of those  
898 conditions partly because we didn't know how the Board was going—

899  
900 Mr. Wright - Right, right. I just wanted to go over it. Have you had  
901 any complaints from any of the neighbors?

902  
903 Mr. Blankinship - No.

904  
905 Mr. Wright - No complaints.

906  
907 Mr. Blankinship - No. Not even from Ms. Harris.

908

909 Mr. Wright - We commend you on your operation. It sounds like  
910 it's a wonderful service here that you provide.

911  
912 Ms. Johnston - Thank you. I appreciate it.

913  
914 Mr. Wright - Certainly there's a need for it. I have two great-  
915 granddaughters now, and they're facing this business of finding somebody to  
916 look after them. Any questions from members of the Board?

917  
918 Mr. Bell - How did you find out that you needed a permit? I'm  
919 just curious.

920  
921 Ms. Johnston - I didn't know, and I apologize for that. When I first  
922 actually decided to hire employees, I applied for a business license, but I was  
923 told that Henrico County doesn't do business licenses for in-home daycares. And  
924 I thought that was the end-all of it. A few years ago, Social Services decided that  
925 in order to have your license renewed or with the application, you have to contact  
926 Zoning. In my mind, I thought I was okay. And I actually submitted the zoning  
927 request to Mr. Blankinship—and thank you for being so patient with me in that  
928 problem I was having. And so I almost just inadvertently just filed it because I  
929 thought I was doing okay. And then I looked at it and I was, oh, whoa, I need a  
930 permit. What is this? So I immediately got on the phone, and figured out what I  
931 needed, and got that motion going so that I could be compliant.

932  
933 Mr. Bell - Thank you.

934  
935 Ms. Johnston - Thank you.

936  
937 Mr. Wright - Any other questions from members of the Board?

938  
939 Mr. Baka - I have just a couple. You mentioned you have twelve  
940 children. DSS regs, there's typically no more than twelve children in a residence  
941 excluding your own. So what happens if I'm a parent, and I call, and I want to  
942 have my child there? What's said to them?

943  
944 Ms. Johnston - I can't take your child at this time. I put them on a  
945 waiting list.

946  
947 Mr. Baka - Do you maintain a waiting list?

948  
949 Ms. Johnston - I do. Actually I have one to 2015 right now.

950  
951 Mr. Baka - I understand. What I'm getting at is a major point,  
952 though. That waiting list is an opportunity for you, also. In the future down the  
953 road, have you considered a commercial location for future expansion?  
954

955 Ms. Johnston - I have.  
956  
957 Mr. Baka - That's what I'm driving at.  
958  
959 Ms. Johnston - And I have questions. My parents always ask me that  
960 question. They're so used to me that they want to actually keep their children  
961 there an extra year for kindergarten. I base my curriculum on smaller ratios, and  
962 I'm not sure how that would translate over into a commercial childcare center  
963 where you have to have more children, you have to have more staff. That's what  
964 I've built my philosophy on, so having just the twelve children in the home  
965 actually works perfectly for my philosophy right now. And I would not keep any  
966 more than the twelve because that would be a gross violation, and I wouldn't do  
967 that.  
968  
969 Mr. Baka - Thank you. No further questions.  
970  
971 Mr. Wright - Good questions. Thank you. Any further questions  
972 from members of the Board?  
973  
974 Mr. Bell - I understand you have two employees now, and you  
975 can have up to three, right?  
976  
977 Ms. Johnston - I can have as many as you all grant me, but I could  
978 never—I mean I would not be able to afford any more than two as it is. And two  
979 employees—having two to three people there on site we are always compliant.  
980 So I wouldn't need any more than two. But two would be what I would need at a  
981 minimum. And at maximum, as well, too. I wouldn't need any more than two, but  
982 I would need at least two to keep my ratios the way they are.  
983  
984 Mr. Bell - Thank you.  
985  
986 Mr. Wright - Okay. Any further questions? Is there anyone here in  
987 opposition to this request? Hearing none, that concludes the case. Thank you  
988 very much.  
989  
990 Ms. Johnston - Thank you. [Speaking off microphone.] I have a little  
991 package.  
992  
993 Mr. Blankinship - If you want to submit it, that's fine. I'll take it.  
994  
995 Ms. Johnston - [Speaking off microphone.] This is just letters from my  
996 parents. [Inaudible.]  
997  
998 Mr. Blankinship - Thank you. And there are copies of the photographs;  
999 that's good too.  
1000

1001 Mr. Wright - Thank you. Good. Thank you, ma'am.

1002

1003 **[After the conclusion of the public hearings, the Board discussed the case**  
1004 **and made its decision. This portion of the transcript is included here for**  
1005 **convenience of reference.]**

1006

1007 Mr. Wright - Do I hear a motion on this case?

1008

1009 Mr. Bell - I move that we approve it because I don't see any  
1010 adverse health, safety, or welfare issues in that area of the neighborhood. I don't  
1011 think it unreasonably impairs the light or air on the property. I don't think it  
1012 increases congestion any more than has already been there for a number of  
1013 years.

1014

1015 Mr. Wright - All right, sir. Is there a second to that motion?

1016

1017 Mr. Nunnally - Second.

1018

1019 Mr. Wright - Motion made and seconded. Is there any discussion?  
1020 Hearing none, all in favor say aye. All opposed say no. The ayes have it; the  
1021 motion passes.

1022

1023 Ms. Harris - And I did abstain.

1024

1025 Mr. Wright - And Ms. Harris abstains.

1026

1027 After an advertised public hearing and on a motion by Mr. Bell, seconded by  
1028 Mr. Nunnally, the Board **approved** application **CUP2013-00012, Sonia**  
1029 **Johnston's** request for a conditional use permit pursuant to Section 24-12(g) of  
1030 the County Code to operate a family day home with outside employees at 8104  
1031 Langley Drive (MOUNTAIN RIDGE) (Parcel 778-762-6020), zoned R-3, One-  
1032 Family Residence District (Fairfield). The Board approved this conditional use  
1033 permit subject to the following conditions:

1034

1035 1. This conditional use permit authorizes the operation of a large family day  
1036 home with a maximum of two outside employees. All other applicable  
1037 regulations of the County Code shall remain in force.

1038

1039 2. The hours of operation for the large family day home are limited to Monday  
1040 through Friday, 6:00 am to 6:00 pm.

1041

1042 3. No more than twelve children, exclusive of the provider's own children, may  
1043 receive daycare services at any one time.

1044

1045 4. Employees of the daycare business shall park on-site, not on the street.

1046

1047 5. The applicant shall install a six foot tall backyard privacy fence for security  
1048 purposes, screening of play equipment, and to maintain the aesthetic quality of  
1049 the neighborhood.

1050

1051 6. The applicant shall remove the trampoline located in the rear yard as it is not  
1052 allowed by the Department of Social Services.

1053

1054 7. There shall be no more than one sign, not exceeding one square foot in area,  
1055 advertising the family day home. The sign shall not be illuminated.

1056

1057

1058 Affirmative: Baka, Bell, Nunnally, Wright 4

1059 Negative: 0

1060 Absent: 0

1061 Abstain: Harris 1

1062

1063

1064 **[At this point, the transcript continues with the public hearing on the next**  
1065 **case.]**

1066

1067 **CUP2013-00013 WASHINGTON MEMORIAL CEMETERY** requests a  
1068 conditional use permit pursuant to Section 24-52(h) of the County Code to  
1069 expand the existing cemetery at 6200 Memorial Drive (Parcel 840-706-8908),  
1070 zoned A-1, Agricultural District (Varina).

1071

1072 Mr. Wright - Anyone desiring to speak with reference to this case,  
1073 whether for or against it, please stand and raise your right hand so you may be  
1074 sworn.

1075

1076 Mr. Blankinship - Raise your right hands, please. Do you swear the  
1077 testimony you're about to give is the truth and nothing but the truth so help you  
1078 God?

1079

1080 Mr. Wright - All right. Please state your name for the record.

1081

1082 Mr. Wilkins - My name is Jason Wilkins. I'm with Townes Site  
1083 Engineering representing Stewart Enterprises, who is the property owner.

1084

1085 Mr. Wright - All right. Please state your case.

1086

1087 Mr. Wilkins - We have submitted a conditional use permit  
1088 application to expand the existing Washington Memorial Cemetery. The  
1089 expansion will include an additional mausoleum, a new maintenance building,  
1090 and additional clearing for gravesites on the property. And what's shown as a  
1091 storage site, whenever burials occur there are spoils, as much as I think two or



1092 three cubic yards of dirt every time, where they have to have a location on site  
1093 designated for that. And that's what that is.

1094  
1095 Mr. Wright - Have you read the conditions?

1096  
1097 Mr. Wilkins - Yes.

1098  
1099 Mr. Wright - And you're in accord with them? Is it the mausoleum  
1100 that has to be moved?

1101  
1102 Mr. Wilkins - Yes sir. When we got the conditions and read through  
1103 them, I understand the original location we had shown on our master plan had  
1104 the mausoleum closer than 400 feet (to an R district). But after looking at that  
1105 and discussing it with Mr. Blankinship, we're in agreement with that condition and  
1106 can place the mausoleum in a location that will meet that 400 feet setback  
1107 requirement.

1108  
1109 Mr. Wright - So you can satisfy that requirement.

1110  
1111 Mr. Wilkins - Yes.

1112  
1113 Mr. Wright - Okay. Tell us a little bit about the soil stockpile, how  
1114 it's used, how often, if there's traffic there, and so forth.

1115  
1116 Mr. Wilkins - I think due to the nature of the fact that there aren't—  
1117 the burials occur maybe on a semi-consistent basis, there is not a large amount  
1118 of earthwork that is ever happening at any one given time. They may go there to  
1119 smooth out the soil they have and seed it. And there are standard erosion control  
1120 measures that are in place. But it's never a large amount of earthwork because  
1121 it's kind of a consistent—you know, they may have—I don't know how many  
1122 burials they may have in a month, but it's definitely a minor earthwork activity. It  
1123 probably would never be more than—I'm sure it would be well under the  
1124 threshold for land disturbance, under 2,500 square feet at any given time. Far  
1125 below that, I'm sure. And the idea for selecting a stockpile area—typically when  
1126 we look at these sites is we try to look for a location that is kind of out of sight  
1127 from everybody and in an area that's large enough to be able to spread the  
1128 topsoil so we're not creating any kind of mound or anything like that and in an  
1129 area where it can be seeded and actually look more or less like an open field.

1130  
1131 Mr. Wright - When you have a burial—let's say one is scheduled  
1132 for 11:00 on a particular day, how would the equipment and so forth be used to  
1133 take care of that burial? When would you have to open the grave for that burial if  
1134 it were at 11:00 today?

1135  
1136 Mr. Russell - If I can just speak.

1137

1138 Mr. Wright - Yes sir.  
1139  
1140 Mr. Russell - I work for Stewart Enterprises. My name's Tim  
1141 Russell.  
1142  
1143 Mr. Wright - Please state your name for the record.  
1144  
1145 Mr. Russell - Tim Russell. R-u-s-s-e-l-l. We typically would open up  
1146 the grave the night before. At that cemetery, they may have two or three (burials)  
1147 tops a day. I think they do 500 burials a year. So throughout the year we're  
1148 generating about 1,500 yards of spoils and we like to put them in the stockpile  
1149 area. Typically it's got a silt fence around it. Just trying to be compliant with that.  
1150 This one's designed to be out of the way in the back section of the cemetery with  
1151 some trees shielding it in sensitivity to our families. A lot of people don't like to  
1152 drive in there and see the dirt and stuff. The burials are 3 feet by 8 feet, so we're  
1153 never—it's just standard business as far as that goes.  
1154  
1155 Mr. Wright - The question is because we have some interest here  
1156 in the noise that that would be generated by the equipment, the use of the  
1157 equipment.  
1158  
1159 Mr. Russell - Right. It's an operating cemetery right now, so the  
1160 new stockpile area wouldn't increase the amount of noise; we would still be  
1161 doing business as usual. We would just be putting it in that location. Currently it's  
1162 being put over near the pond, off the road up in there. We just wanted to try and  
1163 move it over to this area. It's a little more out of the main area of the cemetery.  
1164 So it's going to be the same operation that's been ongoing for years.  
1165  
1166 Mr. Wright - How long does it take to prepare a gravesite?  
1167  
1168 Mr. Russell - I've never actually seen them do it, but I would  
1169 imagine they can do it in a couple of hours.  
1170  
1171 Mr. Wright - So it isn't something that would be going on from six  
1172 in the morning to six at night that could disturb a neighbor.  
1173  
1174 Mr. Russell - No. The cemetery grounds crew, they normally work  
1175 eight to about five.  
1176  
1177 Mr. Wright - What type of equipment do you use?  
1178  
1179 Mr. Russell - We use a backhoe.  
1180  
1181 Mr. Wright - Just one piece of equipment takes care of that?  
1182

1183 Mr. Russell - There might be a couple of carts that they use to  
1184 transport the tent, and the chairs, and stuff like that. The only heavy equipment  
1185 would be a backhoe.

1186  
1187 Mr. Wright - That would be the thing that would be making noise.

1188  
1189 Mr. Russell - That's correct.

1190  
1191 Mr. Wright - Okay. Do you have anything further to offer?

1192  
1193 Mr. Wilkins - I guess I would say with regard to the noise  
1194 consideration and the construction, I'm pretty sure we're not talking about a  
1195 situation where there's going to be dump trucks running on a consistent basis  
1196 hauling material like you would see on a construction site. This is a pretty  
1197 minimal operation where it's a daily thing where—like you said, if people haven't  
1198 noticed it before, I doubt they would notice it now.

1199  
1200 Mr. Blankinship - Well, you're moving closer to the house immediately  
1201 to your south. And I did get a phone call from the occupant there, but she's not  
1202 here today.

1203  
1204 Ms. Harris - I have a question.

1205  
1206 Mr. Wright - All right, Ms. Harris.

1207  
1208 Ms. Harris - Do you have plans for the mausoleum, the blueprint,  
1209 how many stories?

1210  
1211 Mr. Blankinship - Those were submitted after the package was mailed  
1212 out, but they are in the presentation.

1213  
1214 Mr. Wright - There it is; it's on the screen.

1215  
1216 Ms. Harris - Are you familiar with the Forest Lawn Cemetery  
1217 mausoleum?

1218  
1219 Mr. Wilkins - No ma'am.

1220  
1221 Ms. Harris - Okay. I was just over there yesterday. And I was  
1222 wondering in comparison to that how tall it would be.

1223  
1224 Mr. Russell - This building's approximately eighteen feet tall, I  
1225 believe. It would be a six-level mausoleum, and each level is about two and a  
1226 half feet plus the roof.

1227

1228 Mr. Wright - That looks very similar to the one they have at  
1229 Westhampton.  
1230  
1231 Mr. Blankinship - It does.  
1232  
1233 Mr. Wright - It looks like it's almost identical to the one they have  
1234 there.  
1235  
1236 Mr. Russell - Yes sir.  
1237  
1238 Ms. Harris - So there will be a chapel area inside?  
1239  
1240 Mr. Wright - Yes. There's an open area—you go in the door—  
1241 where you can seat about what, a hundred people or something. Maybe not that  
1242 many.  
1243  
1244 Mr. Wilkins - It varies. We would set up chairs inside for memorial  
1245 services.  
1246  
1247 Mr. Wright - I've been to several over there.  
1248  
1249 Ms. Harris - So it's closed.  
1250  
1251 Mr. Wright - Yes, you close the door.  
1252  
1253 Ms. Harris - It's not an open atrium at all? It's closed, usually,  
1254 right? It's enclosed. Well, the one that I saw yesterday is open.  
1255  
1256 Mr. Wright - Yes. The Forest Lawn one is.  
1257  
1258 Mr. Wilkins - They have some that open, then they have some that  
1259 are enclosed. There's also some that don't have any chapel area. But this one  
1260 will have an open area. This rendering is showing it with it being enclosed. I don't  
1261 know if that has actually been finalized yet, but this is the typical type mausoleum  
1262 that we would build.  
1263  
1264 Mr. Wright - Any further questions from members of the Board? Is  
1265 anyone here in opposition to this request? Hearing none, that concludes the  
1266 case. Thank you very much for appearing.  
1267  
1268 Mr. Wilkins - Thank you.  
1269  
1270 **[After the conclusion of the public hearings, the Board discussed the case**  
1271 **and made its decision. This portion of the transcript is included here for**  
1272 **convenience of reference.]**  
1273

1274 Mr. Wright - Do I hear a motion on this case?  
1275  
1276 Mr. Nunnally - I move we approve this conditional use permit with  
1277 the five conditions suggested by the staff. It will not affect the health, safety, or  
1278 welfare of the neighborhood.  
1279  
1280 Mr. Wright - All right. Motion is made. Is there a second?  
1281  
1282 Ms. Harris - Second.  
1283  
1284 Mr. Wright - Seconded by Ms. Harris. Is there any discussion?  
1285 Hearing none, all in favor say aye. All opposed say no. The ayes have it; the  
1286 motion passes.  
1287  
1288 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
1289 Ms. Harris, the Board **approved** application **CUP2013-00013, Washington**  
1290 **Memorial Cemetery's** request for a conditional use permit pursuant to Section  
1291 24-52(h) of the County Code to expand the existing cemetery at 6200 Memorial  
1292 Drive (Parcel 840-706-8908), zoned A-1, Agricultural District (Varina). The  
1293 Board approved this conditional use permit subject to the following conditions:  
1294  
1295 1. This approval is only for the expansion of new gravesites, one new  
1296 maintenance building, one new mausoleum, and one soil stockpile area, as  
1297 shown on the plans submitted with this application as modified by these  
1298 conditions. Any substantial changes or additions to the cemetery shall require a  
1299 new conditional use permit.  
1300  
1301 2. Prior to any development in accordance with this conditional use permit, the  
1302 applicant shall submit construction plans to the Planning Department for  
1303 administrative review and approval.  
1304  
1305 3. Prior to construction of the maintenance building, mausoleum, or any other  
1306 building, the applicant shall obtain all permits from the Department of Building  
1307 Construction and Inspections.  
1308  
1309 4. Prior to any land disturbance, the applicant shall submit a complete erosion  
1310 and sediment control (ESC) plan to the Henrico County Department of Public  
1311 Works (DPW) for review and approval. This plan shall include the necessary  
1312 floodplain information if applicable. Throughout the life of this permit, the  
1313 applicant shall continuously satisfy DPW that ESC procedures are in accordance  
1314 with the approved ESC plan and are properly maintained. If site conditions  
1315 change, an updated ESC plan and subsequent revised ESC bond may be  
1316 required as determined by DPW.  
1317  
1318 5. All graves shall be located at least 50 feet from adjacent property lines and  
1319 250 feet from any dwelling or well on adjacent property. The mausoleum shall be

1320 distant at least 800 feet from any lot in any residence district and 400 feet from  
1321 any other lot occupied by a dwelling other than a farm dwelling or by any school,  
1322 place of worship, or any institution for human care not located on the same lot  
1323 with the cemetery.

1324

1325

1326 Affirmative: Baka, Bell, Harris, Nunnally, Wright 5

1327 Negative: 0

1328 Absent: 0

1329

1330

1331 Mr. Wright - Okay. We have minutes of the April 25<sup>th</sup> meeting to  
1332 be approved, and I had one correction on page 6, line 255. The first word it says  
1333 "this suggestion." And that should be condition, the way you worded this  
1334 condition. Any other corrections to the minutes? Hearing none, do I hear a  
1335 motion that we approve the minutes?

1336

1337 Mr. Baka - So moved.

1338

1339 Ms. Harris - Second.

1340

1341 Mr. Wright - Motion's made and seconded. Any discussion?  
1342 Hearing none, all in favor say aye. All opposed say no. The ayes have it; the  
1343 motion passes.

1344

1345 On a motion by Mr. Baka, seconded by Ms. Harris, the Board **approved as**  
1346 **corrected** the **Minutes of the April 25, 2013**, Henrico County Board of Zoning  
1347 Appeals meeting.

1348

1349

1350 Affirmative: Baka, Bell, Harris, Nunnally, Wright 5

1351 Negative: 0

1352 Absent: 0

1353

1354

1355 Mr. Wright - Anything else to come before this Board,  
1356 Mr. Blankinship?

1357

1358 Mr. Blankinship - No sir.

1359

1360 Mr. Wright - How many cases do we have next time?

1361

1362 Mr. Blankinship - We have two use permits filed so far, and we are  
1363 expecting the East End Landfill to file today for extension.

1364

1365 Mr. Wright - Okay. All right. Do I hear a motion that we adjourn?

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1411

Mr. Nunnally -

So moved.

Mr. Wright -

Is there a second?

Mr. Bell -

Second.

Mr. Wright -

All right. Any discussion? Hearing none, all in favor say aye. All opposed say no. The ayes have it; the motion passes.

Affirmative:

Baka, Bell, Harris, Nunnally, Wright

5

Negative:

0

Absent:

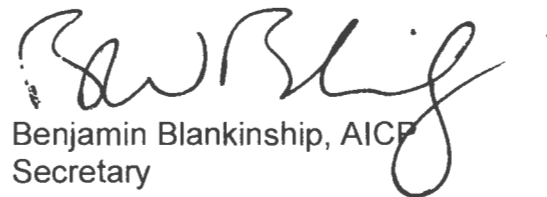
0

Mr. Wright -

This Board is adjourned.



R. A. Wright  
Chairman



Benjamin Blankinship, AICP  
Secretary