

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 MAY 25, 2017 AT 9:00**
5 **A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
6 **DISPATCH MAY 8, 2017 AND MAY 15, 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 May 25, 2017
10 meeting of the Henrico Board of Zoning Appeals. For those who are able, please
11 stand and join us for the Pledge of Allegiance.

12
13 Our Board secretary, Mr. Blankinship, will now read us our rules.

14
15 Mr. Blankinship - Good morning, Mr. Chair, members of the Board,
16 ladies and gentlemen, the rules for this meeting are as follows: Acting as
17 secretary, I'll call each case. And as I'm speaking, the applicant is welcome to
18 come down toward the podium. We will then ask everyone who intends to speak
19 to that case to stand and be sworn in. Then a member of the staff will give a brief
20 introduction to the case. And then the applicant will present their case. After the
21 applicant has spoken, everyone who wishes to will have an opportunity to speak
22 to that case. After everyone has had an opportunity to speak, the applicant and
23 only the applicant, will have an opportunity for rebuttal.

24
25 As soon as that's complete, the Board will move on to the next public hearing.
26 They will render all of their decisions at the end of the meeting. So if you wish to
27 hear their decision on a specific case, you can stay until the end of the meeting,
28 or you can check the Planning Department website—we usually get it updated
29 within an hour or so after the meeting—or you can call the Planning Department
30 this afternoon.

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

36 Mr. Blankinship - Mr. Chairman, we have two requests for deferral this
37 morning, which are the two cases that were deferred from last month.

38
39 Mr. Berman - Very good. CUP2017-00014.

40
41 Mr. Blankinship - Yes. Discipleship RVA.

42
43 **CUP2017-00014 DISCIPLESHIP RVA** requests a conditional use
44 permit pursuant to Section 24-52(e) of the County Code to allow a human care
45 facility at 6089 Old Lafrance Road (Parcels 834-707-5482, 834-707-5834 and
46 834-708-8616) zoned Agricultural District (A-1) (Varina).

47
48 Mr. Berman - Does the applicant wish to speak at this time? Good
49 morning.

50
51 Mr. Hooker - Good morning, members of the Board. My name is
52 Randy Hooker. H-o-o-k-e-r. Engineering Design Associates on behalf of
53 Discipleship RVA. We're here again today asking for a deferral of this case. Still
54 trying to get some items addressed. We're asking to have this case deferred to
55 the July hearing to give our client more time to get some items addressed that
56 came up after submission of this request.

57
58 Mr. Berman - Very good. That would be July 27th. Is there anybody
59 here to speak in opposition who showed up today for that? Seeing none, do I
60 have a motion for deferral?

61
62 Mr. Mackey - Yes, Mr. Chairman. I make a motion that we grant the
63 applicant's request to defer the case to July 27, 2017.

64
65 Mr. Berman - Motion from Mr. Mackey. Do I hear a second?

66
67 Mr. Reid - Second.

68
69 Mr. Berman - Second from Mr. Reid. Any discussion? No
70 discussion. All in favor of deferral, signify by saying aye. Those opposed? There
71 is no opposition; that motion carried 5 to 0. The deferral is granted.

72
73 After an advertised public hearing and on a motion by Mr. Mackey seconded by
74 Mr. Reid, the Board **deferred** application **CUP2017-00014, DISCIPLESHIP**
75 **RVA's** request for a conditional use permit pursuant to Section 24-52(e) of the
76 County Code to allow a human care facility at 6089 Old Lafrance Road (Parcels
77 834-707-5482, 834-707-5834 and 834-708-8616) zoned Agricultural District (A-1)
78 (Varina).

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80
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82 Affirmative: Bell, Berman, Harris, Mackey, Reid 5
83 Negative: 0
84 Absent: 0

85

86

87 Mr. Blankinship - The other is CUP2017-00017. Affinity Funeral
88 Service.

89

90 **CUP2017-00017 AFFINITY FUNERAL SERVICE** requests a
91 conditional use permit pursuant to Section 24-50.7(e) of the County Code to
92 allow one cremation unit at a funeral home at 2720 Enterprise Parkway (WEST
93 BROAD PARK) (Parcel 763-752-3510) zoned Office District (O-2) (Tuckahoe).

94

95 Mr. Berman - Thank you. Would the applicant like to speak? Is the
96 applicant present? Is anybody present today?

97

98 Mr. Blankinship - Paul, was this you? Can you speak to it, please?

99

100 Mr. Gidley - Good morning. Mr. Chairman, members of the Board,
101 Mr. Secretary. My name is Paul Gidley. The applicant for this case has requested
102 a deferral until September. He is working with the neighbors who came out at the
103 public hearing last month. Whether or not they're able to resolve everything, I
104 don't know, but he's working with them and may be considering an alternative
105 site as well. So he has requested a four-month deferral.

106

107 Mr. Berman - Thank you. So it would be September 28th?

108

109 Mr. Gidley - Yes sir, that's correct.

110

111 Mr. Berman - Very good. Did anybody show up today to speak in
112 opposition? Hearing none, do I have a motion for deferral? Tuckahoe Magistrate.

113

114 Mr. Reid - Yes, I make a motion that we defer the hearing until
115 the September 28th meeting.

116

117 Mr. Berman - Thank you, Mr. Reid. We have a motion. Do I hear a
118 second?

119

120 Mr. Bell - I so second.

121

122 Mr. Berman - Second from Mr. Bell. Any discussion? All in favor of
123 deferral signify by saying aye. Those opposed? There is no opposition; the
124 deferral carries 5 to 0.

125

126 After an advertised public hearing and on a motion by Mr. Reid seconded by Mr.
127 Bell, the Board **deferred** application **CUP2017-00017, AFFINITY FUNERAL**

128 **SERVICE's** request for a conditional use permit pursuant to Section 24-50.7(e) of
129 the County Code to allow one cremation unit at a funeral home at 2720
130 Enterprise Parkway (WEST BROAD PARK) (Parcel 763-752-3510) zoned Office
131 District (O-2) (Tuckahoe).

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133

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

135 Negative: 0

136 Absent: 0

137

138

139 Mr. Berman - That brings us to our first case.

140

141 Mr. Blankinship - Mr. Chairman, the first case is actually a request to
142 amend conditions of a previously approved conditional use permit. This was
143 approved in October of last year. It's CUP2016-00020, Curles Neck Properties,
144 LLC.

145

146 **CUP2016-00020 CURLES NECK PROPERTIES, LLC** requests a
147 conditional use permit pursuant to Sections 24-52(d) and 24-103 of the County
148 Code to extract materials from the earth at 4721 Curles Neck Road (Parcels 833-
149 666-1289 and 834-666-2189) zoned Agricultural District (A-1) (Varina).

150

151 Mr. Blankinship - Would everyone who intends to speak to this case
152 please stand and be sworn in. Do you swear the testimony you're about to give is
153 the truth, the whole truth, and nothing but the truth so help you God? Thank you.
154 Mr. Gidley.

155

156 Mr. Gidley - Good morning, and thank you, Mr. Secretary. Good
157 morning, Mr. Chairman, members of the Board.

158

159 As you may recall, back on October of 2016, this Board approved a conditional
160 use permit to extract sand and gravel from the Curles Neck Farm site located off
161 of New Market Road. Five of the conditions of the use permit required specific
162 action to be taken within 180 days. These included posting a financial guarantee;
163 submitting an erosion and sedimentation control plan; obtaining a mine license
164 from the Virginia Department of Mines, Minerals, and Energy; marking the area
165 to be disturbed with red and white poles; and completing an architectural and
166 archeological survey.

167

168 The financial guarantee has been posted and a license has been obtained from
169 the state. Delineation of the wetlands, however, has been delayed. This has
170 resulted in the delay of the erosion control plan and the marking of the disturbed
171 area. Because it's not possible to meet the 180-day deadline, the applicant is
172 requesting an extension of these until October 27, 2017. Those revised
173 conditions should have been handed out to you.

174

175 The applicant also asks for a similar modification to the condition relating to
176 architectural and archeological surveys. The original draft required the surveys
177 be completed before beginning any work on the site. It was amended during the
178 meeting to say within 180 days of approval and before beginning any work on the
179 site. Again, today's request would extend this until October the 27th.

180

181 This application was approved by the Board six months ago and has not
182 changed. It's simply a matter of the applicant being unable to complete all the
183 required tasks within the 180 days that was originally required. Staff is unaware
184 of any changes to laws or circumstances that would affect the previous approval
185 by the Board of this use permit. As a result, staff recommends modification of the
186 conditions and approval subject to the revised conditions that were handed out
187 today.

188

189 This concludes my presentation, and I'll be happy to answer any questions you
190 may have. Thank you.

191

192 Mr. Berman - Thank you, Mr. Gidley. For the record, I've been told
193 that the changes are on conditions 2, 3, 4, and 5, updating it to October 27th, and
194 item 16, removing the date. Any questions for Mr. Gidley?

195

196 Ms. Harris - Mr. Gidley, has any reclamation already taken place?
197 I know the report stated that, but I was wondering do we have any visuals of
198 vegetation already growing on the reclaimed land.

199

200 Mr. Gidley - The farm overall has been mined for sand and gravel
201 over the years, Ms Harris, and that's been reclaimed. As far as the approval that
202 was done in October, no mining or reclamation has occurred because they're still
203 in the process of meeting all the conditions needed to go forward with this
204 process.

205

206 Ms. Harris - Right. I was talking about the reclaimed land prior to
207 the submission of this application. Do we have any visuals? I see the area map,
208 but I was wondering is this the only view that we have of this.

209

210 Mr. Gidley - Yes ma'am, that's correct.

211

212 Ms. Harris - Okay, thank you.

213

214 Mr. Gidley - And of course the farm goes out quite a bit further
215 than what's showing here.

216

217 Mr. Berman - Any other questions for Mr. Gidley? Thank you, sir.

218

219 Mr. Gidley - Thank you, Mr. Chair.

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Mr. Berman - Is the applicant present today? Good morning.

Mr. Lewis - Good morning. My name is Monte Lewis. L-e-w-i-s. I'm with Lewis and Associates. We're the civil engineers on the project. We also have John Brooks here, who is an environmental consultant who's working on the permits.

As far as your question about reclamation, we haven't done anything on the site since the first approval because we haven't gotten full approval of all our core permits. So we can't start construction, so there's nothing to reclaim. But as far as the entire farm is concerned, I think everything has been reclaimed out there. The fields that we have our mining set up to be are farm fields right now.

As far as the permitting process, we have obtained a permit from the state for mining. We have obtained a permit from DEQ for the wetlands and waters of the U. S. impact. We have submitted plans to Public Works for erosion control. One item that we do not have yet is the Corps of Engineers permit. It's in the process. Typical of the Corps, their manpower, and they're behind. That's why we had asked a 180-day extension so that didn't have to come before you to get another extension just to get a Corps permit. We feel that the 180 days will give us enough time that the Corps can get to the process and issue the permit. We didn't want to set red barber poles, as we call them, until we had all the permits just in case the Corps goes no, you have to back off of a certain site.

Basically, we're just asking for an extension and some clarification and some cleanup on some of the comments, which I appreciate Mr. Blankinship and Paul's work on that. I think it's a little clearer that we won't start anything until we get all of our permits, until we've documented through archeological studies of just the mining area. We are anticipating that the Corps will probably ask for the same archeological study of the mining area.

Mr. Berman - Thank you, Mr. Lewis.

Mr. Blankinship - There was another very small change in condition 16, Mr. Chair. The original conditions from October would have required the archeological survey over the entire site. But they're not disturbing the entire site; so we're just requiring that survey of the area to be disturbed.

Mr. Berman - Thank you. Are there any questions for Mr. Lewis from the Board?

Ms. Harris - My question had to do with the visual for the reclaimed areas.

Mr. Lewis - The areas that have already been reclaimed?

266
267 Ms. Harris - Yes. I'd just like to know what it looks like after we
268 extract the materials.
269
270 Mr. Lewis - I don't know if your guy in the booth can bring up a
271 Google Earth.
272
273 Mr. Blankinship - I don't know if they can or not.
274
275 Mr. Lewis - It looks quite nice.
276
277 Mr. Blankinship - It looks like farm fields.
278
279 Mr. Lewis - It looks like farm fields and about 10,000 geese.
280
281 Ms. Harris - I think the Google Earth would simply show what we
282 have here, the aerial view too. Would it not?
283
284 Mr. Blankinship - You're right.
285
286 Mr. Lewis - The ponds that you see here are areas that have
287 already been mined and reclaimed. If you've been out there, when they mine
288 these areas and reclaim them, they end up with it being just a big, deep sink with
289 water at the bottom. And usually it's anywhere from 30 to 40 feet from the land
290 down to the water's edge.
291
292 Ms. Harris - That's what I saw. I was wondering how you reclaim a
293 ditch as deep as 30 to 50 feet except to allow the water to be a lake or
294 something.
295
296 Mr. Lewis - The water doesn't run out, it perks through that sand
297 layer and out into the James River. I think we had one site that had an actual
298 surface discharge, and that was on the other side of Route 5 in the area that they
299 call *the slash*. That was part of Vulcan's permits probably 10, 15 years ago.
300
301 Mr. Blankinship - Yes, 2005, I believe.
302
303 Mr. Lewis - Good memory.
304
305 Ms. Harris - Thank you.
306
307 Mr. Berman - Any other questions?
308
309 Mr. Mackey - Yes sir, Mr. Chairman, I have one additional question.
310 Mr. Lewis, do you anticipate with the request of the additional 180 days this
311 causing you to have a problem with the completion date?

312
313 Mr. Lewis - I sure hope not. I hope the Corps can issue the permit
314 by then. Perhaps Mr. Brooks can—if you want him to speak more on it, that's the
315 permit that he's obtaining. He can give you an update on where they are in the
316 process. They've met with the Corps and DEQ. Would you like to hear from him?
317
318 Mr. Mackey - Yes sir. Thank you.
319
320 Mr. Lewis - Sure. John Brooks.
321
322 Mr. Brooks - John Brooks. B-r-o-o-k-s. Timmons Group. I'm the
323 environmental engineer that's getting the permit from the Army Corps of
324 Engineers. I talked with the Corps yesterday, and they just stated, "John, it's a
325 manpower issue. We've got more permits than we can process. You're in line. Be
326 patient." And I said okay. There are no issues with issuing the permit. We've met
327 all the regulatory deadlines internally with the Corps. It's just their time to process
328 it and get us the physical permit.
329
330 Mr. Mackey - Okay. All right. Thank you, Mr. Brooks.
331
332 Mr. Brooks - Thank you.
333
334 Mr. Berman - Any further questions? Thank you, gentlemen.
335
336 Mr. Brooks - Thank you.
337
338 Mr. Lewis - Thank you.
339
340 Mr. Berman - Is anybody here today to speak in support of this
341 application? Is there anybody here today to speak in opposition of the
342 application? Very well. Do I hear a motion?
343
344 Mr. Bell - I so move that we extend the conditions 180 days
345 until September 28th.
346
347 Mr. Berman - Thank you. We have a motion from Mr. Bell. Do I hear
348 a second?
349
350 Mr. Mackey - Second.
351
352 Mr. Berman - Second from Mr. Mackey. Any discussion? All in favor
353 of updating conditions of approval signify by saying aye. Those opposed? There
354 is no opposition; that motion carries.
355
356 After an advertised public hearing and on a motion by Mr. Bell seconded by
357 Mr. Mackey, the Board **amended the conditions of application CUP2016-**

358 **00020, CURLES NECK PROPERTIES, LLC's** request for a conditional use
359 permit pursuant to Sections 24-52(d) and 24-103 of the County Code to extract
360 materials from the earth at 4721 Curles Neck Road (Parcels 833-666-1289 and
361 834-666-2189) zoned Agricultural District (A-1) (Varina). The Board granted the
362 request to amend the conditions of the conditional use permit. The revised
363 conditions are as follows:

364
365 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24
366 of the County Code.

367
368 2. No later than October 27, 2017, the applicant shall post a financial guaranty in
369 an amount of \$216,000, guaranteeing that the land will be restored to a
370 reasonably level and drainable condition, consistent with the elevation of the land
371 prior to the beginning of excavation. In the event of termination of that financial
372 guaranty, this permit shall be void, and excavation shall cease. Within 180 days
373 of termination, the applicant shall restore the land as provided for under the
374 conditions of this use permit. Termination of such financial guaranty shall not
375 relieve the applicant from its obligation to indemnify the County of Henrico for any
376 breach of the conditions of this use permit.

377
378 3. No later than October 27, 2017, the applicant shall submit environmental
379 compliance plan to the Department of Public Works (DPW) for review and
380 approval. The applicant shall continuously satisfy DPW that erosion control
381 measures are in accordance with the approved plan and are properly maintained.
382 As site conditions change, updated plans and bonds may be required as
383 determined by DPW.

384
385 4. No later than October 27, 2017, the applicant shall obtain a mine license from
386 the Virginia Department of Mines, Minerals and Energy.

387
388 5. No later than October 27, 2017, the areas approved for mining under this
389 permit shall be delineated on the ground by five-foot-high metal posts at least five
390 inches in diameter and painted in alternate one foot stripes of red and white.
391 These posts shall be so located as to clearly define the area in which the mining
392 is permitted.

393
394 6. Throughout the life of this permit, the applicant shall comply with the
395 Chesapeake Bay Preservation Act and all state and local regulations
396 administered under such act applicable to the property, and shall furnish to the
397 Planning Department copies of all reports required by such act or regulations.

398
399 7. Hours of operation shall be Monday through Friday, 6:00 a.m. to 6:00 p.m.
400 when Daylight Saving Time is in effect, and 7:00 a.m. to 5:00 p.m. at all other
401 times.

402
403 8. No operations of any kind are to be conducted at the site on Saturdays,

404 Sundays, or national holidays.

405
406 9. All access to the property shall be from the established entrance onto New
407 Market Road or by barge from the James River.

408
409 10. The applicant shall maintain gates at the entrance to the property. These
410 gates shall be locked at all times, except when authorized representatives of the
411 applicant are on the property.

412
413 11. The applicant shall post and maintain a sign at the entrance to the mining site
414 stating the name of the operator, the use permit number, the mine license
415 number, and the telephone number of the operator. The sign shall be 12 square
416 feet in area and the letters shall be three inches high.

417
418 12. The applicant shall post and maintain "No Trespassing" signs every 250 feet
419 along the perimeter of the property. The letters shall be three inches high. The
420 applicant shall furnish the Chief of Police a letter authorizing the Division of
421 Police to enforce the "No Trespassing" regulations, and agreeing to send a
422 representative to testify in court as required or requested by the Division of
423 Police.

424
425 13. All material excavated from the property shall be moved by barge on the
426 James River. No trucks hauling material excavated from the property shall travel
427 on New Market Road.

428
429 14. All roads used in connection with this use permit shall be effectively treated
430 with calcium chloride or other wetting agents to eliminate any dust nuisance.

431
432 15. The applicant shall maintain the property, fences, and roads in a safe and
433 secure condition indefinitely, or convert the property to some other safe use.

434
435 16. Before beginning any work on the site, each structure to be demolished shall
436 be documented with an architectural survey and photographed, and an
437 archeological survey shall be performed for the area to be mined. The applicant
438 shall provide copies of the resulting documents to the Department of Recreation
439 and Parks. If, during excavation, the applicant discovers evidence of cultural or
440 historical resources, or an endangered species, or a significant habitat, it shall
441 notify appropriate authorities and provide them with an opportunity to investigate
442 the site.

443
444 17. If water wells located on surrounding properties are adversely affected, and
445 the extraction operations on this site are suspected as the cause, the effected
446 property owners may present to the Board evidence that the extraction operation
447 is a contributing factor. After a hearing by the Board, this use permit may be
448 revoked or suspended, and the operator may be required to correct the problem.

450 18. Open and vertical excavations having a depth of 10 feet or more, for a period
451 of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to
452 protect the public safety.

453

454 19. Topsoil shall not be removed from any part of the property outside of the area
455 in which mining is authorized. Topsoil shall be stockpiled within the authorized
456 mining area and provided with adequate erosion control protection. Sufficient
457 topsoil shall be stockpiled on the property for respreading in a layer five inches
458 deep. If the site does not yield sufficient topsoil, additional topsoil shall be
459 brought to the site to provide the required five-inch layer of cover. All topsoil shall
460 be treated with a mixture of seed, fertilizer, and lime as recommended by the
461 County after soil tests have been provided to the County.

462

463 20. The reclamation of the property shall take place simultaneously with the
464 mining process. The final grading of the site shall be consistent with the elevation
465 of the land prior to the beginning of excavation as shown on the approved
466 reclamation plan. Reclamation shall not be considered completed until the mined
467 area is covered completely with permanent vegetation.

468

469 21. If it is necessary to bring topsoil or fill material to the site for reclamation,
470 such material shall be brought in by barge on the James River. No trucks hauling
471 topsoil or fill material to be placed on the property shall travel on New Market
472 Road.

473

474 22. The operator shall submit a quarterly report stating the origin, nature, and
475 quantity of any off-site generated material deposited on the site, certifying that no
476 hazardous material was included. The material to be deposited on the site shall
477 be limited to imperishable materials such as stone, bricks, tile, sand, gravel, soil,
478 asphalt, concrete and like materials, and shall not include any hazardous
479 materials as defined by the Virginia Hazardous Waste Management Regulations.

480

481 23. A superintendent, who shall be personally familiar with all the terms and
482 conditions of Section 24-103 of the County Code, and this use permit, shall be
483 present at the beginning and conclusion of operations each work day to see that
484 all the conditions of the Code and this use permit are observed.

485

486 24. A progress report shall be submitted to the Board every year on or about
487 October 31. This progress report shall include how much land has been mined to
488 date of the report, how much land is left to be mined, how much reclamation has
489 been performed, when and how the remaining amount of land will be reclaimed,
490 and any other pertinent information about the operation that would be helpful to
491 the Board.

492

493 25. This permit shall expire October 31, 2026. On or about October 25, 2018;
494 October 22, 2020; October 27, 2022; and October 24, 2024; the Board will hold a

495 public hearing to consider renewal of this use permit. The permit will be renewed
496 in two-year increments unless the Board finds that the applicant is in violation of
497 any of these conditions, or that the operation has had a substantial detrimental
498 impact on nearby property. Examples of detrimental impacts may include
499 excessive noise, excessive traffic, or environmental impacts such as water or air
500 pollution.

501

502 26. Reclamation of the property shall be completed within one year of either the
503 termination of this permit, or the final cessation of excavation at the property,
504 whichever occurs sooner.

505

506 27. Failure to comply with any of the foregoing conditions shall automatically void
507 this permit. The Board may revoke this use permit at any time if it finds, after a
508 public hearing, that the operator is in violation of any of these conditions, or that
509 the operation has had a substantial detrimental impact on nearby property. In the
510 event the Board revokes this use permit, the applicant agrees to immediately
511 stop all excavation at the property until the Board has issued a notice to resume
512 excavation. If the applicant appeals such revocation of this use permit, the
513 applicant agrees that all excavation work at the property shall remain stopped
514 until such appeal is finally resolved or the Board has issued a notice to resume
515 excavation.

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517

518 Affirmative:	Bell, Berman, Harris, Mackey, Reid	5
519 Negative:		0
520 Absent:		0

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522

523 Mr. Berman - That concludes our deferrals. Mr. Blankinship?

524

525 Mr. Blankinship - All right, new applications. CUP2017-00021,
526 Lakewood Manor.

527

528 **CUP2017-00021 LAKEWOOD MANOR** requests a conditional use
529 permit pursuant to Section 24-116(d)(1) of the County Code to allow two
530 temporary office trailers at 1900 Lauderdale Drive (Parcel 733-745-8147) zoned
531 General Residence District (R-6C) and Conservation District (C-1) (Tuckahoe).

532

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

537

538 Mr. Gidley - Thank you, Mr. Secretary, Mr. Chairman, members of
539 the Board.

540

541 This request comes to us from Lakewood Manor, which as you may know is a
542 large continuing care facility that is located off of Lauderdale Drive in the western
543 part of the County. Last May, the Board approved a conditional use permit for a
544 temporary sales trailer that would be used to market two proposed residential
545 buildings that would be built on the northern portion of the site. The sales trailer is
546 now up and operating. You can see a picture of it right here. It came out pretty
547 good, I think. Again, this is on the northern portion of the site.

548
549 In addition to the new residential buildings, Lakewood Manor is also proposing
550 other changes. As you can see here, the middle of the site has their main
551 building on it, and a proposal exists to tear down the western roughly third of the
552 building and replace it with a new four-story structure. The first story would be a
553 clubhouse with offices and a dining facility. Above this would be three floors of
554 residential units. During their meeting yesterday, the Planning Commission
555 approved a plan of development authorizing approval of the work on this building
556 here.

557
558 While the work is ongoing, temporary space will be needed for the offices that
559 are located within the building right now, and also a replacement classroom for
560 the residents to meet and have classes. To meet this demand, Lakewood Manor
561 is asking this Board for approval of a temporary conditional use permit for two
562 office trailers to be located on the site. They would be located adjacent to the
563 existing building. You can see them right here and here in the red color. Again,
564 the construction is going to be down here, so these would be located away from
565 where that's occurring.

566
567 Here is the proposed site plan. This is turned around a little more. Lauderdale
568 Drive is actually here, so you're looking west here with north more up this
569 direction. Again, the construction is going to occur right in through here, and the
570 office trailers would be located well down here towards these areas.

571
572 Both of the trailers will be connected to public water and sewer. They would be
573 handicapped accessible, and each one would have at least one restroom in it.

574
575 As far as the evaluation, the Comprehensive Plan and the Zoning Ordinance.
576 The Comprehensive Plan designates this site as Multi-Family Residential, which
577 the Lakewood Manor complex complies with. The zoning where the trailers will
578 go is R-6C General Residence District. Although office trailers are not allowed by
579 right in the R-6 District, it's not uncommon to have them used for temporary
580 space when there's construction or renovation going on. So this is a fairly
581 common request.

582
583 As far as substantial detriment to nearby property, the trailers will be used to take
584 care of existing employees and their space needs, so there are no new
585 employees coming in other than the construction workers. So it really should
586 cause an increase in traffic other than the construction workers. The trailers,

587 again, are centrally located on the site, so I didn't see where there would be a
588 detrimental impact on surrounding properties from the trailers themselves. The
589 impact is primarily going to be on the residents and the employees of the
590 community. During this construction, they're going to have a new space that they
591 have to move into, and they'll have to deal with the visual aspects of the
592 construction and the trailers. But in the long run, it's to upgrade the property and
593 to make it better, so it's an investment in the property's future and will ultimately
594 benefit the residents who live there.

595
596 Because staff does not anticipate any substantial detrimental impacts on
597 adjacent property owners and because this is temporary and a long-term
598 investment in the project, staff can recommend approval of this request.

599
600 This concludes my presentation. I'll be happy to answer any questions you may
601 have Thank you.

602
603 Mr. Berman - Thank you, Mr. Gidley. Questions from the Board?

604
605 Mr. Bell - I have one here. Do you know if anything happened at
606 the Planning Commission on May 24th that might pertain to this?

607
608 Mr. Gidley - They heard a request for a plan of development,
609 which was required to demolish part of this building and to get approval for the
610 construction of the new four-story structure that would go there. That meeting
611 was held yesterday morning by the Planning Commission, and it was approved
612 by the Planning Commission at that meeting.

613
614 Mr. Bell - Thank you.

615
616 Ms. Moore - I can speak further to that. There were some
617 residents there who just wanted to know more about the height, and the planner
618 went with the distance. They seemed concerned, but given the distance the
619 buildings were going to be from those neighborhoods and the street, the
620 Planning Commission did approve it.

621
622 Mr. Bell - Thank you.

623
624 Ms. Harris - Mr. Gidley, the other trailers that were approved, are
625 they going to be on site? In other words, how many trailers now will you have in
626 the Manor?

627
628 Mr. Gidley - My understanding, Ms. Harris, is that there would be
629 three trailers. Let's see if we can go out to the site map. The one that was
630 approved back in May is actually located over in this direction here. In fact,
631 maybe an aerial would be better. Where you're coming in off Lauderdale Drive
632 here, over in this area is where the existing trailer is that I showed you earlier and

633 that was approved in May. The two new residential buildings I believe are in this
634 area right here—will be in this area once they're built. Again, today's request is to
635 tear down this portion of the building and replace it. The two trailers would be
636 roughly over here and over here, so that would be a total of three on the site.

637

638 Ms. Harris - Okay. Thank you.

639

640 Mr. Berman - Any further questions from the Board? Very good.
641 Thank you, Mr. Gidley.

642

643 Mr. Gidley - Thank you, Mr. Chairman.

644

645 Mr. Berman - Would the applicant like to speak?

646

647 Mr. Mullins - Good morning, members of the Board. I'm Jason
648 Mullins from Timmons Group, civil engineer on the project.

649

650 Mr. Berman - Spell your last name, please.

651

652 Mr. Mullins - M-u-l-l-i-n-s.

653

654 Mr. Berman - Thank you.

655

656 Mr. Patterson - My name is Earl Patterson. P-a-t-t-e-r-s-o-n. I'm with
657 Lifespire, the owner of Lakewood Manor.

658

659 Mr. Berman - Thank you. Anything you wanted to add to the
660 application?

661

662 Mr. Patterson - I think Paul did a great job. We'd be happy to answer
663 any further questions you guys have.

664

665 Mr. Berman - Very good. Board, any questions?

666

667 Ms. Harris - I have a question. Will these be the only classrooms
668 you have on site?

669

670 Mr. Patterson - These are replacing classrooms that are in the
671 existing old building that's coming down. They will take care of arts and crafts,
672 library functions, small classroom functions. We'll use the same room over and
673 over again for various functions that the residents have now that they would lose
674 if we don't provide some other opportunity for them within the campus. So we
675 would do that for those folks. The other trailer is strictly offices for our staff that
676 are being displaced by the construction as well.

677

678 Ms. Harris - So you don't have computer instruction going on in
679 any of your classrooms?

680
681 Mr. Patterson - I'm sorry. Say that—

682
683 Ms. Harris - Do you have computer instruction occurring in any of
684 your facilities?

685
686 Mr. Patterson - Yes we do have computer instruction. I'm not sure if
687 that would take place in this trailer or in one of the other buildings that is
688 remaining.

689
690 Ms. Harris - Okay, thank you.

691
692 Mr. Berman - Any other questions? Very good. Thank you.

693
694 Mr. Patterson - Thank you.

695
696 Mr. Berman - Is anybody here today to speak in support of this
697 application? Is there anybody here today to speak in opposition of the
698 application? I see no opposition. We will defer all motions to the end of the
699 meeting, until after we've heard all the applications.

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

704
705 Mr. Reid - I make a motion that we approve CUP2017-00021 to
706 allow two office trailers at 1900 Lauderdale Road on property owned by
707 Lakewood Manor in connection with their construction project.

708
709 Mr. Berman - Thank you. We have a motion from Mr. Reid. Do I
710 hear a second?

711
712 Ms. Harris - I second the motion. I think the reason that I support
713 this particular application is because Lakewood Manor is to me stepping up to
714 the plate when it comes to what the current needs of the community involve. I
715 believe that it will not adversely affect or impact the community.

716
717 Mr. Berman - Thank you, Ms. Harris. Is there any further
718 discussion? All in favor signify by saying aye. Those opposed? There is no
719 opposition. The motion carries 5 to 0.

720
721 After an advertised public hearing and on a motion by Mr. Reid, seconded by
722 Ms. Harris, the Board **approved** application **CUP2017-00021, LAKEWOOD**
723 **MANOR's** request for a conditional use permit pursuant to Section 24-116(d)(1)

724 of the County Code to allow two temporary office trailers at 1900 Lauderdale
725 Drive (Parcel 733-745-8147) zoned General Residence District (R-6C) and
726 Conservation District (C-1) (Tuckahoe). The Board approved the conditional use
727 permit subject to the following conditions:
728

729 1. This conditional use permit applies only to the temporary use of two office
730 trailers. All other applicable regulations of the County Code shall remain in force.
731

732 2. Only the improvements shown on the plot plan filed with the application may
733 be constructed pursuant to this approval. Any additional improvements shall
734 comply with the applicable regulations of the County Code. Any substantial
735 changes or additions to the design or location of the improvements shall require
736 a new conditional use permit.
737

738 3. The trailers shall be connected to public water and sewer and be handicapped
739 accessible.
740

741 4. Before beginning any clearing, grading, or other land disturbing activity, the
742 applicant shall obtain approval of an environmental compliance plan from the
743 Department of Public Works.
744

745 5. The trailers shall be removed from the property on or before May 25, 2019, at
746 which time this permit shall expire. This permit shall not be renewed.
747

748 6. This approval is subject to all conditions that may be placed on the plan of
749 development by the Planning Commission.
750

751 7. All exterior lighting shall be shielded to direct light away from adjacent
752 residences.
753

754 8. Any landscaping removed by the installation of the trailers shall be replaced
755 during the normal planting season, following the trailers' removal.
756

757 9. All trash shall be in closed containers with regular pickups, the containers shall
758 be properly screened, and the area shall be kept clean.
759

760			
761	Affirmative:	Bell, Berman, Harris, Mackey, Reid	5
762	Negative:		0
763	Absent:		0
764			
765			

766 **[At this point, the transcript continues with the public hearing on the next**
767 **case.]**
768

769 **CUP2017-00022** **BRIEL FARM SOLAR, LLC** requests a conditional
770 use permit pursuant to Section 24-116(d)(2) of the County Code to allow a
771 renewable energy facility at 2701 Meadow Road (Parcel 842-716-0583) zoned
772 Light Industrial District (M-1C) (Varina).

773

774 Mr. Blankinship - Would everyone who intends to speak to this case
775 please stand and be sworn in. Do you swear the testimony you're about to give is
776 the truth, the whole truth, and nothing but the truth so help you God? Thank you.
777 Mr. Madrigal?

778

779 Mr. Madrigal - Thank you, Mr. Secretary. Good morning, Mr. Chair,
780 members of the Board.

781

782 Before you is a request to allow a renewable energy facility in the Light Industrial
783 District. The 229-acre site was originally part of a 400-acre tract of land that was
784 rezoned from A-1 to M-1C in 1989. Although the property is identified as one of
785 the County's Prime Industrial Development sites, it has remained an agricultural
786 use due to the high cost associated with providing highway access and public
787 utilities to the property.

788

789 The site also lies within a Civil War battlefield area, the Battle of Savage Station.
790 Unfortunately, the battlefield setting has already been disturbed by both the
791 construction of the interstate highway and the constant plowing of the site for
792 farming. The applicant is working with the Department of Historic Resources to
793 conduct a phase 1 review of the property to determine the location of any
794 remaining areas of historic and archeological significance.

795

796 The applicant, Briel Farm Solar, is proposing to cover approximately 45 percent
797 of the 229-acre site with solar panels. The electricity generated by this facility will
798 be sold at wholesale to one or more electric utilities for distribution to customers.
799 The proposed system will consist of 71,000 solar panels, 12 inverters, a
800 transporter, and an interconnection point. The panels will be attached to frames
801 that will rotate to track the sun as it crosses the sky. The maximum height of the
802 panels will be 20 feet and will be attached to posts driven into the ground rather
803 than on permanent foundations. The inverters will be located on 6'-by-12'
804 concrete pads placed around the perimeter of the property. Underground
805 electrical lines will connect the solar arrays to the inverters and to a transformer
806 proposed at the southern property line. A new transmission line will be installed
807 under Interstate 64 from the interconnection point to the existing transmission
808 line along Old Williamsburg Road.

809

810 The proposed use will be passive in nature and will not produce any noise,
811 vibration, dust, smoke, or any other emissions. The projected life of the facility is
812 approximately 30 years.

813

814 The property owner's long-term plan is to remove the solar farm and convert the
815 property to industrial or office use. For this reason, the proposed solar farm may
816 be considered a placeholder to derive income from the property until economic
817 development becomes practical.

818

819 The property is zoned M-1C and is designated Rural Residential and
820 Environmental Projection Area on the Land Use Plan. The Planning Commission
821 has already determined that the proposed facility is substantially in accord with
822 the County's Comprehensive Plan. Although the specific use is not contemplated
823 under the M-1 zoning designation or the rezoning case, it is consistent with the
824 intent of the Light Industrial District, particularly if the project is viewed as a
825 placeholder until a more beneficial use can be recruited to the site.

826

827 The property is bounded by interstate highways on the west and south. The
828 adjoining property to the north and east is primarily agricultural in nature with a
829 row of seven dwellings on three-acre lots across Meadow Road. Once the site is
830 up and running, it will generate a negligible amount of traffic, noise, glare, or
831 other impacts as compared to other industrial uses. It will essentially be a
832 passive, unmanned facility requiring occasional maintenance. The most
833 significant issue associated with the site will be the visual impact of solar panels
834 occupying approximately 100 acres of the property.

835

836 Because of the topography of the property, the view from the interstate highway
837 would be minimal. A modest amount of supplemental landscaping along the
838 western and southern property lines should be all that is required to maintain the
839 rural visual character from that vantage point. The view from Meadow Road will
840 be more of a concern. A landscaping buffer will be required along the northern
841 boundary of the property to mitigate the visual impact on nearby property.

842

843 Because of the presence of a floodplain and wetlands on the property, the
844 applicant has indicated that the project will be situated to minimally disturb any
845 environmentally sensitive areas on the property. Additionally, care will be taken
846 to identify and preserve areas of cultural and historic significance, as per the
847 requirements of the Department of Historic Resources and the County's
848 Department of Recreation and Parks.

849

850 In conclusion, the Planning Commission has determined that the proposed
851 facility is substantially in accord with the Comprehensive Plan. The proposed use
852 will allow the property owner to benefit from the property until a suitable user is
853 found for this prime economic development site. When the proposed facility
854 reaches the end of its useful life, the solar panels and all related equipment will
855 be removed. The proposed use will contribute to the County's goal of promoting
856 sustainable development.

857

858 Based on the facts of the case, staff recommends approval of the request subject
859 to conditions. This concludes my presentation, and I will attempt to answer any
860 questions you may have.

861
862 Mr. Berman - Any questions? I do have one. Oh, please go ahead.

863
864 Mr. Bell - If you know, in the County are there any other areas
865 planned for these solar farms?

866
867 Mr. Madrigal - I believe this is the only site that we have at the
868 moment.

869
870 Mr. Blankinship - Yes. These are the only people that have approached
871 us at this point.

872
873 Mr. Bell - There is a lot of land available around it to expand,
874 which carries me to my second question. M-1 doesn't specifically have this. Do
875 you think they might want to look into maybe adding this?

876
877 Mr. Blankinship - That's one of the issues that will be taken up in the
878 code update, which has just begun.

879
880 Mr. Bell - Thank you.

881
882 Mr. Berman - Any other questions?

883
884 Ms. Harris - I have several questions. Do we have the dimensions
885 of the solar panel? We know that it's not going to be taller than 20 feet, but what
886 about the width?

887
888 Mr. Blankinship - The applicant might be the best one to answer that.

889
890 Ms. Harris - Okay. This is stated in the report, 71,000 solar panels.
891 Is that correct?

892
893 Mr. Madrigal - Yes.

894
895 Ms. Harris - That's why I'd like to see the dimensions. Condition
896 #5 talks about the facilities at the interconnection point. I'm going to maybe save
897 this for the applicant too. I'd like a description of these facilities that will be at the
898 interconnection point. And the fencing, did they describe the fencing, the six-foot
899 fencing? Will it be wire or what type of fencing?

900
901 Mr. Madrigal - Again, I think the applicant should probably field that
902 question.

903

904 Ms. Harris - All I saw was the six feet. Those were my questions. I
905 can save them for the applicant.
906

907 Mr. Berman - Thank you, Ms. Harris.
908

909 Mr. Mackey - I'm not sure if you can answer this. Ms. Moore may be
910 able to answer it. I know there were some members from across the street that
911 had some concerns at the Planning Commission meeting. Has the County
912 received any complaints or concerns regarding the solar panel farm going up?
913

914 Ms. Moore - We did not. For the substantially in accord at the
915 Board level, we did not have any opposition at that.
916

917 Mr. Mackey - Okay. Thank you very much.
918

919 Mr. Berman - Do you think that we need to add a condition
920 regarding the end of useful life? You had stated that they're going to remove all
921 the equipment. As an example, are the concrete pads also going to be removed
922 from the inverters?
923

924 Mr. Blankinship - Isn't that in there? It's supposed to be.
925

926 Mr. Berman - In the condition?
927

928 Mr. Blankinship - Yes. It absolutely should be.
929

930 Mr. Berman - I apologize. Is the base footer the same as the
931 concrete pad?
932

933 Mr. Blankinship - Yes.
934

935 Mr. Berman - Okay, then it's covered.
936

937 Mr. Blankinship - All of that would be spelled out in detail in that
938 decommissioning plan.
939

940 Mr. Berman - Okay, thanks. The rest of my questions are for the
941 applicant. Any other questions? Very good.
942

943 Mr. Madrigal - Thank you.
944

945 Mr. Berman - Thank you.
946

947 Mr. Bowers - Members of the Board, Roger Bowers—B-o-w-e-r-s—
948 on behalf of Briel Farm Solar. I tried to take notes on the questions, and I would
949 be happy to speak to those questions.

950

951 First of all regarding the fencing, as with any utility facility, there will be a six-foot
952 chain link fence with the razor wire on the top to discourage anyone from trying to
953 climb over it. I would note, though, that the fencing is only around the portions
954 where there are actually solar panels. It is not a complete fencing of the entire
955 property, so that allows wildlife passage and others in between the locations
956 where the facility is.

957

958 With regards to the panels themselves, photovoltaic panels are approximately
959 two feet by six feet. They are mounted in arrays in two different ways for tracker
960 systems. Those panels are laid side by side by side in arrays that are
961 approximately 180 to 250 feet in length that create the concentration of the
962 energy that's necessary that then goes to inverters. For fixed panels, they are
963 mounted end to end, six feet, two of them. And they're on the same post. The
964 posts themselves are about six feet high. The panels are at the optimal angle for
965 the sun, which is the angle of latitude we're at of 36 degrees. So they are
966 approximately about 10 or 12 feet high at the highest point. That's why we put
967 the 20-foot limitation, which is less than the allowed height in that district, but
968 made it clear that everything on the facility would be under that 20-foot limit.

969

970 The tracker panels are on a six-foot post, and then they rotate. The six-foot
971 panels rotate 170 degrees, so they're about nine feet tall in the morning, first
972 thing, and then they rotate back into about nine feet tall again at the end of the
973 day when they've moved all the way to the west.

974

975 I believe those were Ms. Harris's questions. If you have other questions, I'll be
976 happy to answer them.

977

978 Ms. Harris - Do you know of other sites with these solar panels?
979 Do you have any other sites or locations where this is being done?

980

981 Mr. Bowers - We do not. Urban Grid does not have any other sites
982 in Henrico, although they are always looking for sites. Siting of solar facilities is
983 actually a two-part process, and both legs are equally important. The first is the
984 property, where it's located, does it have sufficient acreage, does it have the right
985 topography facing the sun. But secondly, and equally important, is where it fits in
986 on the electrical grid. Is it in a location where there's an existing substation that
987 can take the power? Does it fit the grid in how it goes up into the grid?

988

989 This site is unique in that it will connect back into—the White Oak Substation I
990 believe is the name for it, back down Old Williamsburg Road. There was existing
991 three-phase, the 34.5KV distribution line, power, to take the energy that's
992 coming off of this facility.

993

994 Ms. Harris - In Virginia do you know of any other sites?

995

996 Mr. Bowers - Yes. For Urban Grid, we have sites that are approved
997 in Surry County, and we have applications in Westmoreland, in Halifax, and
998 we're looking at sites in two or three other counties as well.
999

1000 Ms. Harris - Do you have much opposition from neighbors?
1001

1002 Mr. Bowers - We don't. In fact, here in Henrico we met with the
1003 neighbors first, door-to-door, and then through a community meeting. They asked
1004 for and we produced the rendering that you saw as to what the landscape will
1005 look like first at planting per the County code and then what it will look like at
1006 maturity in ten years. The neighbors on Meadow Farm Road and others that
1007 we've spoken to are actually in support of this facility. They would like to see this
1008 come in, and they see it as the passive rural use that is a good neighbor.
1009

1010 Ms. Harris - Okay. Look at condition #5, if you don't mind. You
1011 were going to respond, sir?
1012

1013 Mr. Crawford - I just had one other thing. James Crawford. C-r-a-w-f-
1014 o-r-d. One of the comments that the neighbors had was to leave the existing
1015 vegetation along Meadow Road, which as you can see in the renderings, which
1016 we have.
1017

1018 Ms. Harris - I noticed in the report, too, that landscaping was
1019 supposed to be a part of your submission.
1020

1021 Mr. Bowers - It is. We have not done a formal landscaping plan. We
1022 will not do that until we go to the site plans. But we have a typical landscaping
1023 that's on our preliminary plan, and then it's been referenced in the conditions.
1024 And that meets the County requirements for landscaping for this type of use.
1025

1026 Ms. Harris - Okay, condition #5. You talk about the interconnection
1027 point.
1028

1029 Mr. Bowers - Yes ma'am.
1030

1031 Ms. Harris - About the facility that would be there. Can you
1032 describe that, please? Is that like a tower?
1033

1034 Mr. Bowers - No. It's utility poles. If you go along a normal 34.5KV
1035 distribution line, every half mile or so there will be one of those cans, which is a
1036 transformer that modulates the height. The interconnection point is actually a
1037 series of five of those utility poles, three to five of those utility poles. What that
1038 allows is one pole will hold the disconnect. And then one pole will hold that step-
1039 up transformer that gets it from the lower voltage that comes off of the panels
1040 and steps it up to the 34.5KV so you can put it into the line. Then there's another
1041 breaker, basically. And then there's the meter because we sell it to the utility on

1042 site. We don't do any transmission. And then they'll be a final breaker. So there is
1043 a series of equipment, but it is no larger than what can hang up on a pole that's
1044 something maybe as big as this podium or smaller. And then a bunch of the
1045 wires. All of the wires are connected with the buffers or filters, the glass—
1046 insulators. That's it.

1047

1048 There are three phrases, so there are three sets of wires that come through. But
1049 it has to go through a breaker, a transformer, another breaker, the meter, another
1050 breaker, and then on to where it goes. It will actually come out of the ground,
1051 because Dominion wants that all up on the poles. That can't be in the ground.
1052 And then it will go back down in the ground, and they will bore under 64 to get
1053 over to Old Williamsburg Road on the southern side of the site.

1054

1055 Ms. Harris - Will they be clustered? Those poles, will they be
1056 clustered together?

1057

1058 Mr. Bowers - Yes. They'll be in a line. They'll be on the southern
1059 portion of the site, but interior to the site, backing up. The last pole will then turn
1060 and go underground where they go into the ground and go underneath I-64.

1061

1062 Ms. Harris - Okay. Thank you.

1063

1064 Mr. Berman - Any other questions from the Board?

1065

1066 Mr. Bell - Real quick. I'm just curious. We have, as you know,
1067 production, distribution of the services. You being the production part, are you all
1068 taxed through the County?

1069

1070 Mr. Bowers - There are taxes associated with this project that are a
1071 positive increase in terms of revenue to the County. Taxes are split. There are
1072 taxes on the land use. So once this conditional use permit is approved, that will
1073 be seen as a change in land use. That will allow the assessor to reassess the
1074 parcel as a whole from agricultural use to solar facility use. It varies by county,
1075 depending on how the assessing is done, but we've seen that go up as much as
1076 much as two-to-fourfold in terms of the land value taxes.

1077

1078 The equipment itself is pollution control equipment. It is exempt from taxation on
1079 the equipment portion. The legislature has provided an incentive for those who
1080 will invest the money in clean energy production and things that don't create any
1081 wastes or emissions, so there is no taxation on the machinery portion of the
1082 facility.

1083

1084 Lastly, there is no significant burden to county services. There is no addition to
1085 schools or libraries. There is no traffic. There is no daily traffic. We anticipate two
1086 to three visit a month to check the facilities. If a panel goes out, they bolt-out the
1087 two-by-six panel and bolt-in a new one. Underneath the panels will be planted a

1088 meadow grass. So two or three times a year they're going to have come through
1089 and cut the grass down.

1090
1091 The panels themselves are set—just because of shading purposes, if they're
1092 trackers they're set 12 feet apart. With six feet on each side, there's about a six-
1093 foot drive aisle between them. They're north/south. The fixed panels are
1094 east/west. But again, because of shading purposes, they're set back from each
1095 other. There's a six-foot drive aisle between them. So that will be all planted in
1096 grass, and someone will have to come through and maintain that.

1097
1098 Mr. Bell - Thank you.

1099
1100 Mr. Berman - A couple quick questions. Is there any emission of
1101 any harmful vapors or chemicals?

1102
1103 Mr. Bowers - No. There are no hazardous materials involved with
1104 this process at all. The light energy comes in as photons, and the silicon wafer in
1105 the panel transfers that to electrons and collects it. The panels themselves just
1106 have a layer of the silicon material, but they're heavy-duty glass and metal. The
1107 panels have been taken and crushed up and then tested. There's no hazardous
1108 waste per se, so they are landfill-ready in that if one of them breaks and there is
1109 broken glass, you go out, you sweep up the glass and collect the metal. And it
1110 can go in the landfill.

1111
1112 The reality is that the recycling value of that metal and that glass is such that
1113 there's a value there. There's a positive value on the ground to take and recycle
1114 that. What we have as part of our decommissioning plan that was mentioned
1115 briefly before is a commitment that each ten years through the life of the facility to
1116 have a certified engineer come in and estimate that value of the remaining
1117 equipment and the removal costs so that we're up to date on that cost of
1118 removal. Right now, even with recycling being at lower levels than it was five,
1119 eight years ago, it's a positive number. It's a number that actually is an asset,
1120 separate and apart from the asset producing the energy, the actual equipment on
1121 site is an asset as a recyclable.

1122
1123 Mr. Berman - Thank you. Is there any electrocution hazard to
1124 wildlife or humans?

1125
1126 Mr. Bowers - With electricity there's always—and that's why we
1127 have the fencing around the facility itself. At the panel levels, it is lower voltage.
1128 In fact, here the only time you get up to higher voltages is that step up on the
1129 interconnection point that we talked about.

1130
1131 Mr. Berman - That's above ground, way above ground.

1132
1133 Mr. Bowers - Yes, that's way above ground.

1134
1135 Mr. Berman - Okay. You mentioned there's no glare. I'm curious.
1136 With glass, how can there not be glare, especially if it's going back and forth?
1137
1138 Mr. Bowers - The panels are actually coated with a black covering.
1139 They don't want to lose any light. They don't want any light going away. They
1140 actually want to collect all the light they can get. That's more energy. So that
1141 antiglare coating is on there to try to keep the light there and not reflect it.
1142
1143 Where solar has been associated with glare is a thermal reflection facility, which
1144 is an entirely different type of solar facility.
1145
1146 Mr. Berman - That's what I wanted to clarify. Okay. I didn't want a
1147 car driving down there and—
1148
1149 Mr. Bowers - Yeah, no. We're not going to try to zap the people on
1150 the flyover.
1151
1152 Mr. Berman - Very good. Last question. Are the folks on the grid
1153 required to buy back your excess energy?
1154
1155 Mr. Bowers - No. This is not like the residential where you have
1156 come and go. We don't use any of the power on—well, I mean the tracker units
1157 use a little bit of the power to move back and forth. But we don't store any power
1158 on site. We enter into either a power purchase agreement or an interconnection
1159 agreement with the purchasing utility. They take the power that comes. We don't
1160 retain any of it, and it is per that contractual agreement.
1161
1162 Mr. Berman - Actually that's the part I'm asking about. Are they
1163 required to purchase? My concern would be that you would build this out and
1164 there wouldn't be a demand or a contract on it.
1165
1166 Mr. Bowers - We have already had the preliminary discussions for
1167 that contract, so we know there is the demand. As you may have heard—
1168 certainly from Dominion—in the press recently they are seeking hundreds of
1169 megawatts of solar, renewable energy. Not only for their use, that is they have a
1170 mandate to get the renewable energy and have it a cost that's not any increase
1171 to the ratepayers. So they are actively seeking out these. We're about 20
1172 megawatts in order to stay at our regulatory level. That's the maximum we'll
1173 produce off this site. So there's a ready market for it. And we will enter into a
1174 long-term power purchase agreement that will have a place for that power to be
1175 sold over the useful life of that facility.
1176
1177 Mr. Berman - Very good. I have visited these solar farms in North
1178 Carolina, and they are impressive. Very impressive. Are there any other
1179 questions from the Board?

1180
1181 Ms. Harris - The life of this project, what do you estimate that—
1182
1183 Mr. Bowers - The useful life is a period of 25 to 30, could be as
1184 much as 40 years. The panels themselves degrade about a half a percent per
1185 year. So at 30 years, you're at an 85 percent efficiency. In 30 years, in 2047, I
1186 sincerely hope that solar power has evolved and technology has overtaken us.
1187 But photovoltaic cells themselves are a 40-year-old technology. They've had
1188 those for that long. So it could still be producing. But it really goes to the
1189 economics of the site.
1190
1191 Then to your previous question, condition 8 does cover a requirement of us as a
1192 decommissioning plan so that we're not the last crop on this field. We will be able
1193 to, and be required to, remove all of the posts and panels and wires at the end of
1194 that useful life within one year of it going out of production.
1195
1196 Mr. Berman - Is there a bond associated with this?
1197
1198 Mr. Blankinship - Yes there will be.
1199
1200 Mr. Berman - Okay. Any other questions?
1201
1202 Ms. Harris - Yes. Mr. Blankinship, with the conditional use permit
1203 application, don't we normally have an ending date, they would have to come
1204 before us again?
1205
1206 Mr. Blankinship - On mining sites we do. A lot of these permits are not.
1207 It depends on the particular use. The decommissioning plan, I guess, takes the
1208 place of an expiration date.
1209
1210 Mr. Berman - Any other questions? Thank you very much.
1211
1212 Mr. Bowers - Thank you very much for your time.
1213
1214 Mr. Blankinship - I'm sorry. I had one question. Can you talk just a
1215 minute about the actual construction process, how long are the days, how many
1216 days, how many months, how much noise?
1217
1218 Mr. Bowers - Sure. The construction process itself for this site
1219 would be probably two to three months. The reason that it's a little shorter is
1220 because there is not the clearing. We'll have to do some clearing. There are a
1221 few lines of trees between the traditional field sites, and there are a few areas
1222 that we will have to do. But most of its open land already. There is very little
1223 change in the topography.
1224

1225 You first bring in the—they're kind of like mounted on a tractor. They pound in the
1226 posts. You take a soil test to know how far you need to pound it. It's like a 6-inch
1227 post, and then they're on I think it's 12-foot spacing. So you'll have lines of posts.
1228 That will be the period where there is some noise from driving those in. There is
1229 a condition already that limits the hours of doing that, which is very reasonable,
1230 six to six, Monday to Saturday.

1231
1232 The site itself slopes away from the road. We're at 100-foot setbacks already,
1233 and then you start the posts beyond that. So pretty quickly they'll be down over
1234 the hill, and they won't be providing a lot of things on the road.

1235
1236 The next stage would be the wiring and the panels themselves. They typically get
1237 delivered—we've indicated there's the laydown area up near Meadow Road.
1238 They typically come as a container full of panels or wire on a trailer truck where
1239 they'll drive in the trailer truck, the cab will leave, and the trailer will be there. In
1240 terms of the noise and effort for that, it's bolting the panels and then wiring them
1241 together. It's really an electrician's work. There is some ditching to be done. The
1242 wires go from panel to panel underneath the array, but at the end of each array
1243 they have to go down in the ground and then go the inverter. That will be some
1244 kind of ditch—plow, I guess they call it, a vibrating plow they put in, and they feed
1245 the wire right underneath it. So there's no open excavation for that. It's just laying
1246 the wire behind the plow. It's like they do for the fiber wire when they put that in.
1247 That'll bring the wires to the inverter boxes.

1248
1249 The inverter boxes themselves are premade units that are usually on skids. If
1250 you're in a lower area, you necessarily might need to put block down or you
1251 might need to pour an 8-by-10 concrete pad to put that inverter box on. That
1252 would be the only concrete, per se, on site. There will be gravel on the access
1253 roads between those inverters just to give those a little hardening.

1254
1255 None of this work will be done in any of the wetland areas on site. Those are
1256 avoided. In fact, by having the second entrance at the upper right-hand corner,
1257 we're able to avoid wetland crossings completely. I think it shows there's one that
1258 may be there, but that's really an intermittent stream that comes down through
1259 the middle of the field.

1260
1261 That will be the work on site. The heavy work of driving of the poles for the
1262 interconnection site will be down south of the railroad, between the railroad and
1263 the highway, well away from where the neighbors are. So we think we'll have
1264 very little impact on the people there on Meadow Road.

1265
1266 Mr. Berman - I assume these are resistant to weather hazards like
1267 hail, tornados, and hurricanes?

1268
1269 Mr. Bowers - They area. They told me about the testing process for
1270 these panels. They're hardened glass. As part of the quality control, they fire

1271 baseballs at them to make sure that the glass is solid enough. It's hail resistant,
1272 and they're wind resistant up to I think I was told 130 miles an hour. It's a Type 2
1273 Hurricane strength that they are designed to withstand.

1274
1275 Mr. Bowers - Part of the monitoring system—if winds were to
1276 approach higher levels, they actually go to what's called the stow position. So the
1277 tracker technology will actually flatten out so it decreases resistance.

1278
1279 Mr. Berman - Interesting. Any other questions? That was an
1280 education on solar farms. Thank you.

1281
1282 Mr. Bowers - Thank you, sir. Appreciate the consideration.

1283
1284 Mr. Berman - Is anybody here today to speak in support of this
1285 application? Is there anybody here today to speak in opposition of the
1286 application? Hearing none, let's proceed.

1287
1288 **[After the conclusion of the public hearings, the Board discussed the case**
1289 **and made its decision. This portion of the transcript is included here for**
1290 **convenience of reference.]**

1291
1292 Mr. Berman - Do I hear a motion?

1293
1294 Mr. Mackey - Yes, Mr. Chairman. I make a motion that we approve
1295 CUP2017-00022, Briel Farm Solar, LLC. I don't see where it will be a detriment
1296 to the community, and I think they will be a good neighbor towards the
1297 community.

1298
1299 Mr. Berman - Thank you. We have a motion from Mr. Mackey. Do I
1300 hear a second?

1301
1302 Mr. Reid - Second.

1303
1304 Mr. Berman - I hear a second from Mr. Reid. Any discussion?

1305
1306 Ms. Harris - Yes. I'd like to say on this particular case that this is a
1307 massive project, and I'm not sure the neighbors know just how massive this
1308 project is. But I think we've covered in our discussion every conceivable problem
1309 that might incur. So for that reason, I will support this motion.

1310
1311 Mr. Berman - We have a second. Discussion's closed. All in favor
1312 signify by saying aye. Those opposed? There is no opposition. The motion
1313 carries 5 to 0.

1314
1315 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
1316 Mr. Reid, the Board **approved** application **CUP2017-00022, BRIEL FARM**

1317 **SOLAR, LLC's** request for a conditional use permit pursuant to Section 24-
1318 116(d)(2) of the County Code to allow a renewable energy facility at 2701
1319 Meadow Road (Parcel 842-716-0583) zoned Light Industrial District (M-1C)
1320 (Varina). The Board approved the conditional use permit subject to the following
1321 conditions:

1322

1323 1. Only the improvements shown on the conceptual plan filed with the application
1324 shall be constructed pursuant to this approval. Any additional improvements shall
1325 comply with the applicable regulations of the County Code. Any substantial
1326 changes or additions to the design or location of the improvements shall require
1327 a new conditional use permit.

1328

1329 2. Before beginning any clearing, grading, or other land disturbing activity, the
1330 applicant shall obtain approval of construction plans, including erosion and
1331 sedimentation plans as required by the Department of Public Works. This
1332 approval is subject to all conditions that may be placed on the construction plans
1333 by the Department of Public Works and the Department of Public Utilities.

1334

1335 3. Before beginning any clearing, grading, or other land disturbing activity, the
1336 applicant shall obtain approval of a detailed landscaping and lighting plan from
1337 the Planning Department. The plan shall provide screening at least equivalent to
1338 what is shown on the "Conceptual Plan for the Briel Farm Solar Project" by
1339 Draper Aden Associates, last revised March 20, 2017. Approved landscaping
1340 shall be installed prior to activation of the facility. All landscaping shall be
1341 maintained in a healthy condition at all times. Dead plant materials shall be
1342 removed within a reasonable time and replaced during the normal planting
1343 season.

1344

1345 4. Hours of construction shall be limited to Monday through Saturday, 6:00 am to
1346 6:00 pm. No construction shall take place on Sundays or national holidays.

1347

1348 5. The total height of the solar energy system, including panels and mounts, shall
1349 not exceed 20 feet above the ground when orientated at maximum tilt. This
1350 height limitation requirement shall not apply to the overhead crossing of the
1351 railroad, the facilities at the interconnection point, or the transmission lines from
1352 the interconnection point to the local utility power grid.

1353

1354 6. All exterior lighting shall be shielded to direct light away from adjacent property
1355 and streets. Light fixtures shall not exceed 20 feet in height.

1356

1357 7. All electrical wiring shall be underground except for the overhead crossing of
1358 the railroad, the interconnection point, and the transmission lines to the local
1359 utility power grid.

1360

1361 8. Prior to the issuance of permits for installation of equipment, the applicant shall

1362 obtain approval of a plan for decommissioning the facility. The solar energy
1363 system shall be decommissioned and removed within 12 months after the facility
1364 ceases electricity generation for a continuous 12-month period.
1365 Decommissioning shall include removal of solar collectors, cabling, electrical
1366 components, any bases or footers, and all other associated items. The plan shall
1367 include a financial guaranty to insure the decommissioning will be completed at
1368 the applicant's cost.

1369
1370 9. During the construction and operation of the facility, the applicant shall
1371 cooperate with the Virginia Department of Historic Resources and the Henrico
1372 County Department of Recreation and Parks to identify, preserve, and interpret
1373 historical and cultural resources on the site. This shall include, at a minimum, the
1374 completion of a Phase I Cultural Resource Review before the issuance of permits
1375 for installation of equipment.

1376
1377 10. Before the facility is energized, it shall be secured with a fence at least 6 feet
1378 in height.

1379
1380
1381 Affirmative: Bell, Berman, Harris, Mackey, Reid 5
1382 Negative: 0
1383 Absent: 0

1384
1385
1386 **[At this point, the transcript continues with the public hearing on the next**
1387 **case.]**

1388
1389 **CUP2017-00023 EASTERN HENRICO RURITAN CLUB** requests a
1390 conditional use permit pursuant to Section 24-116(d)(1) of the County Code to
1391 allow a turkey shoot at 3808 Nine Mile Road (Parcel 806-723-4768) zoned
1392 Agricultural District (A-1) (Varina).

1393
1394 Mr. Blankinship - Would everyone who intends to speak to this
1395 application please stand and be sworn in. Raise your right hands, please. Do you
1396 swear the testimony you're about to give is the truth, the whole truth, and nothing
1397 but the truth so help you God? Let's let Mr. Madrigal do his introduction.

1398
1399 Mr. Madrigal - Mr. Chair, members of the Board, before you is a
1400 request to allow a turkey shoot in the east end of the County. The Eastern
1401 Henrico Ruritan Club was chartered in May 1967 and held its first turkey shoot that
1402 same year. Since then, they have conducted this annual fundraising event on
1403 Fridays from October through December and on the Wednesday before
1404 Thanksgiving Day. Their most recent approval encompassing 2015 and 2016
1405 was granted by this Board in June 2015.

1406

1407 The event is held on a baseball field located at the Eastern Government Center,
1408 immediately west of the Ruritan building. Here on the site map you can see the
1409 Ruritan building, and here's the baseball field.

1410
1411 The subject property is zoned A-1 and is designated as Government on the Land
1412 Use Plan. Clubs, fraternities, lodges, or similar nonprofit organizations are
1413 permitted in the A-1 district subject to the approval of a provisional use permit.
1414 Because the Ruritan Club predates this section of the Code and does not have a
1415 provisional use permit, the existing club is considered legal non-conforming.

1416
1417 Similar to past events, the turkey shoot is conducted in the evening after the
1418 government offices are closed. Shotgun fire is associated with the event and
1419 occurs in a northerly direction toward a treed area at the back of the field, away
1420 from the adjoining residential neighborhood located to the west and away from
1421 the offices to the south and east.

1422
1423 Low-powered shot shells are used, and strict safety rules are followed to ensure
1424 the safety of participants and club volunteers. Staff is not aware of any
1425 complaints or safety concerns arising from prior events. Because the County
1426 owns the subject property, staff is recommending two conditions that are not
1427 common to other turkey shoot applications. These require the applicant to
1428 provide an indemnity agreement and a liability insurance policy to protect the
1429 County in case of an unforeseen accident. These two requirements have been
1430 included in the recommended conditions of approval.

1431
1432 In conclusion, the existing club has been part of the Eastern Government Center
1433 complex for 50 years. The use is consistent with both the zoning and
1434 Comprehensive Plan designations of the property. The organization has proven
1435 over its long tenure that the turkey shoot is conducted in a safe and responsible
1436 manner. Staff is not aware of any complaints or negative issues associated with
1437 this event. Thus staff recommends approval subject to conditions.

1438
1439 This concludes my presentation. I'll be happy to answer any questions.

1440
1441 Mr. Berman - Thank you. Any questions?

1442
1443 Ms. Harris - Mr. Madrigal, do we know how much liability
1444 insurance they have?

1445
1446 Mr. Madrigal - The monetary amount? I'm not sure. Do you know,
1447 Ben?

1448
1449 Mr. Blankinship - It's either one million or two million.

1450
1451 Mr. Madrigal - I want to say it's one million.

1452

1453 Ms. Harris - One million dollars. Thank you.
1454
1455 Mr. Berman - Any other questions? Thank you, sir.
1456
1457 Mr. Madrigal - Thank you.
1458
1459 Mr. Blankinship - One million per occurrence, two million in the
1460 aggregate.
1461
1462 Ms. Harris - Okay, thank you.
1463
1464 Mr. Blankinship - Mr. Fifer?
1465
1466 Mr. Fifer - He's pretty well covered everything.
1467
1468 Mr. Berman - Could you state your name please and spell it?
1469
1470 Mr. Fifer - My name is Tom Fifer. F-i-f-e-r.
1471
1472 Mr. Berman - Good to see you back this year.
1473
1474 Mr. Fifer - Glad to be back this year.
1475
1476 Mr. Berman - Anything further? You said it's all covered?
1477
1478 Mr. Fifer - No. The insurance policy as we speak is being written
1479 by the same company out in Highland Springs, VIPA or VPIA, one or the other. I
1480 forget the title. They have insured us for the last several years with a one million
1481 dollar insurance policy that holds the County harmless against any occurrence.
1482
1483 We shoot, like you said, low-powered shells that do not reach the end of the
1484 property. This property is County owned. And the end of it is also County owned.
1485 They store vehicles back there, I think, heavy equipment. We've never had a
1486 complaint from anyone over there that anything has been damaged from the
1487 turkey shoot over 20-some years I believe.
1488
1489 Mr. Berman - Mr. Fifer, you supply the ammunition, right?
1490
1491 Mr. Fifer - Yes sir. Everyone shoots the same shell. In order to
1492 be equal in competition, we don't have one person shooting his self-loaded shells
1493 where he's putting more powder in it or more shot or anything like that. We buy
1494 our shells from Green Top by the case. Everyone who shoots is supplied the
1495 shell by us. We give it him just prior to his stepping up to the firing line. We only
1496 give out two shells at a time, one to the person that's shooting and one to the
1497 person who is going to shoot next. They're instructed to stay on the firing line
1498 until after they've fired. The guns are to be pointed downrange at all times.

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Mr. Berman - Is there a range marshal present?

Mr. Fifer - We don't call him a marshal; we just call him the shell man. He issues the shells and watches the people who shoot so that they don't load the gun prior to stepping up to the line. Especially with younger people, we're especially careful with them in their shooting and instructing them not to get in front of the shooters or cross in front of the shooting line. In fact, on the firing line there is a bar that you really have to get under. You can get under it and go out in front of the firing range, but we have people there to prevent that from happening.

Mr. Berman - Very good. Any further questions for Mr. Fifer?

Ms. Harris - Have there been any complaints, Mr. Fifer?

Mr. Fifer - Not that I'm aware of. There is a residential area off to the side. We don't shoot in that direction. Each time we start our turkey shoot, I call the non-emergency police number and let them know that we are commencing our turkey shoot and it goes from 6:30 p.m., I think, until 10:00 p.m. We don't fire after 10:00 at night. If any of the people in the area call to complain, they'll know that it's a turkey shoot going on and not a mass murderer or something.

Ms. Harris - Good. To safeguard the community, I know you said that the shots are aimed away from the residential area.

Mr. Fifer - Yes ma'am.

Ms. Harris - So that's the safeguard for the community?

Mr. Fifer - Well, that plus the fact that the residential community is further way than the shotgun shells will reach if the shotgun shells are fired from the firing line in that area.

Ms. Harris - And they can't be fired from any other position. You had an "if" clause.

Mr. Fifer - They *could* be. Anything's possible. You could give a gentleman a shell and ask him not to put it into his gun until he's ready to shoot. And he stands there, and when he's ready to shoot, he puts it in his gun and then swings it the other way on purpose or some crazy thing like that. But with normal commonsense folks that we try to keep at our turkey shoots, they won't fire in that direction.

1544 Ms. Harris - Okay. Who actually participates in this shooting
1545 process?
1546
1547 Mr. Fifer - Just the public.
1548
1549 Ms. Harris - Okay.
1550
1551 Mr. Fifer - You can come shoot if you'd like.
1552
1553 Ms. Harris - Thank you.
1554
1555 Mr. Fifer - You're certainly welcome. It's open to the public. It's a
1556 fundraiser. We raise the monies for all sorts of charities. Every dime we get we
1557 donate to charity in the County or in the surrounding neighborhood. Trying to
1558 make the neighborhood a little better place to live. We have people who can't pay
1559 their fuel bill and their medical bill. So we'll try to pay one of them for them as
1560 long as they don't try to attach themselves to us as a lifelong beneficiary. As long
1561 as they're just down on their luck temporarily, perhaps the husband has had a
1562 heart failure or something and is out of work temporarily but will be back. We will
1563 assist them in whatever they need—food, medicine, fuel. There are things that
1564 we cannot pay for by law, but those things that we can help them with we do help
1565 them with.
1566
1567 Ms. Harris - Okay. Thank you.
1568
1569 Mr. Mackey - Good morning, Mr. Fifer.
1570
1571 Mr. Fifer - Good morning.
1572
1573 Mr. Mackey - Hopefully you never have any accidental shootings or
1574 anything. But what steps as far as first aid do you take other than calling 9-1-1?
1575 Do you have like an on-hand first aid station or anything like that there?
1576
1577 Mr. Fifer - We have a first aid kit there, but it's like every other
1578 first aid kit. It's limited in its supplies. We're limited in our personnel that are
1579 trained in that area. But yes, 9-1-1 is our primary. To my knowledge, I don't think
1580 it's been called.
1581
1582 Mr. Mackey - That's very good.
1583
1584 Mr. Fifer - And I hope it never will be called.
1585
1586 Mr. Mackey - I agree, sir.
1587
1588 Mr. Berman - Twelve-gauge generally won't kill somebody unless
1589 it's right up against them.

1590
1591 Mr. Fifer - Oh, yeah, a 12 gauge will kill you. In fact, we go down
1592 to 410s. We'll shoot anything from 410 up to a 12 gauge. Nothing larger than a
1593 12 gauge. Nothing smaller than 410. I don't know if they make anything smaller
1594 than 410. But 12, 14, 16, and 22 gauge, they're about the ones we shoot.

1595
1596 Mr. Berman - Very good. Any further questions from the Board?
1597 Thank you.

1598
1599 Mr. Fifer - Thank you.

1600
1601 Mr. Berman - Is anybody here today to speak in support of this
1602 application? Is there anybody here today to speak in opposition of the
1603 application? Hearing none, let's proceed.

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. Bell - I move that we accept this request from the Ruritan
1612 Club in Highland Springs. I do it because the organization, the Ruritan Club, has
1613 been operating for 50 years in that area. They've done this year after year,
1614 [unintelligible] personally. They've had no accidents and no complaints that we're
1615 aware of, so I recommend that we approve.

1616
1617 Mr. Berman - Thank you. We have a motion from Mr. Bell. Do I hear
1618 a second?

1619
1620 Ms. Harris - Second the motion. And I think we covered the safety
1621 aspect. That was basically my reservation, but I think we've covered the safety
1622 aspect. And should we have any complaints, we would have to revisit this
1623 conditional use permit.

1624
1625 Mr. Berman - Thank you. Ms. Harris. We have a second. Any
1626 further discussion? Hearing none, all in favor signify by saying aye. Those
1627 opposed? There is no opposition. The motion carried.

1628
1629 After an advertised public hearing and on a motion by Mr. Bell, seconded by
1630 Ms. Harris, the Board **approved** application **CUP2017-00023, EASTERN**
1631 **HENRICO RURITAN CLUB's** request for a conditional use permit pursuant to
1632 Section 24-116(d)(1) of the County Code to allow a turkey shoot at 3808 Nine
1633 Mile Road (Parcel 806-723-4768) zoned Agricultural District (A-1) (Varina). The
1634 Board approved the conditional use permit subject to the following conditions:

1635

1636 1. This conditional use permit applies only to the Ruritan Club which allow them
1637 to conduct a turkey shoot fundraiser. All other applicable regulations of the
1638 County Code shall remain in force.

1639
1640 2. Hours of operation shall be limited to 6:00 pm to 10:00 pm on Fridays, October
1641 through December, and on the Wednesday before Thanksgiving Day, 2017 and
1642 2018. This permit shall expire on December 31, 2018.

1643
1644 3. No firearm shall be discharged within 300 feet of any lot occupied by a
1645 dwelling, or across any road or street, or within 300 feet of any building other
1646 than buildings immediately adjacent to the shooting area located on the same
1647 parcel.

1648
1649 4. The turkey shoot shall only involve the use of shotguns no larger than 12
1650 gauge and low powered (2-3/4") shells.

1651
1652 5. The site shall be clearly posted to show where shooting will occur.

1653
1654 6. Sufficient off-street parking shall be provided for all cars visiting the premises.

1655
1656 7. No alcoholic beverages may be consumed on the property during the turkey
1657 shoot. A sign to this effect must be conspicuously posted in the immediate
1658 vicinity of the shooting area. No person under the influence of alcohol, as defined
1659 in §18.2-266 of the code of Virginia, may be permitted in the shooting area.

1660
1661 8. Restrooms shall be provided.

1662
1663 9. This use permit shall not be effective until the applicant and the County enter
1664 into a license agreement or memorandum of understanding, which shall include
1665 an indemnification and hold harmless clause in favor of the County, its elected
1666 officials, employees, agents and volunteers. This agreement must be in place no
1667 later than Thursday, October 1, 2017, and a copy of the agreement shall be
1668 submitted to the Planning Department.

1669
1670 10. The applicant shall provide general liability insurance in the minimum amount
1671 of \$1 million per occurrence, \$2 million aggregate, naming the County of Henrico
1672 as an additional insured. This coverage shall be primary to the additional insured
1673 and to any self-insurance or insurance afforded to the County of Henrico. This
1674 insurance policy must be in place no later than October 1, 2017, and a copy shall
1675 be submitted to the Planning Department.

1676
1677
1678 Affirmative: Bell, Berman, Harris, Mackey, Reid 5
1679 Negative: 0
1680 Absent: 0

1681

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

Mr. Blankinship - That completes our conditional use permits for the agenda. There is one variance on this morning's agenda.

VAR2017-00010 **SHIRLEY E. SHAHEEN** requests a variance from Sections 24-95(c)(4) and 24-95(c)(1) of the County Code to build an addition at 5903 West Club Lane (WESTWOOD) (Parcel 769-738-1556) zoned One-Family Residence District (R-3) (Brookland). The least side yard setback and front yard setback are not met. The applicant proposes 25 feet front yard setback and 4.7 feet side yard setback, where the Code requires 35 feet front yard setback and 10.6 feet side yard setback. The applicant requests a variance of 10 feet front yard setback and 6 feet side yard setback.

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

Mr. Madrigal - Thank you. Mr. Chair, members of the Board.

Before you is a request to build an addition onto a one-family dwelling by way of variance. The subject property is located in the Westwood subdivision, which was created in 1928. The lot is approximately 15,300 square feet in area and has a minimum lot width of approximately 100 feet. It is improved with a one-story, 2,000-square-foot home with open parking, which was constructed in 1954. In addition to the dwelling, there is an inground pool, a 200-square-foot pool house, and a 100-square-foot shed, all located in the rear yard.

The house is situated on the lot in a slight angle to the front property line instead of being parallel to it. The front setback varies from 40 feet on the west corner of the house to 51 feet on the east corner of the house. This creates a transition from the adjacent home on the west, which has a 35-foot front setback, to the corner house on the east which has a 50-foot front setback.

The property was purchased by the applicant in January of 2002. She would like to build an addition onto the front of the home consisting of an attached garage on the east side of the house and a master suite on the west side of the house. So this would be the garage. This would be the master suite.

The proposed garage would be 31 feet from the front property line and 4.7 feet from the side property line instead of 35 feet and approximately 10 feet respectively. The master suite would be set back 25 feet from the front property line instead of 35 feet.

1728

1729 The applicant has cited an unusual placement of the house on the lot and a
1730 physical handicap as a justification for the variance request. The Code of Virginia
1731 provides that a variance shall be granted under one of two conditions. The first is
1732 if the strict application of the code unreasonably restricts the utilization of the
1733 property, or second if granting a variance would alleviate a hardship due to a
1734 physical condition of the property or the improvements thereon at the time of the
1735 effective date of the ordinance. In this case, the subject property was originally
1736 developed under the R-4 standards and was rezoned to R-3 as part of the
1737 comprehensive rezonings in 1960.

1738

1739 The lot is improved with a single-family dwelling and several accessory structures
1740 in the rear yard. The subdivision was established in 1928, and the home was
1741 built in 1954 with an attached open carport on the east side of the dwelling. In
1742 1962, the carport was enclosed and made part of the dwelling. Sometime
1743 between 1962 and when the applicant purchased the property, a 238-square-foot
1744 Florida room was added off the rear of the home. In 2006, an inground swimming
1745 pool and a pool house were added. Based on the history and current use of the
1746 property, it's difficult to argue that the code unreasonably restricts the use of the
1747 property.

1748

1749 With respect to the physical condition of the property, it is a standard size lot as
1750 compared to other lots on this block face. Although it qualifies for the exception
1751 standards due to the age of the subdivision, the lot exceeds the minimum lot size
1752 and lot width requirements for both the exception and current R-3 standards. The
1753 placement of the home on the lot affords it a slightly larger front setback than
1754 most homes on the block, which average between 35 and 40 feet. The slightly
1755 larger setback is attributed to the angular placement of the home on the lot.

1756

1757 Although the positioning of the home is unique, it does not adversely affect the
1758 property or create a parity issue as compared to adjacent or nearby homes. The
1759 deeper front setback allows the opportunity for a minor addition up to the point
1760 where it conflicts with the minimum front and side setback requirements. This is
1761 viewed as a benefit over homes that are built at the front setback line.

1762

1763 Moreover, the applicant has sufficient room along the back of the home for a
1764 sizeable addition, and she could accommodate a detached garage in the rear
1765 yard, if she chose to remove the existing shed. If pressed for more living space, a
1766 full second floor could also be added to the residence. All of this could be done
1767 without a variance.

1768

1769 Based on these facts, the applicant's request constitutes more than a reasonable
1770 deviation from the code and lacks any demonstrable use restrictions or
1771 parity issues caused by strict application of the code or a physical hardship
1772 attributed to the property or improvements thereon. Although the applicant's

1773 medical condition is a significant matter not to be taken lightly, it is not a hardship
1774 associated with the use or physical condition of the property.

1775
1776 Because the request has failed to meet the initial threshold requirement for a
1777 variance, staff recommends denial of the applicant's request. This concludes my
1778 presentation.

1779
1780 Mr. Berman - Thank you.

1781
1782 Mr. Madrigal - Oh, and by the way, there is a letter that I received
1783 this morning in support of the applicant.

1784
1785 Mr. Berman - Thank you very much. Any questions for
1786 Mr. Madrigal? Thank you, sir. Can the applicant please approach? State your
1787 name and spell it, please.

1788
1789 Ms. Shaheen - Good morning. I'm Shirley Shaheen. My last name is
1790 S-h-a-h-e-e-n. Thank you all for allowing me to present this morning.

1791
1792 Just a little history about Ehlers-Danlos, which is my medical condition that I
1793 have. It was diagnosed in 2010. The home I purchased in 2002. So the
1794 renovations that I'm proposing now, had I known in 2002 when I purchased the
1795 home, I could have made accommodations and made those lifestyle changes to
1796 house. But I didn't know about the condition until 2010 after I'd been living there.

1797
1798 Ehlers-Danlos is a connective tissue disorder. It affects the joints, the ligaments,
1799 and tendons. They easily tear. They dislocate. I have to say it has greatly altered
1800 my life. I am a registered nurse. I worked in the PICU. I was a forensics nurse at
1801 St. Mary's. As my disease has progressed, I have gone from being to be a
1802 bedside nurse and a forensics nurse to working at home on a computer as a
1803 nurse. Not where I thought my career would take me, but at least I can continue
1804 to nurse. The reason for no longer being to do bedside nursing is doctors have
1805 said that I can no longer squat or kneel. I can't push, pull, or carry items over a
1806 weight limit of 10 to 15 pounds.

1807
1808 Going up and down stairs, I fall. I get dizzy from the condition. I have frequently
1809 fallen off my front stoop, which is only three steps, because standing there I lose
1810 my equilibrium and fall. I have actually fallen down the courthouse steps here at
1811 Henrico Courthouse.

1812
1813 It's a debilitating condition. There's a lot of chronic pain, a lot of limitations. It's
1814 extremely depressing and disheartening to hear that you can't do the things that
1815 you like in your life. You can't play tennis. You can't go horseback riding. You
1816 can't go running. There's a lot of "you can't." You feel like you're back as a child.
1817 And it's frustrating.

1818

1819 The proposed improvements that I like would allow me to continue to live in the
1820 home. My desire is to never have to leave my home. A second story, while I can
1821 build up, eventually it would be inaccessible to me because of my condition. I
1822 can't go up and down stairs. As it is now, when I'm at people's homes, if they
1823 wish to go upstairs to show things, they have to bring them down to me because
1824 the stairs are just not good for me.

1825

1826 I am followed by pain management and rehabilitation through MCV and VCU. I
1827 do get several cortisone injections to help maintain the joints and to decrease the
1828 pain. We're at the point now where over-the-counter medications and cortisone
1829 injections are not working. So they're looking at a pain management program to
1830 control pain.

1831

1832 With the proposed additions I understand that—the drawings that I submitted and
1833 the application that I filled out wasn't quite accurate. The proposed garage at the
1834 front right of the—if you're in the street looking at the house, so I guess this—the
1835 proposed garage here. It would look better to go straight out from the home, but
1836 I'm trying to stay within the parameters of the side setback. So I would actually
1837 be building the garage kind of at a slight angle so that the side setback is stayed
1838 at 9.7 feet. So I would only need the five feet from the street frontage, not from
1839 the side, because it would be built so that as you came from the street up the
1840 side of the garage there's at least a 2-1/2 to 3-foot path that would remain.
1841 There's already a driveway and a sidewalk, and you would still have that access
1842 to maintain that 9.7-foot side setback.

1843

1844 Mr. Berman - I'm sorry. Can you kind of outline with the mouse what
1845 your intentions would be for the garage?

1846

1847 Ms. Shaheen - Yes sir. The drawing that I did shows the garage
1848 attached directly to the corner of the house and comes straight out, which would
1849 encroach on the side setback. What I'm actually—with the builders we've actually
1850 talked about building the side wall here so that it angles in to maintain this side
1851 setback of 9.7. Coming this way, I would need five feet to make it the smallest
1852 acceptable standard one-car garage. It's my understanding that standard size
1853 garages for one car range from 12 to 20 up to 16 by 22. The builder had
1854 originally proposed at 24-by-20, and I shortened it to try to stay within the
1855 smallest garage but still allow handicap wheelchair accessibility into the home.

1856

1857 The Florida room that's at the back of the house was actually an existing
1858 screened-in concrete porch. When we renovated when I first moved in, I just
1859 enclosed it instead of keeping a screened-in porch. So that part was already
1860 there, I just enclosed it.

1861

1862 In the backyard, going towards the back it was indicated that there's an area to
1863 do an addition and a detached garage if I take down the shed. The issue then is
1864 that my sewer line runs from the house to the County sewer line, which is back

1865 here along the fence line. My sewer line would no longer be accessible because
1866 the addition and the garage and the driveway would all be on top of it. So I would
1867 have to dig it all up and reroute it all so that it would be accessible. There is a
1868 gentle slope to the land, but there are already drainage issues. So I would have
1869 to do substantial upgrades to take care of a drainage issue. And even with the
1870 detached garage, it's then very limited getting in and out. And with depth
1871 perception changes and equilibrium changes, it's not safe for me to go straight in
1872 and straight out that way. Putting a detached car garage out here also defeats
1873 the purpose of the attached garage for safety issues to decrease falls. It actually
1874 is putting me further from the home and in inclement weather increasing the risk
1875 for falls. And if I'm inevitably in a wheelchair, we're crossing a great expanse to
1876 get into the home in a wheelchair. So again, that was why we were asking for the
1877 five-foot variance on the front of the house for the garage.

1878
1879 The addition on the opposite end for the master suite is actually coming off of the
1880 master bedroom. It's to allow a wheelchair handicap-accessible bathroom. That
1881 would allow me to have a walk-in shower. The bathroom that I have, the full bath
1882 that I have now, it's not large enough to accommodate a wheelchair walk-in
1883 shower. It has a smaller-than-standard tub/shower, and I frequently fall out of the
1884 shower. So I've been told that I need to have a walk-in shower.

1885
1886 The kitchen area right here is like a pantry. In the pantry is actually a stacked
1887 washer and dryer unit. Eventually the drier is no longer going to be accessible
1888 because it's way up here. This portion of the addition would also allow me to
1889 have an area to place the washer and dryer so that they're side by side and I can
1890 actually use them. It also would allow me to access the pantry. The opening to
1891 the pantry with the washer and dryer is extremely narrow. As it is currently, you
1892 have to step sideways to get into the pantry. It will not accommodate a
1893 wheelchair as it is. This is the pantry with the washer and dryer. Even accessing
1894 it now is very difficult because you go in sideways.

1895
1896 The one and only utility closet that I have is not even a 24-inch door. It's
1897 smaller. And it's deep and it's tall. So again, this section, this addition over here
1898 would allow me to have a linen closet that I could actually get into and store
1899 things.

1900
1901 All of the additions would be in keeping with the current style of the home. The
1902 roofline would not extend about the current roofline. There is siding on the house.
1903 It's brick and siding, so the additions would be constructed to keep in line with the
1904 current materials. I'm even going to paint the house so that the additions are
1905 presented as seamlessly as possible.

1906
1907 With the two additions, it kind of creates a courtyard appearance at the front of
1908 the house. As you saw, there is some beautiful landscaping. We'll continue to
1909 landscape it. I also feel—and the young lady, Ms. Allen, who sent in the letter,
1910 she and I talk about it frequently. It provides kind of a barrier for the traffic up and

1911 down Bremono, as well as the noise from Bremono. Ms. Allen, if you're looking at the
1912 house, she's to the right of me, and Bremono is just on the corner. It's Bremono and
1913 West Club. And we have the speed bumps because of the traffic and the
1914 speeding. The addition would help to provide some barrier from that noise.

1915

1916 The proposed addition for the master suite actually would not extend past the
1917 current landscaping. It actually kind of stops right at the edge of the current
1918 landscaping. The landscaping, as you can see, provides kind of a natural barrier,
1919 but now we would have a usable section of the house for me.

1920

1921 Do you have any questions?

1922

1923 Mr. Berman - Yes. I just want to restate some things to make sure
1924 that you're clear on the staff report. Only speaking for myself, obviously I'm
1925 sympathetic of your health needs and your desire to remain in your house. But
1926 you do understand that the hardship that we review is for the land use itself and
1927 not for medical requests. We had a similar one last month, a very similar case. I
1928 just want to make sure you understand our approach.

1929

1930 Ms. Shaheen - Yes sir, I do. And I know that my lot exceeds the
1931 minimum standards, but it doesn't appear to exceed the maximum standard.

1932

1933 Mr. Berman - I also want to make sure you understand the goal is
1934 the sightline of the where the houses line up along the street and that you and
1935 your neighbors will not always be the occupants of those homes. I just want to
1936 make sure that was understood.

1937

1938 Ms. Shaheen - Correct. At this time, the only permanent neighbors on
1939 either side of me are 5905, the Allens, and they just moved in. And then the
1940 house on the corner, which he's been there for about three years. The two
1941 houses across the street from me are both rentals. The owner of 5902, he and I
1942 have spoken about the addition, and he has no objections to it either,
1943 understanding that it brings the front of the house out a little further than the
1944 houses on the street.

1945

1946 Mr. Berman - Okay. I just wanted to make sure you were clear on
1947 how it was being evaluated.

1948

1949 Ms. Shaheen - Yes sir.

1950

1951 Mr. Berman - Any questions from the Board?

1952

1953 Mr. Bell - May I add onto that. If you look at this diagram into
1954 the whole neighborhood from Bremono going down the whole curve, if you notice,
1955 they are all the same pretty much for the front yard. That is the condition that we
1956 have to consider to maintaining.

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Ms. Shaheen - Yes.

Mr. Bell - When that condition is changed, then it creates a problem. Like he said, last month we had a situation just like this. I am very much concerned and sorry for your medical condition and hope that everything works out right. But when we look at something, we are referred to it primarily by a code that we have to operate under.

Ms. Shaheen - Yes.

Mr. Bell - And one of the conditions that the code tells me—I'm speaking for myself now—is that it has to show that this is a hardship case. Unfortunately, in the code there is no consideration for medical conditions. It's strictly property. As we've already seen, when you look at the options that you have, even though they are costly, there are options to continue to improve your land other than going into the front yard.

Ms. Shaheen - Okay.

Mr. Bell - That's what I really have to go on. That area in the backyard is very costly probably to do it, but it can be done. So it does not limit the value of your property. If there was an area or something that limited that value, then we would still have to address the front. But that pertains strongly to the code, and it's almost a must for us to follow the code as best as we can. That's the problem we're faced with, and that's the problem, unfortunately, that you're going to be faced with when the vote is counted I'm afraid.

Ms. Shaheen - If I can ask the Board. When it comes to additions and staying within the code, if the addition for the master suite, if you think it extends too far out, do you all have the opportunity to say we can split it and say yes to one and no to the other? If the garage would extend a little bit further out as opposed to the master suite addition, which would come further out. Is that something that the Board could consider?

Mr. Berman - The precedent is to have a clean front line on the house regardless, whether we opt for one side or the other.

Ms. Shaheen - Okay.

Mr. Bell - Even riding through the neighborhood—I rode through it several times—there's only one garage on the front of any of the houses down there, and that is recessed with the house. It was probably put on when the house was built. That's halfway down that curve. And even when you come back up Sunnybrook, the other ones on the other side, you don't find any garages there.

2003

2004 Ms. Shaheen - I know on the opposite side of West Club when you
2005 cross Bremono there's a garage that extends out. 5809, I believe. You cross
2006 Bremono. Right here. I believe that's the house.

2007

2008 Mr. Blankinship - You can see that's still set back in line with the other
2009 houses.

2010

2011 Mr. Berman - Have you considered a chairlift for access to a second
2012 floor?

2013

2014 Ms. Shaheen - I have. But then I would have to also have two
2015 wheelchairs, one for upstairs and one for downstairs. And I do live alone, so the
2016 concern now for my family is when I'm home alone when I fall. So I have to keep
2017 a cell phone on me at all times. The rescue squad has been to the house several
2018 times to assist. We did talk about a second floor. I think for me it presents more
2019 issues and restrictions than it does help because then I can't have access as
2020 easily and as safely with the condition that I have.

2021

2022 Mr. Berman - Understood. Any further questions from the Board?

2023

2024 Ms. Harris - I was concerned about whether or not you had
2025 spoken with people who advertise renovating established bathrooms for the
2026 handicapped or renovating the closets or even the kitchen for the handicapped.
2027 Have you explored those?

2028

2029 Ms. Shaheen - I've been meeting with contractors and designers and
2030 builders for about 2-1/2 years trying to figure out what I can do to make my home
2031 accessible. I have to widen pretty much all of the doorways. I do have to put
2032 handholds in the bathroom. For the existing bathroom, there is no way the same
2033 bathroom will accommodate a walk-in shower. It's just not large enough to have
2034 the walk-in shower, the toilet, and a vanity sink.

2035

2036 We've talked about the fact that I'll need a double sink, one that I can walk up to
2037 and then to progress with a wheelchair. As of right now, I'm not in a wheelchair,
2038 so I need a cabinet that will accommodate both sections.

2039

2040 So yes ma'am, I have talked to them, and I've gotten their recommendations on
2041 how I can improve the house as it is. But I don't have the space to make some of
2042 the recommendations that they've made, the washer and dryer being one of
2043 them. Expanding the bathroom, widening some of the closets so that I can
2044 access them.

2045

2046 Mr. Berman - Thank you. Any other questions? Thank you very
2047 much.

2048

2049 Ms. Shaheen - Thank you.
2050
2051 Mr. Berman - Is anybody here today to speak in support of this
2052 application?
2053
2054 Mr. Shaheen - Good morning. My name is George Shaheen. S-h-a-
2055 h-e-e-n. I'm the applicant's father. I'm just here to speak a little bit on Shirley. As
2056 she said, she's a registered nurse who has been in various emergency room
2057 hospitals. She's a forensic specialist helping those who have been violated in
2058 various ways. She is an EMT, a volunteer for many years at rescue squads and
2059 was an instructor. Shirley didn't tell you that because of this condition she has
2060 already had seven surgical procedures to repair the tears that have occurred.
2061
2062 Shirley's not asking you to change the code. You all are talking about the code.
2063 That's why you have a variance for things that come out that need a little help.
2064 Shirley has dedicated her life to helping others. She needs help right now, and
2065 you all are the ones that can provide that help. There have been many occasions
2066 in the County where there have been variances against the code, changing the
2067 code so that things could be accommodated.
2068
2069 My brother-in-law, Ernest Vanarsdall, was in on many of these variances, and
2070 I've seen them. So I know this is something that can be done where there is a
2071 need. And there is certainly a medical need although it's not a property need. It's
2072 more of a medical need. And that's what I think we are here to do, to help the
2073 residents of county when they're in need. She's not asking for financial support.
2074 It's going to increase the value, which will increase the tax basis for the County.
2075 She is asking for your help, which you can do and have the authority to do.
2076
2077 Any questions on what I have put forward?
2078
2079 Mr. Berman - Thank you very much. I understand your impassioned
2080 plea, but again, our authority ends at the code. We are able to do variances, but
2081 based on land use and with regards to—well I will leave it at that.
2082
2083 Mr. Shaheen - Okay. When you say "land use," that's residential use,
2084 right? It's not changing the aspect of the use of the property.
2085
2086 Mr. Berman - If we were to make a variance that's not in
2087 accordance to what we have the authority to do, it would most likely be overruled
2088 by the Circuit Court. So even if we did overstep our authority, which we're not
2089 generally inclined to do, it would likely be overturned. I can't predict the future.
2090
2091 Mr. Shaheen - I understand. I'm a little confused, though. When you
2092 say you don't have the authority, you don't have the authority to give a variance?
2093
2094 Mr. Berman - Yes sir, we do. Within the code.

2095

2096 Ms. Moore - I think it's worth mentioning the code refers to the
2097 Code of Virginia. So the Code of Virginia authorizes this Board to approve
2098 variances under very finely construed criteria. And I think our staff member went
2099 over that criteria and where it meets and doesn't meet. Other than that, the Board
2100 really doesn't have the purview or authority to give a variance unless it meets
2101 those criteria.

2102

2103 Mr. Shaheen - What are the criteria? I'm confused. I'm not arguing,
2104 I'm just confused. What are the criteria?

2105

2106 Mr. Blankinship - They're set out really clearly, sir, in the staff report, if
2107 you want to read them. But the Code establishes a two-part question that we call
2108 the threshold question. And then there are five other questions that come after
2109 that. The two parts of the threshold question are that either the terms of the
2110 ordinance would unreasonably restrict the use of the property, which the courts
2111 have told us means that there is no reasonable use of the property at all, no
2112 economically viable use of the property. So if you have a house on the lot, it's
2113 almost impossible to make that argument because you have reasonable use of
2114 the property already.

2115

2116 And then the second part is about the hardship, and let me read the end of it to
2117 you: "...relating to the property or improvements thereon at the time of the
2118 effective date of the ordinance." So it's not any circumstance that people find
2119 difficult to accommodate. It's a problem related to the property or the
2120 improvements on the property.

2121

2122 Unless the Board can determine that either there is no reasonable use or that
2123 there is some unreasonable hardship due to those kinds of factors, then they
2124 don't even get into the other five questions.

2125

2126 One of the other five questions is about whether the situation is of a general or
2127 recurring nature. And as you read the staff report, you'll see that's that other point
2128 where staff was not able to find that this case meets the legal criteria because
2129 the conditions that apply to this lot apply to virtually every lot in that subdivision.
2130 So it's not appropriate in a case like that under state law for the Board of Zoning
2131 Appeals to grant the variances lot by lot by lot if everybody has the same issue,
2132 then either the Board of Supervisors can consider whether that requirement is
2133 appropriate—it's either everybody lives with it or nobody lives with it.

2134

2135 There are circumstances where due to let's say a floodplain or different kinds of
2136 circumstances relevant to the actual physical property, one property is at a
2137 disadvantage compared to everyone else in the subdivision. That's the kind of
2138 case that a variance was created for so that if because of those factors outside of
2139 their control one property doesn't have the ability to be used the way other
2140 properties do.

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But in a case like this where this property is used more or less the same as every other property in the subdivision, it's not appropriate for this Board to say well this property is going to have more buildable area than any other lot in the subdivision.

Mr. Shaheen - May I ask one last question? Would it be applicable to get a special use permit to do this?

Mr. Blankinship - That's a very good question, because that is a completely different set of legal criteria. The difference is that for a conditional use permit, the permission to grant that is specifically delegated to this body in the Code. So, for example, the previous case of the turkey shoot, the Code specifically authorizes the Board to grant temporary use permits that don't involve permanent buildings or won't be going on beyond a certain time period. The case before that, the solar farm, was something where the Code specifically provides that this Board has the authority to review public utility structures.

There are some examples that are residential in nature. For example, sometimes on a corner lot the only reasonable place to put a garage might be in the side yard whereas the Code only allows it in the rear yard by right. The BZA does have the authority grant a conditional use permit to allow accessory structures in the side yard on a case-by-case basis if there is some reason why the side yard is the appropriate location and the rear yard is not. But that is spelled out in the Code that they can do that. There is nothing in the Code that says they can grant an addition that extends into the front yard without making the findings of a variance.

Mr. Shaheen - Do you think that would fit into that category?

Mr. Blankinship - If the Board of Supervisors wanted to write that into the code to delegate to this body—

Mr. Shaheen - No, I'm sorry. A special use.

Mr. Blankinship - No, because that's for a detached accessory structure. And it would still not be allowed to extend into the front yard setback. And this is not a corner lot either. It doesn't really meet those criteria. Staff can show you some examples of cases that have been approved so you can see what I'm talking about.

Mr. Shaheen - Okay. I thank you all.

Mr. Berman - Any further questions for Mr. Shaheen? Okay. Thank you, sir.

2187 Mr. Shaheen - Thank you.
2188
2189 Mr. Berman - Is there anyone else to speak in support of this
2190 application? Is there anybody here today to speak in opposition of the
2191 application? Thank you. That concludes this section, and we will move to motions
2192 for the applications.
2193
2194 **[After the conclusion of the public hearings, the Board discussed the case**
2195 **and made its decision. This portion of the transcript is included here for**
2196 **convenience of reference.]**
2197
2198 Mr. Berman - Do I hear a motion?
2199
2200 Mr. Bell - Yes. I want to make a motion. This is one of those
2201 double negative things. How do I make it? Do I say I don't approve it or?
2202
2203 Mr. Blankinship - A motion to deny if that is your inclination.
2204
2205 Mr. Berman - Which is in line with the staff recommendation. Yes,
2206 motion to deny.
2207
2208 Mr. Bell - I have to agree with the staff's recommendation in
2209 making the motion to deny the addition of the garage and the bedroom.
2210 Unfortunately, this is one of many situations where the variance code does not
2211 cover a cause that should be covered. It does cover many other causes; this
2212 should be covered as well. But for the Board, it is our requirement to go by the
2213 codes, and the code here was basically built on hardship use of their land. And I
2214 have to motion this denial because the hardship use of the land I could not put in
2215 as being a reason to approve this. So therefore, I move to deny it.
2216
2217 Mr. Berman - We have a motion for denial from Mr. Bell. Do I hear a
2218 second?
2219
2220 Ms. Harris - I second the motion. My heart does go out for people
2221 who are in need of handicap accessibility in their homes. This is a large problem,
2222 especially with senior citizens, of which I am one. So I do understand the issue
2223 here. But when we do approach this situation, I think all over the county we have
2224 older homes that need to be made handicap accessible. And we do have to go to
2225 the drawing board to find a way within the Code to alleviate the problem.
2226
2227 Mr. Berman - Thank you. We have a second from Ms. Harris. Any
2228 further discussion? All in favor of the motion for denial, signify by saying aye.
2229 Those opposed? There is no opposition. The motion for denial passes.
2230
2231 After an advertised public hearing and on a motion by Mr. Bell seconded by
2232 Ms. Harris, the Board **denied** application **VAR2017-00010, SHIRLEY E.**

2233 **SHAHEEN's** request for a variance from Sections 24-95(c)(4) and 24-95(c)(1) of
2234 the County Code to build an addition at 5903 West Club Lane (WESTWOOD)
2235 (Parcel 769-738-1556) zoned One-Family Residence District (R-3) (Brookland).

2236

2237

2238 Affirmative: Bell, Berman, Harris, Mackey, Reid 5

2239 Negative: 0

2240 Absent: 0

2241

2242

2243 Mr. Berman - This concludes the motions. Is there any new
2244 business? With regard to the minutes, I'd like to make a motion that they—first let
2245 me ask if there are any corrections to the minutes.

2246

2247 Ms. Harris - Yes. On page 58, line 2610. It should be "wondering"
2248 not "wonderful." Page 58.

2249

2250 Mr. Berman - Any other corrections? Very good. I make a motion
2251 that we enter these minutes without reading into the record.

2252

2253 Mr. Mackey - Second.

2254

2255 Mr. Berman - Second from Mr. Mackey. Any discussion? All in favor
2256 signify by saying aye. Those opposed? There is no opposition; the motion
2257 carries.

2258

2259 On a motion by Mr. Berman, seconded by Mr. Mackey, the Board **approved as**
2260 **corrected** the **Minutes of the April 27, 2017**, Henrico County Board of Zoning
2261 Appeals meeting.

2262

2263

2264 Affirmative: Bell, Berman, Harris, Mackey, Reid 5

2265 Negative: 0

2266 Absent: 0

2267

2268

2269 Mr. Berman - I believe that is it. We are adjourned.

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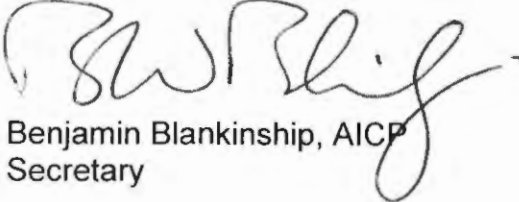
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Dennis Berman
Chairman

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Benjamin Blankinship, AICP
Secretary