

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE GLEN ECHO BUILDING AT**
3 **THE HENRICO COUNTY EASTERN GOVERNMENT CENTER, ON**
4 **THURSDAY, NOVEMBER 20, 2008, AT 9:00 A.M., NOTICE HAVING BEEN**
5 **PUBLISHED IN THE RICHMOND TIMES-DISPATCH OCTOBER 30, 2008 AND**
6 **NOVEMBER 6, 2008.**

7
Members Present: Elizabeth G. Dwyer, Chairman
Helen E. Harris
James W. Nunnally
Robert Witte
R. A. Wright

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

8
9 Ms. Dwyer - Good morning. Welcome to the Henrico County Board
10 of Zoning Appeals meeting. This is November 20, 2008. We'll begin our meeting
11 with the **Pledge of Allegiance to the Flag of Our Country.**

12
13 Mr. Secretary, are there any deferrals or withdrawals on today's agenda?

14
15 Mr. Blankinship - There is one withdrawal, which is A-27-08, Doug and
16 Miriam Tice appeal a decision of the Director of Planning. If anyone is here for
17 that case, sorry to inconvenience you. That case was withdrawn yesterday.

18
19 **(Withdrawn)**

20 **A-027-08 DOUG AND MIRIAM TICE** appeal a decision of the
21 director of planning pursuant to Section 24-116(a) regarding the property at 600
22 Forest Avenue (Parcels 756-737-7986, 7779 and 8569), zoned R-3, One-family
23 Residence District (Tuckahoe).

24
25 Mr. Blankinship - Let me begin by reading the rules for this meeting.
26 Good morning, Madam Chairman, members of the Board, ladies and gentlemen.
27 The rules for this meeting are as follows. Acting as Secretary, I will call each
28 case, and while I'm speaking, the applicant should come down to the podium. We
29 will then ask everyone who intends to speak on that case to stand and be sworn
30 in. The applicant will then have an opportunity to speak, and then anyone else
31 who wishes to speak will be given an opportunity. After everyone has spoken,
32 the applicant, and only the applicant, will be given an opportunity for rebuttal.
33 After everyone has spoken and the Board has asked questions, they will take the
34 matter under advisement, and they will render all of their decisions at the end of

35 the meeting. If you wish to hear their decision on a specific case, you can either
36 stay until the end of the meeting, or you can check the Planning Department
37 website this afternoon, or you can call the Planning Department later this
38 afternoon. This meeting is being recorded, so I will ask everyone who speaks to
39 speak directly into the microphone on the podium, state your name, and please
40 spell your last name so we get it correctly in the record. Finally, there are two
41 binders out in the foyer that contain the staff report for each case, including the
42 conditions that have been recommended by the staff. Particularly if you're the
43 applicant for a use permit case, you need to be familiar with those conditions that
44 have been recommended.

45
46 Ms. Dwyer - Thank you, Mr. Secretary. Would you call the first
47 case?

48
49 **A-026-08 SHERRY MCCARTHY** requests a variance from
50 Section 24-95(b) to build a one-family dwelling at 17 S. Beech Avenue (Highland
51 Springs) (Parcel 821-725-4718 (part)), zoned R-4, One-family Residence District
52 (Varina). The total lot area requirement is not met. The applicant has 5,000
53 square feet total lot area where the Code requires 6,000 square feet total lot
54 area. The applicant requests a variance of 1,000 square feet total lot area.

55
56 Ms. Dwyer - Is there anyone here to speak to this case, either for
57 or against? All right. Those who are here to speak to the case, please raise your
58 hand and be sworn.

59
60 Mr. Blankinship - Will you raise your right hand please? Do you swear
61 the testimony you're about to give is the truth and nothing but the truth so help
62 you God?

63
64 Ms. McCarthy - I do. Hi, I'm Sherry McCarthy. Back in the late
65 thirties, my family bought this plot of land with the land going from Cedar Avenue
66 at 18 S. Cedar, and back to Beech Avenue. The back part of that lot was
67 purchased as an extra building lot. We are currently selling the lot and the house,
68 and would like this variance to be able to sell that back lot as a building lot. There
69 are many more lots in that same block, and over on Cedar, that are the same
70 size as this lot. So, we are asking for this variance to be able to sell this as a
71 building lot.

72
73 Mr. Nunnally - You say you're selling the house and the building lot?

74
75 Ms. McCarthy - Yes.

76
77 Mr. Nunnally - To the same person?

78
79 Ms. McCarthy - No, to different people.

80

81 Mr. Nunnally - You're selling the house to someone, and then you're
82 selling the lot to a builder?

83

84 Ms. McCarthy - Right. We're selling the house, and then the back lot
85 will be sold to a builder to build another home.

86

87 Ms. Dwyer - You could sell all three lots together, and you would
88 not need a variance for any of the lots.

89

90 Ms. McCarthy - We could, yes, but there would be extra income from
91 selling that back lot as a building lot, which we would prefer, of course.

92

93 Ms. Dwyer - Is there anyone else to speak to the case?

94

95 Mr. Seay - Yes, I'd just—

96

97 Ms. Dwyer - Could you state your name, please?

98

99 Mr. Seay - Yes, I'm sorry. My name is Chad Seay. I'm the
100 principal broker of Seay Real Estate, and am representing Ms. McCarthy and her
101 sister, Beverly Lily, in this. It's a situation where it could all be sold as one piece,
102 but as Ms. McCarthy alluded to, her and her family will receive more income
103 when everything is said and done if the two can be sold separately. The lot in
104 back being 50 by 100, again, what she's applying for is that 1,000-foot variance
105 from 6,000 square feet down to the 5,000 that she has. Again, it will allow them
106 to just realize more from the sale of the family property. Also, if you'll look at eight
107 and ten on the screen, they front on Cedar Avenue. In 1995, this Board granted a
108 variance for the same thing. Those are two 50 by 100-foot lots. Right there, eight
109 and ten in 1995. The same sort of variance was applied for, and granted by
110 Henrico County for two to be built in the same sort of situation. There was an old
111 house sitting right there in the middle of those two lots that was torn down and
112 built. Again, all those others. Most of the lots in that block are—Most of the
113 houses are built on 50 by 100-foot lots. I prepared something showing you
114 exactly which ones are all built on 50 by 100-foot lots, if you care to see them,
115 but your screen there shows it rather nicely.

116

117 Mr. Nunnally - There are about eight or nine on that one block, aren't
118 there, on 50-foot lots?

119

120 Mr. Seay - There are one, two, three, four, five, six, seven, eight,
121 nine, ten, eleven, twelve, if you're looking at Beech and Cedar. We did have a
122 surveyor go over there to survey that just to make 100% sure that it was 50 by
123 100. I received copies of that yesterday from Jolliffe and Associates over in the
124 Byrd Center off Laburnum Avenue, indicating that it is.

125

126 Ms. Dwyer - Have you submitted that to—

127
128 Mr. Blankinship - Yes, we need a copy of that. Some of our County
129 records appeared to show the lot smaller. We didn't think it was smaller, but we
130 did ask the applicant to confirm that. Yes, I only need one. Thank you.
131
132 Mr. Seay - At the outset of us helping Ms. McCarthy and her
133 sister, we recognized the same thing, that there was a database here or there
134 that indicated the lot was smaller. To go out there and to look at, it certainly
135 appeared to be 50 by 100, so we did hire the surveyor to confirm that.
136
137 Ms. Dwyer - What type of house will you build?
138
139 Mr. Seay - It's going to be either one of two. It's going to be a 35'
140 to 28' rancher that's very common in Highland Springs—980 square feet. There
141 is also a two-story plan that is built in various places that has a smaller
142 foundation, and ends up being about a 1,200 square foot house, three bedroom,
143 bath and a half.
144
145 Ms. Dwyer - Are there other two-story houses in that
146 neighborhood?
147
148 Mr. Seay - Yea ma'am. Two were just built on North Kalmia that
149 are the two-story plan like this that are quite attractive.
150
151 Mr. Nunnally - Are there two-story houses in that block?
152
153 Mr. Seay - I think so, Mr. Nunnally. I think maybe older ones.
154 There are certainly more of the one-level ranchers.
155
156 Ms. Dwyer - Any questions by Board members?
157
158 Mr. Nunnally - How long has your family been living there, Ms.
159 McCarthy?
160
161 Ms. McCarthy - I think since 1939, 1940.
162
163 Mr. Nunnally - Are they going to move, too?
164
165 Ms. McCarthy - My mother's passed away.
166
167 Mr. Nunnally - I'm sorry.
168
169 Ms. McCarthy - My mother was Virginia Arendall.
170
171 Mr. Nunnally - Okay.
172

173 Ms. Harris - The house that's on Lot 19, when was that built? Was
174 it before 1960 when the Code changed?
175
176 Ms. McCarthy - I don't believe so.
177
178 Mr. Blankinship - Which one, ma'am?
179
180 Ms. McCarthy - On Lot 19?
181
182 Ms. Harris - Right.
183
184 Ms. McCarthy - That lot belonged to Ruth and Arthur Wright, and they
185 lived on Lot 21. After Ruth and Arthur passed away, I believe their daughter sold
186 Lot 19, and that house was built there. I really don't think it was before 1960. I
187 think it was long after that.
188
189 Ms. Dwyer - Any more questions?
190
191 Mr. Blankinship - We're showing 1957 as the year that house was built.
192
193 Ms. McCarthy - Oh, on Lot 19?
194
195 Mr. Blankinship - Yes.
196
197 Ms. McCarthy - Oh.
198
199 Mr. Seay - Lot 15 used to belong to your family as well, correct?
200
201 Ms. McCarthy - Yes.
202
203 Mr. Seay - Lot 15 was part of Ms. McCarthy's family, and I guess
204 it was sold at one point to someone else—
205
206 Ms. McCarthy - Yes.
207
208 Mr. Seay - —or her family had.
209
210 Mr. Blankinship - That one we show as being built in 1970.
211
212 Mr. Gidley - [Off mike.] For the record, there's a street address
213 shown on the map, not the lot number.
214
215 Mr. Blankinship - No, I'm going by the lot numbers. Are you talking
216 about the addresses or the lot numbers?
217
218 Ms. McCarthy - Lot numbers.

219
220 Mr. Blankinship - Yes, I'm going by the lot numbers, not the addresses.
221 Lot #19 is addressed 13.
222
223 Mr. Seay - Oh, okay.
224
225 Mr. Blankinship - Lot #15 is addressed 9. I'm not sure which.
226
227 Mr. Seay - Is that the address you have on the screen?
228
229 Mr. Blankinship - The addresses are on the screen.
230
231 Ms. McCarthy - The two lots that are directly behind 18, which are
232 shown as 15 and then the one that's highlighted. The lot that's highlighted is the
233 one that we'd like to sell outright as a building lot. Lot 15, that house was built
234 there you said in 1970?
235
236 Mr. Blankinship - Now again, you're saying Lot 15, but you mean the
237 address.
238
239 Ms. McCarthy - The address 15.
240
241 Mr. Blankinship - Okay, yes. That was built in 1963.
242
243 Ms. McCarthy - Okay. The one that's at 19 Beech was built in—
244
245 Mr. Blankinship - 1998.
246
247 Ms. McCarthy - Yes, that's what I thought.
248
249 Mr. Blankinship - According to our records.
250
251 Ms. McCarthy - Okay.
252
253 Mr. Blankinship - I'm sorry for the confusion there.
254
255 Ms. McCarthy - That's all right.
256
257 Mr. Blankinship - The lot numbers and the addresses are close enough
258 that it's hard to tell them apart.
259
260 Ms. McCarthy - I am frequently confused.
261
262 Mr. Blankinship - Board members, let me just point out that 16 S.
263 Cedar—Paul, if you want to indicated that, just to the right of the existing house—

264 we have a variance application for next month on that one, exactly the same
265 situation—a 50' by 100' lot.

266

267 Ms. Dwyer - I have a question for staff about the condition on the
268 Sweet Gum tree along the northern property line. I understand that we want to
269 preserve that during construction, but the way the condition reads it appears that
270 there's a requirement that the tree be preserved in perpetuity. I think it should
271 probably just require preservation during construction, and then allow the
272 homeowner to treat the tree as they deem best.

273

274 Mr. Blankinship - Yes, I think that was the intent.

275

276 Ms. Dwyer - Right. I would just recommend if the Board decides to
277 approve this case that we amend it to say the tree shall be retained during
278 construction. I have no love for Sweet Gums; I should stress that.

279

280 Ms. Harris - I was just thinking the same thing.

281

282 Ms. Dwyer - I'm sure it's a beautiful tree, but. All right. Any more
283 questions by Board members? That concludes the case. Thank you.

284

285 Ms. McCarthy - Thank you.

286

287 Mr. Seay - Thank you.

288

289 **DECISION**

290

291 Ms. Dwyer - Do I have a motion on the case?

292

293 Mr. Nunnally - I move we approve it.

294

295 Mr. Wright - Second.

296

297 Mr. Nunnally - The reason I move we approve it is because I don't
298 think it would be detrimental to the neighborhood because we have about nine or
299 ten houses right there in that same location. That's my reason.

300

301 Ms. Dwyer - Motion by Mr. Nunnally, seconded by Mr. Wright. Any
302 discussion?

303

304 Ms. Harris - Yes. I think we said we were going to add to the
305 condition about those trees being retained during construction.

306

307 Mr. Blankinship - Yes.

308

309 Ms. Harris - We said we were going to modify that.

310
311 Ms. Dwyer - That would be condition—which number was that?
312 Was that the third one?

313
314 Ms. Harris - I think it was the last one. After the word, “retain.”

315
316 Ms. Dwyer - It’s Condition 3, during construction. Any other
317 discussion? All in favor say aye. All opposed say no. The ayes have it; the
318 motion passes.

319
320 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
321 Mr. Wright, the Board **approved** application **A-026-08, Sherry McCarthy’s**
322 request for a variance from Section 24-95(b) to build a one-family dwelling at 17
323 S. Beech Avenue (Highland Springs) (Parcel 821-725-4718 (part)), zoned R-4,
324 One-family Residence District (Varina). The Board approved the variance
325 subject to the following conditions:

326
327 1. This variance applies only to the minimum lot area requirement for one
328 dwelling only. All other applicable regulations of the County Code shall remain in
329 force.

330
331 2. Only the improvements shown on the plot plan and building design filed with
332 the application may be constructed pursuant to this approval. Any additional
333 improvements shall comply with the applicable regulations of the County Code.
334 Any substantial changes or additions to the design or location of the
335 improvements may require a new variance.

336
337 3. [AMENDED] The large, single trunk sweet gum tree along the northern
338 property line shall be retained during construction unless the Director of Planning
339 determines that it must be removed for safety reasons. This shall include
340 protection of as much as the root system as possible by installation of tree
341 protection fencing during site work.

342
343
344 Affirmative: Harris, Nunnally, Witte, Wright 4
345 Negative: Dwyer 1
346 Absent: 0

347
348
349 **UP-025-08 SANDSTON MOOSE LODGE** requests a temporary
350 conditional use permit pursuant to Section 24-116(c)(1) to conduct a turkey shoot
351 at 4505 Oakleys Lane (Parcel 818-719-0377), zoned A-1, Agricultural District and
352 M-1, Light Industrial District (Varina).

353
354 Ms. Dwyer - Is there anyone here to speak to this case?

355

356 Mr. Bordonie - Right here.
357
358 Ms. Dwyer - Please raise your right hand to be sworn.
359
360 Mr. Blankinship - Do you swear the testimony you're about to give is the
361 truth and nothing but the truth so help you God?
362
363 Mr. Bordonie - I do.
364
365 Ms. Dwyer - Please state your name and your case.
366
367 Mr. Bordonie - My name is Charles Michael Bordonie, and I'm the
368 Legion chairman at Sandston Moose Lodge.
369
370 Ms. Dwyer - Could you spell your last name?
371
372 Mr. Bordonie - B-o-r-d-o-n-i-e.
373
374 Ms. Dwyer - Thank you.
375
376 Mr. Bordonie - Yes. What we want is what we have been doing for
377 the last 20-some years, is to have the turkey shoot license renewed again.
378
379 Mr. Nunnally - Is this the same operation that you've had all these
380 years?
381
382 Mr. Bordonie - Yes sir, the same.
383
384 Mr. Nunnally - No changes whatsoever?
385
386 Mr. Bordonie - No changes whatsoever.
387
388 Mr. Wright - Have there been any complaints, Mr. Blankinship?
389
390 Mr. Blankinship - No sir.
391
392 Mr. Wright - Have you looked at the conditions that we propose for
393 this case?
394
395 Mr. Bordonie - No sir.
396
397 Mr. Wright - You should look at them to ensure if we approve it,
398 that you can comply with the conditions. Should we give him a copy?
399
400 Mr. Blankinship - He was mailed a copy.
401

402 Mr. Bordonie - I think basically it's just noise levels and stuff like that.
403 We had no complaints about noise levels.
404
405 Mr. Blankinship - You're only allowed to use low-power shells.
406
407 Mr. Bordonie - Low-power shells. Nothing—
408
409 Mr. Blankinship - No alcohol use. You have the property posted
410 already.
411
412 Mr. Bordonie - No alcohol. We have the signs posted up. We have all
413 that.
414
415 Ms. Dwyer - You do need to agree to the conditions, so.
416
417 Mr. Bordonie - We agree to them.
418
419 Ms. Dwyer - Okay.
420
421 Ms. Harris - Is there any hunting in the area? I notice that you
422 have a large wooded area behind the turkey shoot.
423
424 Mr. Bordonie - Yes ma'am.
425
426 Ms. Harris - Do they ever have any hunting going on there?
427
428 Mr. Bordonie - No ma'am. We have no hunting around there. Our
429 property is just what you see up on the graph right there. That's as far as it goes.
430 Oakleys Lane is a slightly wooded area all the way around the area where the
431 little turkey shoot building is. All that's wooded to the right. On Old Oakleys Lane
432 and where "A-1" is, that's all wooded back up in there, and on the left on Oakleys
433 Lane, that's all wooded. There's also an embankment from the road right there.
434 It's mostly wooded all the way around. You can see the little building barely right
435 there, and it's all wooded around it. The shells we use are #8, and no high-
436 powered rifles or anything like that. That's never been used. Number eights.
437 They barely sometimes make a dent in the cards. That's basically all we use.
438
439 Ms. Harris - Is the turkey shoot going on now?
440
441 Mr. Bordonie - No ma'am. We didn't have one this year because we
442 didn't have enough people to operate it, but we like to keep renewing it because
443 we never know what the new Board of Officers will want to do. We change
444 officers every year, so somebody might want to pick it up, and we'd like to keep it
445 going in case something like that happens.
446
447 Ms. Harris - It will commence on what date?

448
449 Mr. Bordonie - I think it's September through December.
450
451 Ms. Dwyer - It says November 21, 2008 to December 31, 2008,
452 and September 1, 2009 to December 31, 2009.
453
454 Mr. Bordonie - Yes ma'am.
455
456 Mr. Blankinship - We changed that effective date to today. Before it
457 ever reached us, their application was misplaced. They had filled it out in
458 September, but didn't submit until November.
459
460 Ms. Dwyer - Okay. Any more questions by Board members?
461 Anything else you'd like to say?
462
463 Mr. Bordonie - No ma'am.
464
465 Ms. Dwyer - That concludes the case. Thank you.
466
467 Mr. Bordonie - Thank you.
468
469 **DECISION**
470
471 Mr. Nunnally - I move we approve it.
472
473 Ms. Dwyer - Motion for approval. Do I have a second?
474
475 Mr. Wright - Second.
476
477 Ms. Dwyer - Motion by Mr. Nunnally, seconded by Mr. Wright. Any
478 discussion? Could we support the motion for approval, please.
479
480 Mr. Nunnally - I move we approve it because it's not going to be
481 detrimental to any property around there, and they've had this going on for about
482 30 years now, I think, and they haven't had any complaints. So, that's my
483 reason.
484
485 Ms. Dwyer - Okay. All in favor say aye. All opposed say no. The
486 ayes have it; the motion passes.
487
488 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
489 Mr. Wright, the Board **approved** application **UP-025-08, Sandston Moose**
490 **Lodge's** request for a temporary conditional use permit pursuant to Section 24-
491 116(c)(1) to conduct a turkey shoot at 4505 Oakleys Lane (Parcel 818-719-
492 0377), zoned A-1, Agricultural District and M-1, Light Industrial District (Varina).

493 The Board approved the temporary conditional use permit subject to the following
494 conditions:

495
496 1. Hours of firing shall be from 7:00 p.m. to 11:00 p.m. on Friday and Saturday
497 nights.

498
499 2. The property shall be clearly posted to show the area in which shooting
500 occurs.

501
502 3. No alcoholic beverages may be consumed on the premises during the turkey
503 shoot. A sign to this effect must be conspicuously posted in the immediate
504 vicinity of the shooting area. No person under the influence of alcohol, as defined
505 in Section 18.2-266 of the Code of Virginia, may be permitted in the shooting
506 area.

507
508 4. Restrooms shall be provided.

509
510 5. The turkey shoot shall only involve the use of shotguns no larger than 12
511 gauge and low powered (2-3/4") shells containing No. 8 shot.

512
513 6. This permit shall be valid from November 21, 2008 to December 31, 2008 and
514 September 1, 2009 to December 31, 2009.

515
516
517 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5
518 Negative: 0
519 Absent: 0

520
521
522 **UP-026-08** **MARTHA R. BANKS** requests a conditional use
523 permit pursuant to Section 24-12(g) to operate a 24-hour family day home with
524 employees at 3216 Arthurwood Place (Huntwood) (Parcel 806-727-5394), zoned
525 R-3, One-family Residence District (Varina).

526
527 Ms. Dwyer - Anyone here to speak to this case, please stand and
528 raise your right hand to be sworn.

529
530 Mr. Blankinship - Anyone who intends to speak.

531
532 Ms. Dwyer - If you think you even might want to speak, please
533 raise your hand.

534
535 Mr. Blankinship - It'll save us a minute later. Do you swear the
536 testimony you're about to give is the truth and nothing but the truth so help you
537 God?
538

539 Ms. Banks - I do.
540
541 Ms. Dwyer - Please state your name and your case.
542
543 Ms. Banks - I'm Martha R. Banks. I applied for a conditional use
544 permit because of a complaint filed against my daycare. First of all, I'd like to
545 just state—
546
547 Mr. Blankinship - Just a moment. For some reason I can't hear. The
548 last two applicants were coming through loud and clear.
549
550 Ms. Banks - Testing, testing.
551
552 Ms. Dwyer - That's better.
553
554 Mr. Blankinship - Thank you.
555
556 Ms. Banks - I filed for this conditional use permit only because
557 someone had complained against the operation of my daycare. Just to state
558 some facts about my daycare, and to give you proof of when I started to operate,
559 I have operated my daycare since February 25, 2003, licensed first as a
560 volunteer register, licensed by Memorial Child Guidance Service. The next year, I
561 was licensed by the State of Virginia. I am in compliance with the State of
562 Virginia, the State Police Department, Memorial Child Guidance, and every
563 agency that needs me to comply with operating a daycare.
564
565 As far as my daycare running 24 hours a day, I have only operated maybe a few
566 times overnight when a parent had to work a third shift, and that was some years
567 ago. At the present time, I only operate from 7:10 a.m. to approximately 5:35
568 p.m. This past summer, I kept one little child from 4:00 p.m. to 9:30 p.m.
569 because the mother's babysitter was on vacation. I do not care to keep kids all
570 of those times, but if a parent needs help, the state needs to know that there is a
571 child in my home that's not mine. The only other children that are in my home are
572 my grandchildren. Every summer, I bring two grandchildren from Georgia to keep
573 them while their parents work and cannot afford daycare.
574
575 All of my children that are in my home are trained, they're obedient. I had not
576 heard any complaint from anyone until the person—I forget her name—came out
577 to say that she had a complaint, and that I was not in compliance. I have always
578 been in compliance. I'm still in compliance. A couple weeks from now, I will be
579 taking a national exam to allow me to be certified over the whole country, a
580 national exam, CDA credentials that I will acquire.
581
582 I have proof of every accusation that has been brought up against me. When I
583 purchased my home in 1999, we had no association. I lived in Huntwood One
584 from 1996, and I still own that property. I moved to Arthurwood Place in May of

585 1999. The association was formed probably around 2005. I received nothing that
586 says that you could not have a business in your home. When they formed the
587 association in approximately 2005, there was something then that said you
588 couldn't operate a business in your home. But the president of our committee—
589 And I used to go to the same beautician who operated out of his home before
590 1999 when I lived on Hunter Run Drive.

591

592 Just some special points of interest. I'm an ordained pastor. I'm working as an
593 elder in my church, dean of a Bible college. I'm a retired computer programmer
594 analyst who serves her community. Everyone that has supported me, I have
595 letters. I have pictures of my property. From my understanding, my neighbors
596 have all been—the ones who signed the petition against me, my understanding is
597 that a Mister—I'm not even going to call his name. But someone used scare
598 tactics to tell my neighbors that if I am granted a conditional use permit, that all of
599 their properties will be rezoned as a business district, which is not true. I only
600 need a conditional use permit because the County says I need one for outside
601 employees if someone works in my home. I do need, though, the conditional use
602 permit for times like this, or when I have to take my mother, who is disabled, to
603 the doctor. There are times when I have to be away from home. I always have to
604 have two people on staff because of the number of children I have been granted
605 to take care of. That's why I'm asking you all to grant the conditional use permit. I
606 understand the recommendations by the County. I don't wish to work on
607 Sundays, so that's not a problem. I don't wish to really work all night, because I
608 don't. If a child was in my home at 12:00 at night, they were asleep, just like I
609 was. I just provided supervision for a working parent's child.

610

611 When the cars come to my home, they don't speed down the street, as has been
612 alleged. When the cars come to my home, the parents start coming at 7:10 a.m.
613 They come from 7:10 a.m. in stagnated times. Occasionally, two cars might
614 come one behind another. I have pictures that show where they have been
615 parking. I have pictures to show you my property. I have pictures to show you
616 that my property is well maintained. My property will not depreciate the value of
617 anyone's property. I love my property, I love my home, and I take good care of
618 my home. I'm a law-abiding citizen.

619

620 I want to present you with this package.

621

622 Mr. Nunnally - How many children do you have in there now?

623

624 Ms. Banks - Excuse me?

625

626 Mr. Nunnally - How many children do you have?

627

628 Ms. Banks - Right now, I have ten kids that I provide services for. I
629 am licensed to take care of twelve children.

630

631 Mr. Witte - What ages are they?
632
633 Ms. Banks - From infancy to age twelve, but I only am keeping
634 kids from—let me see I think it's ten months to age four now, because the other
635 kids are in school. We have one little girl that comes in on the school bus, a
636 special needs child. She comes in approximately 2:30 in the afternoon. On
637 Mondays, she comes in at 11:30 a.m. We are sitting on the steps in the house
638 waiting for her bus to come down the street. I used to take care of a little girl who
639 had something called Rett Syndrome, who could not even speak. We used to go
640 out, get her off of her little bus. First, we encouraged her mother to put her in
641 school, in public school. We pureed her food, spoon-fed her, picked her up and
642 changed her pampers. So, we provide excellent service. I even have letters from
643 parents who are not here, as well as a letter from the Licensing Department of
644 Social Services, where they have never had a complaint against us, against any
645 child, or they've never even had a complaint against us that was valid before.
646
647 Mr. Nunnally - The permit they're operating under now, how many
648 children can they have?
649
650 Mr. Blankinship - Up to twelve.
651
652 Mr. Nunnally - Up to twelve?
653
654 Ms. Dwyer - Is that State law or County?
655
656 Mr. Blankinship - It's both. The County ordinance divides family day
657 homes into two categories. Small is up to five, large is six to twelve. You can
658 have a large by right, a large family day home by right as long as you don't have
659 employees from outside the home, and you don't operate outside the hours of 6
660 a.m. to 6 p.m. So, she's here not because of the number of kids, but because of
661 the extended hours, and because she has employees in her home.
662
663 Ms. Harris - You have two employees, right?
664
665 Ms. Banks - Yes ma'am. One comes in at 8 a.m. The State also
666 said based on the number of kids—They assign a point system to kids. One
667 employee and I have 16 points, that's like eight children that are two points, or
668 either if I have four infants, I have to have that second person to come on staff.
669 Any time I get 16 points, a second person has to be there to help me. I have one
670 employee who's a retired young lady from Phillip Morris. She comes in at 8 a.m.
671 The third employee—second person comes in at 10 a.m. and she stays until
672 approximately 4:30 p.m., 5 p.m., until I'm at 16 points or less. She's hired to stay
673 until 5:30 or 5:35, but if she doesn't need to be there, I release her to go. Like I
674 said, there always should be two people on duty, and I am only required to have
675 one other person to help me. But at the times that I need to leave and be away,
676 just like this morning, those two people are there. That's the reason I have two

677 people. I take the cut because there are occasionally times when I have to go
678 out and do things for my mother, or I have to run to the store. So, I don't violate
679 any laws.

680
681 Ms. Harris - In relationship to the association, you said the rules
682 changed in 2005.

683
684 Ms. Banks - No, I said that's when I first received documentation
685 that they were setting up an association.

686
687 Ms. Harris - Okay. Did you meet with them? You had the
688 business then, right?

689
690 Ms. Banks - I've had the business since 2003.

691
692 Ms. Harris - Did you meet with the association to let them know?

693
694 Ms. Banks - No ma'am. I didn't feel I had any reason to meet with
695 them, and neither have they contacted me, or called me to complain at all. This is
696 my first time here, and anything about them being against my daycare was this
697 petition.

698
699 Mr. Witte - Do you know if any of your neighbors were aware that
700 you were operating a daycare?

701
702 Ms. Banks - Yes. I'm positive that all of them knew.

703
704 Mr. Witte - Okay.

705
706 Ms. Banks - I think the big issue is that they have been scared, or
707 they have been misled to believe that their property values were going to change
708 to business property because of my daycare, and because the statement was
709 made that I want to run a 24-hour daycare. They were misled to say that there's
710 always activity at my home, which is not true.

711
712 Ms. Dwyer - I would like to clarify that point, since you've raised it.
713 This is not a rezoning. There would be no rezoning of the property at all as a
714 result of anything we do here today. That's not—

715
716 Ms. Banks - I understand, but my neighbors need to know that.

717
718 Ms. Dwyer - Right, and that's why I'm saying it.

719
720 Ms. Banks - Yes.

721

722 Ms. Dwyer - There is no rezoning. That would have to come to the
723 Planning Commission, and to the Board of Supervisors. Beyond that, there is no
724 rezoning required to operate a business in your home. That's already permitted
725 without limits by the County ordinance.
726
727 Ms. Banks - I understand that. Thank you so much.
728
729 Ms. Dwyer - I would just like to clarify that as an official—
730
731 Ms. Banks - And this going to be a conditional use permit.
732
733 Ms. Dwyer - Right.
734
735 Ms. Banks - Not rezoning my property.
736
737 Ms. Dwyer - Right.
738
739 Ms. Banks - Thank you.
740
741 Ms. Dwyer - Your property is not going to be rezoned; no one's
742 property is going to be rezoned. This would just allow you to operate your
743 business with employees, and beyond 6 p.m.
744
745 Ms. Banks - Yes.
746
747 Ms. Dwyer - That's the only reason. If you didn't do that, you
748 would not even need to come to us at all. You would have the right by law to
749 operate this business out of your home.
750
751 Ms. Banks - I understand. Thank you. Also to make another
752 point known, I don't need employees to work after 6 p.m. After 6 p.m. when I had
753 any kids, it was maybe two or three children in my home, and I could take care of
754 them. So, it's not like I'm trying to become a commercial daycare in my home.
755
756 Mr. Blankinship - Staff has recommended a condition that employees
757 not be there after 6 p.m.
758
759 Ms. Banks - I understand that, too.
760
761 Mr. Blankinship - That would be binding.
762
763 Ms. Banks - I understand.
764
765 Ms. Dwyer - Have you read the conditions?
766
767 Ms. Banks - Yes ma'am.

768
769 Ms. Dwyer - You agree to those.
770
771 Ms. Banks - I agree to those.
772
773 Ms. Dwyer - I have a question. In the staff report, it says that
774 you're licensed to operate from 7 a.m. to 12:30 a.m., and yet you're asking for
775 hours that are essentially 24 hours a day from Monday through Saturday.
776
777 Ms. Banks - Let me just state the reason for that.
778
779 Ms. Dwyer - Okay.
780
781 Ms. Banks - In the past, like I said, when a young lady works at
782 midnight and I had to keep her kids. When I fill out my application, they allow me
783 to put down anything I want to put down.
784
785 Ms. Dwyer - Is this the state or is this the county?
786
787 Ms. Banks - This is for the state.
788
789 Ms. Dwyer - Okay.
790
791 Ms. Banks - So, when I put down the times I wanted to operate, I
792 was the one who changed it from 7 a.m. to 12 a.m. Like I said, that's fine, those
793 hours are fine because I don't really take care of kids anymore, because I don't
794 have any parents that work midnight shift. So, if I had to put on my state
795 application that I want to work from 6 a.m. to 5:59 a.m., they would have allowed
796 it. So, they allow you to fill out the application. My last license, when I filled out
797 my form to send to the State of Virginia, I applied for the times from 7 a.m. to 12
798 a.m. I forgot that when I made my request to you all. I put down 24 hours
799 because just thinking that I used to take care of kids up to 24 hours if I needed to.
800
801 Mr. Blankinship - If this is approved, you could change your state
802 license and not have to go through another public hearing here.
803
804 Ms. Banks - Okay.
805
806 Ms. Dwyer - Any other questions by Board members?
807
808 Mr. Wright - Yes, let me make a point. I noticed from the picture
809 that was on the screen, you have a drive that comes into your house.
810
811 Ms. Banks - Yes, yes sir. I have a circular driveway that can
812 accommodate cars, more cars than one.
813

814 Mr. Wright - When folks come to bring the children, they're not on
815 the street.

816
817 Ms. Banks - That's not true. I have pictures that show you that
818 some people will park next door to my neighbor's house, like at the end of my
819 driveway. I have pictures to show you where each parent has parked. Some park
820 in my driveway, some park right in the front of the house on the street, right there
821 in the front of that little flowerbed. Some park to the left of my property. Like I
822 said, most of the time, it's only one or two cars at the most there at the same
823 time.

824
825 Mr. Wright - In that case, I don't know why they wouldn't drive off
826 the street around your circular drive to drop off the children.

827
828 Ms. Banks - Sometimes my son's car is there, or my daughter-in-
829 law's car might be there. I have a car that is in my driveway with my car. I have
830 one SUV. It's been alleged that I have two SUV's. I have one SUV. My son has
831 one SUV and another car. I have another car that's parked in my garage that
832 you can't see. This blue car that's parked there, that's my son's car. The gray
833 SUV is mine. My daughter-in-law has a white Toyota. I notice that it's been
834 alleged that we have a BMW. We don't own that yet. I think someone's giving
835 us a BMW. We don't own that yet. We have four cars that are normally there.
836 So, sometimes my son leaves a little after 7 a.m., and that's the reason some
837 people just don't pull in the driveway. I have pictures that I'm going to leave you
838 with that show you when the parents come. This car is in my driveway behind
839 my truck. This car is in my driveway in the semi-circle. This car is in my
840 driveway. This car is on the street to the left of my property.

841
842 Ms. Harris - May we see those pictures?

843
844 Ms. Banks - Sure. I have these for you. They're not mine to keep;
845 they're for you to keep.

846
847 Ms. Dwyer - Would you hand them to Mr. Blankinship?

848
849 Ms. Banks - Yes. This car is to the left of my property. This car is
850 in the front of my mailbox.

851
852 Ms. Harris - Would it be a problem, Ms. Banks, to instruct your
853 parents to park either directly in front of your house or in the driveway, and
854 instruct your family to allow them to do that? That would diffuse some of the
855 criticism of your business. Couldn't you at least do that?

856
857 Ms. Banks - Of course I could do that. The other thing is I have
858 always asked my parents when I interview them not to walk on anyone's grass,
859 not to disrespect my neighbors in any way. We have that understanding. So, I

860 will ask those who have been parking at the end of my neighbor's home to the
861 left of me to just pull up in my driveway, because they can.

862
863 Mr. Witte - Are you aware that the suggested conditions include
864 that the employees shall park on site, not on the street?

865
866 Ms. Banks - I understand that. I asked the neighbor where they
867 park. I have a picture that shows—I think I've given that to you. They have been
868 parking across the street, but they have no problem with parking in my driveway.

869
870 Mr. Witte - All right. Are you going to have room for the
871 employees to park on site, and the children to be picked up on site?

872
873 Ms. Banks - Since they come at staggered times, I believe so.
874 Four cars can get in the long side of my driveway behind that gray truck and the
875 blue truck, and we're selling the blue truck. This side here that's open to the
876 street, they can pull in that side and back out. I prefer that they make a circle so
877 that they don't have to back out in the street. They can come in and pull in this
878 area, and still have room.

879
880 Ms. Harris - Do you see the value of maintaining dialogue with the
881 association so as to avoid confrontations or?

882
883 Ms. Banks - I haven't attended an association meeting primarily
884 because I'm taking care of kids, or I'm working in my church. Like tonight, right
885 after taking care of kids, I'm off to church and Bible College, or I'm at Memorial
886 Child Guidance taking classes. So, I haven't really had a great desire to always
887 attend those meetings. But I do see where there's a need to.

888
889 Ms. Dwyer - How many children do you have in the summertime?
890 You have your two grandchildren in addition to the ten that you normally have?

891
892 Ms. Banks - Yes. I'm permitted to have my own children, as well
893 as the ten kids that I'm licensed to keep.

894
895 Ms. Dwyer - So, typically, you have twelve, then, in the summer.

896
897 Ms. Banks - No. I could have twelve children, and I could have
898 four grandchildren, or five of my own children. The law says that I can have my
899 own children, as well as twelve that I'm licensed to keep.

900
901 Ms. Dwyer - Or four grandchildren.

902
903 Ms. Banks - Yes.

904
905 Ms. Dwyer - Is it limited to four?

906
907 Ms. Banks - Yes.
908
909 Ms. Dwyer - Okay. So, you can have 16 children in the summer.
910
911 Ms. Banks - I can, yes.
912
913 Ms. Dwyer - Any other questions by Board members?
914
915 Mr. Wright - Who lives in your house with you?
916
917 Ms. Banks - My son, his wife, and two grand boys. They have
918 been certified by the State Police to be free of no back—I mean, they have
919 background checks where they are—I’m getting lost for words. Anyway, they
920 have not committed any crimes, so they are allowed to be around the children.
921 Even though my daughter-in-law picks up her kids from school and takes them to
922 her church because she runs a daycare at her church. My grand boys don’t
923 come home until after 7 p.m. in the afternoon. They live upstairs. I have a five-
924 bedroom home. They come downstairs. They don’t even eat breakfast in the
925 morning. They come downstairs and walk out the front door going to catch the
926 school bus.
927
928 Mr. Wright - How many square feet are in your house?
929
930 Ms. Banks - It’s over 3,000 square feet. I also have pictures I’ve
931 given you to show the back area of my home where the kids, the little kids—we
932 basically play on the deck, except for the times we go down in the backyard. We
933 pick vegetables out of the garden. I’m a learning environment, not just a
934 babysitter. Children two years old can spell their names. They know all of their
935 alphabet. They’re being taught preschool skills. I have four kids who have left my
936 center; all straight-A students in public school.
937
938 Ms. Dwyer - Any other questions by Board members?
939
940 Ms. Harris - One quick question. Does your association allow you
941 to have fenced-in yard?
942
943 Ms. Banks - I believe it does. Based on documentation I’ve read, I
944 have to get their approval to have a fenced-in yard, and I really don’t care to have
945 a fenced-in yard.
946
947 Ms. Dwyer - All right. Thank you, Ms. Banks. We’re allowing you
948 some time for rebuttal—
949
950 Ms. Banks - Okay.
951

952 Ms. Dwyer - —after we hear from the opposition.
953
954 Ms. Banks - Thank you. I'd like to leave this whole package with
955 you. Everything I've spoken on.
956
957 Ms. Dwyer - You can hand it to Mr. Gidley and we'll make it part of
958 the file.
959
960 Ms. Banks - Okay.
961
962 Ms. Dwyer - Does the opposition have a representative speaker?
963 What we'll ask is that the speakers limit themselves to new material, that way we
964 will not be redundant this morning in the interest of everyone's time.
965
966 Ms. Brailey - Good morning. My name is Janie Brailey—B-r-a-i-l-e-
967 y. I am the president of the association, and I'd like to make some corrections to
968 Ms. Banks' statement. I bought my house in 1997 from Ryan Development.
969 There was a clause in the buying of the home, upon the completion of all 149
970 homes, that we would pay a homeowner's fee. When you buy a home out there,
971 you are a homeowner. The fee is only \$75 a year. Now, everyone got a booklet.
972 It had "Heartwood Association" on it. If Ms. Banks was here in the other area,
973 she should have had one, too. Everyone received one. As a matter of fact, it
974 was deeded 1993, and it's in the Henrico County Courthouse that we do have an
975 association. There was a lapse in it because the person that purchased the
976 house and was the homeowner left. And so there was a lapse in it, so I took it
977 up.
978
979 It says in our laws that this is supposed to be for residential use only. We feel
980 that we're being infringed upon. It's a cul-de-sac in Ms. Bank's area. The traffic
981 is going to be going and coming. It looks like anyone can come in our
982 neighborhood, check it out. I can say I have nothing against her daycare center.
983 We have a problem with the 24-hour thing, because you start it and you can't
984 finish it. Once you get it approved, anyone can come in our neighborhood.
985 People need to sleep. Around the corner, some come in with loud music, and
986 they're just riding all around. That's hard on people who do have to work, and
987 this traffic is coming in and out. I mean, her daycare is fine. And we are allowed
988 to have a fence, but it has to be a certain type of fence. And no, she has not
989 been to the meetings. There are homeowners' meetings. I put the signs up two
990 weeks in advance to let people know that we are having an association meeting.
991 Of 149 people, we only have about 20 come out, and then those are the ones
992 that complain. They complain, they don't come out, but they don't try to help to
993 better the community.
994
995 Her place is very neat; I have nothing against that. I live on the long street. Some
996 other neighbors out here live on the same street she lives on. Some people
997 need a little bit more privacy without people riding around.

998
999 So, we do have an association, if you need to see the book. But I thought we
1000 already turned in one to the County, but if you do need to see it, you can see it.
1001
1002 Mr. Blankinship - There's a copy in the file.
1003
1004 Ms. Dwyer - Another point of information is that our job is not to
1005 enforce that association agreement; that is up to the association. We are here to
1006 enforce the County law—
1007
1008 Ms. Brailey - Yes.
1009
1010 Ms. Dwyer - —not the association's rules.
1011
1012 Ms. Brailey - Well, our thing is that we don't care for having a 24-
1013 hour thing like that. We don't mind the daycare, certain hours, as long as the
1014 people park on their side, as long you don't have a whole lot of people coming
1015 and going. That's a residential area, and I don't think you need three or four
1016 people to help run the daycare. Most daycares I know, you might have two, and
1017 you park in your yard.
1018
1019 Mr. Blankinship - You're not opposed to the two employees? You
1020 wouldn't want any more?
1021
1022 Ms. Brailey - I wouldn't want any more than two, and I wouldn't
1023 want to see a 24-hour thing.
1024
1025 Mr. Blankinship - Okay.
1026
1027 Ms. Dwyer - Any questions for Ms. Brailey by Board members?
1028 Thank you, Ms. Brailey.
1029
1030 Ms. Brailey - You're welcome.
1031
1032 Ms. Dwyer - Would anyone else like to speak to the case?
1033
1034 Ms. Cameron - Good morning.
1035
1036 Ms. Dwyer - Good morning.
1037
1038 Ms. Cameron - My name is Colleen Cameron. I just have some
1039 concerns—
1040
1041 Mr. Wright - I didn't catch your name.
1042
1043 Ms. Cameron - Colleen Cameron—C-a-m-e-r-o-n.

1044
1045 Mr. Wright - Thank you.
1046
1047 Ms. Cameron - I don't have a problem with Mrs. Banks having the
1048 daycare. I am concerned about the 24-hour issue, as previously stated. My other
1049 main concern is will she be living in the home. Will she be living in the home, or
1050 will this become a business where she then has her workers there, and then
1051 resides someplace else.
1052
1053 Mr. Blankinship - She would be required to live there.
1054
1055 Mr. Wright - She's required to live there.
1056
1057 Ms. Cameron - No signs posted, things like that. And just make sure
1058 the house is maintained. If I decide to sell my home—I've only been in it three
1059 years—I don't want a prospective buyer to say, "Oh, that's a daycare." I've been
1060 to other subdivisions, and it looks atrocious. Mrs. Banks' house is the exception.
1061 It is pristine, and I just want to make sure that it remains that way. I don't want
1062 anyone to notice that there's a daycare. The other issue is that we have several
1063 daycares already in that subdivision—unbeknownst to you all—that are 24 hours.
1064 There's one right down the road on Stone Throw. There's Malachi's Childcare.
1065 They are a 24-hour daycare. This is a small subdivision, and I understand the
1066 need for entrepreneurship and business, but enough is enough.
1067
1068 Mr. Blankinship - I believe we mentioned in the staff report that the
1069 Community Revitalization Department received a list of complaints, and Ms.
1070 Banks is one of those who did come forward to resolve her issues by getting the
1071 permit. The others are being handled by Community Revitalization on a case-by-
1072 case basis.
1073
1074 Ms. Harris - Ms. Cameron, are those daycare businesses in the
1075 homes?
1076
1077 Ms. Cameron - Yes, they are.
1078
1079 Mr. Witte - Do you know if they're licensed?
1080
1081 Ms. Cameron - I do not know that. I know that there are four. There
1082 are probably more, to be quite honest with you. I just know because I have a
1083 small child myself, and I'll get the flier occasionally. I'm not interested in having
1084 somebody care for my child in their home. My child is school age now. How
1085 many 24-hour daycares? I mean, Arthurwood Place. Stone Throw Court is the
1086 next street down. There are several within the subdivision. How many do we
1087 need? Thank you.
1088

1089 Mr. Wright - Let me ask a question. I notice from these
1090 photographs that we have, this property seems to be well maintained.
1091
1092 Ms. Cameron - Yes, it is.
1093
1094 Mr. Wright - I don't see that there's any problem with that, from
1095 what I see. This lady's been there since, what, 1998 or 99?
1096
1097 Ms. Cameron - Yes.
1098
1099 Mr. Wright - She evidently has maintained her property very
1100 nicely. These photos show the flowers and things around it.
1101
1102 Ms. Cameron - I hope it remains that way. My question is what type
1103 of clientele? When you extend those hours, or have that, what type of clientele
1104 will you be attracting that comes to the subdivision? Not everybody is very
1105 mindful of other residents. We are homeowners. We don't rent, we own.
1106
1107 Mr. Wright - I understand.
1108
1109 Ms. Cameron - I want that mentality maintained. She may respect
1110 that, but other people who come in, that's my concern. What is the clientele?
1111 What is their mentality? They might not respect the fact that I live at the
1112 beginning of the subdivision. They might not care that I'm a homeowner. Again, I
1113 just think it's attracting a whole different clientele, and I hope that it doesn't. That
1114 does leave that open to that.
1115
1116 Ms. Dwyer - Mr. Blankinship, what is the County rule about having
1117 signs in the yard if you have a home business?
1118
1119 Mr. Blankinship - They would be allowed no more than one sign. It
1120 could not be lighted, and it would be allowed no larger than one square foot of
1121 sign area. I don't believe she has a sign at all.
1122
1123 Mr. Nunnally - I drove by there about three times to look at that
1124 house, and I never saw a child. None running around on the street or in the yard.
1125 She has a beautiful home, and so do all the rest of you over on that street. That's
1126 a beautiful section in there.
1127
1128 Ms. Cameron - Thank you.
1129
1130 Mr. Nunnally - I think she'll try to keep it that way.
1131
1132 Ms. Cameron - That's the plan.
1133

1134 Ms. Harris - Ms. Cameron, what would you consider acceptable
1135 hours for a daycare business such as this one?

1136
1137 Ms. Cameron - Being that I have child that goes to before and after
1138 care, just for the first time this year, I would take my daughter when she wasn't in
1139 school 6:30 a.m. to 6:30 p.m., or 6:30 a.m. to 6 p.m. I don't have a problem with
1140 the house. Again, you know, let's say Mrs. Banks does keep a child after
1141 midnight or what have you, I hope parents aren't thinking they're going to come
1142 in all hours of the night picking up children. That's not going to work. If you can't
1143 pick up your child by a certain time, the child needs to stay where they are until
1144 such an appropriate time that you can pick them up that morning.

1145
1146 Ms. Dwyer - All right. Any more questions for Ms. Cameron?
1147 Thank you.

1148
1149 Ms. Cameron - Thank you.

1150
1151 Ms. Dwyer - Is there anyone else who wants to speak to this case?
1152 Anyone who has anything to add that hasn't been said already?

1153
1154 Mr. Adkins - Good morning, Mr. Nunnally and the rest of the
1155 Commission.

1156
1157 Ms. Dwyer - Could you state your name, please?

1158
1159 Mr. Adkins - My name is Richard Adkins—A-d-k-i-n-s. I don't want
1160 sound like an echo that I don't have a problem with Mrs. Banks' daycare. Really,
1161 I don't, if Mrs. Banks would go by the rules that Henrico stated, that you cannot
1162 have outside workers. I have seen an ambulance come in there. You know
1163 yourself when you're in a subdivision, the streets are not as wide as your regular
1164 streets. So, if you park a car on both sides of that street, only one car can get
1165 down there. I have seen an ambulance down in the cul-de-sac, and the school
1166 bus shows up to drop off somebody, and the school bus can't get back out until
1167 the ambulance leaves. We have to get out and try to guide her back. I saw it last
1168 week when one of her workers pulled out from behind a Coca-Cola truck that sits
1169 there all day long—and it's in a curve—and almost ran into another car that was
1170 coming down this way. I would be the first person to agree to Mrs. Banks keeping
1171 kids herself, six kids. I don't have a problem with that. My problem is that Henrico
1172 law states that you cannot have outside employees.

1173
1174 Mr. Wright - Except when you get a use permit, and that's why
1175 she's here.

1176
1177 Mr. Adkins - Right.

1178
1179 Mr. Wright - That's why she's here.

1180
1181 Mr. Adkins - Why would you break the law for four years?
1182
1183 Mr. Wright - I don't know, you can ask her that.
1184
1185 Mr. Adkins - Knowing that you were doing wrong until the County
1186 finds you doing wrong, and then you still don't stop doing wrong.
1187
1188 Mr. Wright - How do you know she knew she was doing wrong?
1189
1190 Mr. Adkins - When you—
1191
1192 Mr. Wright - She has the state permits, and all the other permits
1193 she needs, and she probably didn't realize—
1194
1195 Mr. Adkins - Mr. Wright, you asked me a question.
1196
1197 Mr. Wright - Yes, ask her that.
1198
1199 Mr. Adkins - How did she know she was doing wrong? If she didn't
1200 know she was doing wrong, she must not have read what she received when she
1201 applied for her license. You get a package, and that package stated, "Most
1202 Frequent Asked Questions," that is in the packet that you get when you file for
1203 your license. The last question is that you should ask yourself do I need other
1204 types of licenses or permits. That's the last question. And what the State of
1205 Virginia tells you? Zoning approval is required. Ask your local County, do you
1206 need a special permit? This comes with your package that you get.
1207
1208 Mr. Wright - Does it specifically say that if she has outside
1209 employees she has to get a use permit? Does that say that?
1210
1211 Mr. Adkins - Can I bring it to you?
1212
1213 Mr. Wright - Sure.
1214
1215 Mr. Adkins - [Off mike.] I don't have a problem with her keeping
1216 kids, but I don't want my [inaudible] that she's going to do the same thing. My
1217 problem is [back at mike] I had two brothers die from overdoses. I have one
1218 sister that's paralyzed right now from overdosing. My mission is to stop addiction,
1219 and that's what I do now since I retired. I talk to people about addiction. Nobody
1220 will love them no more than I do right now. I have three bedrooms that nobody
1221 sleeps in, but I know that it would be wrong for me to open my house up to a
1222 halfway house for people that are addicted. I wouldn't do my neighbor like that.
1223 When I moved there and had my house built in 1995, I received that association
1224 book, and I read it, and I signed it. This is what I agree to if I live there. Mrs.

1225 Banks was there before I was there. She had her house built before I had mine.
1226 She received one, too. She can't tell me she didn't get—

1227
1228 Mr. Wright - I do want to point out another thing. Arthurwood
1229 Place, that street is 44 feet wide. That's a pretty wide street compared to a lot of
1230 other streets.

1231
1232 Mr. Adkins - That's all I have, unless you have something you'd
1233 like to ask me.

1234
1235 Ms. Harris - Mr. Adkins, you live at 3221 across the street, right?

1236
1237 Mr. Adkins - Yes ma'am.

1238
1239 Ms. Harris - Okay. Do parents or employees of this business park
1240 in front of your door?

1241
1242 Mr. Adkins - No ma'am.

1243
1244 Ms. Harris - They don't. Okay. I was just wondering if that was
1245 one of your concerns.

1246
1247 Mr. Adkins - No ma'am.

1248
1249 Ms. Harris - As far as the ambulance is concerned, that could
1250 happen to anyone. We have to make adjustments in any community. We're
1251 never promised health. You might have an ambulance pull up in anybody's
1252 community, and we just have to adjust the traffic accordingly. Do you not agree?

1253
1254 Mr. Adkins - Yes.

1255
1256 Ms. Harris - Okay.

1257
1258 Ms. Dwyer - Any more questions by Board members? Thank you,
1259 Mr. Adkins. Anyone else here to speak?

1260
1261 Mr. Ponton - Good morning, Board. My name Allee Ponton. That's
1262 Po-n-t-o-n. I am one of the parents that uses the daycare Ms. Banks services.
1263 I'm here to speak on my family's behalf. She has kept both of our daughters,
1264 Alea and Amia. Currently, Amia is still there with her; Alea has moved on to a
1265 pre-K program, and is doing quite well thanks in part to the learning that she's
1266 received from Ms. Banks' daycare.

1267
1268 I'd like to speak on a few points that I've heard. One, I can confirm that anytime
1269 I've dropped off my daughter or daughters, or picking them up, there is normally
1270 no more than maybe one other parent at a time. There is, at times, a need to

1271 park right in front of her residence if that other parent is already in the driveway.
1272 I'm cordial to any neighbors that I may see coming in and out of their homes if I'm
1273 picking up my daughters or dropping them off.

1274
1275 I know one of the things that was mentioned, which is important to me being a
1276 parent and needing daycare. No one likes to drop off their children anywhere, if
1277 they can avoid it, but unfortunately in this day and age, it's a necessarily evil.
1278 Ms. Banks met the high requirements that my wife and I were looking for in
1279 regards to her Christian values and beliefs that lined up with my wife and my
1280 own. Fortunately, for a few a years, my mother was able to watch my children.
1281 But when that came to an end, we were happy to find a similar grandma type
1282 environment that we could put our children in.

1283
1284 To speak to one of the neighbor's concerns, they may not know since they didn't
1285 use Ms. Banks' services, but there is a review/interview process that you go
1286 through before you go into the daycare. I think that's to make sure that one, as a
1287 parent, you line up with Ms. Banks' values, as well as hers lining up with yours. I
1288 can't speak definitely, but I find it hard to believe that she's going to allow an
1289 individual into that home that wouldn't align with the values that she currently
1290 believes. If they are living those values, there shouldn't be any noise or rirffraff in
1291 that particular area.

1292
1293 The big issue about this permit is those two employees. The two employees
1294 make all the difference in some parents having to find daycare at a different
1295 location. Obviously, Ms. Banks does not want to be placed in that position to
1296 decide who gets to stay, and who gets to go, nor do any of the parents want to
1297 be one of the parents who perhaps has to find another location in short notice—
1298 but not so much the notice, just where do you feel comfortable with your children
1299 being? That's the biggest issue for us. We have them there. They are well kept.
1300 We do have piece of mind, as best that you can, not being in their presence.

1301
1302 I'm here in support, and hope that the Board will allowed the permit so that she
1303 can maintain the employees to do things that she needs to do, but most
1304 importantly so my children can continue to receive quality daycare. I'd just like to
1305 add I am a Henrico County resident. No, I do not live in that subdivision. I reside
1306 on Verna Drive in the northwest part of Henrico. In being a homeowner, I do
1307 understand the importance of keeping up the value. I live in cul-de-sac, so I
1308 understand the traffic, and that's actually a good thing about a cul-de-sac in that
1309 it actually minimizes the traffic that you receive, because you can't cut through.
1310 Normally, the only people who are coming through there have business to do
1311 there. At the times I normally come, there are children coming home from school.
1312 It's not a whole lot of activity, but you have the children who reside in that area
1313 who are walking home. It's not a whole bunch of noise, and I don't believe that
1314 we add to that. I do respect the homeowners and their concerns. Again, I
1315 believe this issue is just so she can keep the number of kids that we have.

1316

1317 Ms. Dwyer - Thank you. Any questions by Board members?
1318
1319 Mr. Blankinship - If you don't mind, are your kids there after 6 p.m.?
1320
1321 Mr. Ponton - No.
1322
1323 Ms. Dwyer - Thank you. Anyone else to speak to the case? Again,
1324 I will ask you not to be redundant.
1325
1326 Mr. Hanley - Okay. I'll try to keep it short. My name is Elroy Hanley.
1327 Last name is spelled H-a-n-l-e-y. My daughter is the one Ms. Banks referred to
1328 as a special needs child. I take her to school in the morning, and a bus brings her
1329 to Ms. Banks in the afternoon. Monday is a half-day, and Tuesday through
1330 Friday is 2:30 p.m. when the kids normally get out.
1331
1332 The reason why I'm in agreement with Ms. Banks for [unintelligible] in Henrico,
1333 when my daughter gets off the bus, somebody has to meet her at the bus. They
1334 will not allow her to walk up to the door. Somebody has to meet the bus, so she
1335 needs employees in her home to watch the other kids while she's picking up my
1336 daughter. My daughter doesn't speak very much, but she knows familiar faces. If
1337 I had to find a new daycare, it would be a hard transition for her, and kind of a
1338 recession back in trying to improve her lifestyle to make her as normal a child as
1339 possible. And to try to find kids that, I guess, have special needs is very hard. To
1340 try to find a daycare is very hard. It took me four months just to find a daycare for
1341 my special needs child. Then after you find a daycare, then you have to find
1342 someone who is adequate to take care of your special needs child, which is also
1343 very hard. Some people are not qualified, or they don't want to take the risk of
1344 something happening to your child. I am the advocate for my daughter.
1345 Whatever she needs, I will provide as far as getting her to and from Ms. Banks'
1346 house. My wife picks up my daughter, and she doesn't pick up my daughter after
1347 6 p.m. I have two daughters that go to Ms. Banks.
1348
1349 Ms. Dwyer - Thank you, Mr. Hanley. Any questions by Board
1350 members for this witness? Thank you for coming this morning. Anyone else?
1351
1352 Mr. Carter - Good morning, Board members.
1353
1354 Ms. Dwyer - Good morning.
1355
1356 Mr. Carter - I am a neighbor of Mrs. Banks, Lee Carter. C-a-r-t-e-r.
1357 I would just like to say I love all of my neighbors. Mrs. Banks has a special thing
1358 she has for children. We have lived in the same neighborhood for the last seven
1359 or eight years. I was one of the first to move in the community. My neighbor, Mr.
1360 Adkins, came later, and then later, Mrs. Banks came into the neighborhood. Her
1361 qualities as a lady and neighbor have been very beautiful. She has a beautiful
1362 home. Every time I enhance my home, she enhances hers. And the children are

1363 beautiful. She takes very good care of them. I know that through the years of
1364 talking with Mrs. Banks that she feels that that's her duty to take care of children
1365 and help young mothers, and I've seen her do that in many ways. I have no
1366 complaints about her home, or the way she keeps her children. I'm her next-door
1367 neighbor, so I should know. They are well taken care of, and it would be a loss to
1368 see it leave our community.
1369

1370 Mr. Wright - Mr. Carter, what is your address?
1371

1372 Mr. Carter - 3220 Arthurwood Place.
1373

1374 Mr. Wright - Yes, sir, I see that.
1375

1376 Mr. Blankinship - Any comments about noise or traffic?
1377

1378 Mr. Carter - I have no complaint about any of it because it's been
1379 a beautiful experience.
1380

1381 Mr. Witte - You don't have problems with people trampling your
1382 grass, or parking in front of your property, or causing you any damage at all.
1383

1384 Mr. Carter - The teenagers in the neighborhood do that.
1385

1386 Mr. Witte - Oh, okay.
1387

1388 Ms. Harris - Are you there during the day?
1389

1390 Mr. Carter - Yes.
1391

1392 Ms. Harris - You are there during the day.
1393

1394 Mr. Carter - Yes.
1395

1396 Ms. Dwyer - All right, thank you, sir. Anyone else to speak to the
1397 case?
1398

1399 Mr. Speight - Hello. My name is Ronald Speight. I reside at the
1400 property of—
1401

1402 Mr. Wright - What's your last name, please, sir?
1403

1404 Mr. Speight - Speight—S-p-e-i-g-h-t.
1405

1406 Ms. Dwyer - Thank you.
1407

1408 Mr. Speight - I'm a retired veteran. I was born and raised in DC. I'm
1409 a retired aviator, Post Office. This right here is my residence, and I came to
1410 beautiful Richmond, Virginia, for my peace of mind and relaxation. Personally, I
1411 never have any problems with Ms. Blanks, her daycare, her residence. I know
1412 you all have heard that several times before. Probably my issues are some that
1413 probably don't need to be brought up in this format, but since I am here, I am
1414 going to thank you for letting me know that my property value is not going down,
1415 it's not going to be rezoned, because that was a major issue. The 24-hour thing,
1416 about the peace of mine, you know. If you have a daycare in a home and she
1417 cuts it off at a certain hour, that's fine with me. But after a time, I want to let my
1418 guard down. I want my children to play. I don't want a lot of traffic. If you look at
1419 this graph right here, when it comes—I live at 3229 Arthurwood. A lot of cars
1420 come in there. They're very good, respectable parents, I have to say that. But
1421 they're running late, or they have a time factor, or something like that. And
1422 they're trying to get in before the daycare—They might have a child that runs
1423 around and plays in our neighborhood, too. That's happened several times when
1424 I've had to pick up trash, but I guess that comes with having a corner lot. The
1425 neighborhood is very well kept. I care about my property and the safety of my
1426 child. She could be out there at a certain hour of the night playing—not night, but
1427 in the evening in the summertime, and people with a 24-hours daycare. Yes,
1428 there are special needs, but they need to take care of their kids, as far as a work
1429 environment. But some of them, there's holidays and they might want to go to a
1430 party or an after-hour thing, and this, that, and the other. And two or three
1431 o'clock in the morning, I don't want to hear a lot of cars rolling up and down my
1432 neighborhood. It does impact on the safety of my neighborhood. That's the way I
1433 feel about it. At a certain hour I know no cars are supposed to there, and I can be
1434 fine with that.

1435
1436 Mr. Wright - If she were to keep somebody overnight, and they
1437 picked them up the next morning, you wouldn't have any problem with that.

1438
1439 Mr. Speight - I wouldn't have a problem with it.

1440
1441 Mr. Blankinship - The conditions we drafted would not allow her to have
1442 employees beyond 6 p.m., so it would only be the kids that she herself could care
1443 for.

1444
1445 Mr. Speight - I don't have any problem with that. Thank you very
1446 much.

1447
1448 Ms. Dwyer - Thank you, Mr. Speight. How many more people are
1449 interested in speaking to the case? Just one? Okay.

1450
1451 Mr. Jacobs - Good morning, Board. My name is Don L. Jacobs—J-
1452 a-c-o-b-s. I'm the son of Ms. Banks. I think it's a disgrace and a crying shame
1453 for me to witness what's going on in here this morning. My mother's husband

1454 passed away. I have a property, 5101 Metals Run, that I rent. I moved back with
1455 my mother because of the hardship. Since I've been at that home, it's more traffic
1456 at 840 Maplegrove than what goes on in our home. My mother has no desire to
1457 keep kids all night. Okay? We all are neighbors. The association. I had an
1458 association in my other community. I chose not to participate in the association.
1459 If the association had a concern, I think it should have been brought to the
1460 homeowner first before escalating to this point. I have washed my car in my front
1461 yard, and I watch Mr. Adkins curse out Mr. Carter. Okay? I have seen neighbors
1462 that live in that residence during daylight hours drinking.

1463
1464 Mr. Blankinship - Mr. Jacobs, we need to stay focused on the matter
1465 before us.

1466
1467 Mr. Jacobs - Okay. I'm just address—Okay. These are issues that
1468 I'm addressing. She chooses not to operate a 24-hour daycare. Okay? I live in
1469 the home, and again, the yard is well kept. I take care of the yard. The parking is
1470 not a concern. At one time the employees were parking in the driveway. She
1471 talked to the neighbors, I believe, and it was okay for them to park across the
1472 street. Okay? But I just think it's just disrespectful that it's escalated to this point
1473 because—I'm a manager at the post office, and I understand what it means to
1474 get in compliance with everything. And that's all we're trying to do. We're not
1475 trying to degrade the neighborhood in any way, shape, or form.

1476
1477 Ms. Harris - Mr. Jacobs, did you say your mother did not want to
1478 operate a 24-hour daycare?

1479
1480 Mr. Jacobs - Right. As far as I know, she has no desire to keep
1481 kids overnight, or operate a 24-hour daycare.

1482
1483 Ms. Harris - But does the permit allow her to do that?

1484
1485 Mr. Jacobs - The permit will, if she chooses to.

1486
1487 Mr. Blankinship - But her state license at this point is limited to, I think,
1488 12:30 in the morning.

1489
1490 Ms. Harris - Okay, thank you.

1491
1492 Ms. Dwyer - Any questions for Mr. Jacobs? Thank you, sir.
1493 Anyone else to speak to this case? Ms. Banks, if you would like to come
1494 respond, we'll give you five minutes to make a statement or respond to any of the
1495 issues that have been raised.

1496
1497 Ms. Banks - Okay. My statements will be just to correct something
1498 that was made against me in knowing about the homeowners' association.
1499 When I purchased my first house on Hunters Run Drive, I purchased it from the

1500 person who built the house, who was Mrs. Lillian Bryant. So, I didn't receive
1501 those documents from Ryan Homes. When I purchased this home, it was in
1502 foreclosure, and I never received a package from Ryan Homes saying that there
1503 was an association. The first documentation I received about an association was
1504 in 2005, like I stated earlier. Also, I have no signs in my yard. I do not advertise.
1505 All of my business has come to me by word of mouth by parents who I have
1506 supported in the past. The ambulance that was in the community was next door.
1507 I had to call rescue squad services about three years ago because a little kid was
1508 choking. But, you know, we have to have first aid training, we have to have all of
1509 that. When it got beyond what we could do, that's when I called the rescue
1510 squad. One time in five years. I also only operate in nine-hour intervals. So,
1511 when you bring your child, you have nine hours before you need to return to pick
1512 up your child. So, I don't have people coming in and out all day long. And like I
1513 said, when the kids that stayed overnight, if their mother brought them at 11 a.m.,
1514 she wasn't expected to return until nine hours later. I don't want people coming in
1515 the community. I don't have people coming into the community all different
1516 hours. I don't party at night and do all the things that maybe have been alluded
1517 to. And people don't come to my house playing loud music, because like Mr.
1518 Ponton said, I interview my parents, and I love my community, I respect my
1519 home, and I respect others as well. Thank you.

1520
1521 Ms. Harris - Ms. Banks, do you have a parent who works the
1522 twilight shift?

1523
1524 Ms. Banks - No. I said I had a parent who worked twilight shift
1525 years ago.

1526
1527 Ms. Harris - Okay.

1528
1529 Ms. Banks - I no longer have anyone working past 5:30 p.m. that
1530 picks up their child.

1531
1532 Ms. Dwyer - Ms. Banks, would you agree to a condition that says
1533 there will be no signs in your yard advertising your business?

1534
1535 Ms. Banks - I will agree to that, but I've never had it, and I have no
1536 need to have it.

1537
1538 Ms. Dwyer - I understand, but it might be reassuring to people to
1539 have that as a condition.

1540
1541 Ms. Banks - Yes. I have no need to have that. Just like I said, my
1542 business has been spread by word of mouth. At one time when I first started I
1543 advertised in the newspaper. But again, never any signs on my property.

1544

1545 Ms. Dwyer - Would you be agreeable to reducing the hours that
1546 you've requested to be open, fewer hours that you would find acceptable?
1547
1548 Ms. Banks - I would like to be able to operate from not 6 a.m., but
1549 from 7 a.m. until 12 p.m., or 12 a.m.
1550
1551 Mr. Blankinship - Midnight.
1552
1553 Ms. Banks - Yes, until midnight, in case a mother comes to me
1554 that needs assistance in the afternoon. Again, they will bring me a child at one
1555 time, and they are expected to return nine hours later.
1556
1557 Ms. Dwyer - All right. It would be agreeable to you, then, if we
1558 change the hours that you're requesting from 7 a.m. to midnight, as opposed to—
1559 or 12:30, I think, is that what the state license is—24 hours.
1560
1561 Ms. Banks - It doesn't have to be 24 hours because, again, I
1562 haven't kept any kids past 6 p.m. in the afternoon in years, except for that one kid
1563 I kept one week this past summer. I kept a little kid until 9:30 p.m.
1564
1565 Ms. Dwyer - Okay.
1566
1567 Ms. Harris - In the condition, they say on Saturday 7 a.m., but the
1568 7 a.m. to 12 midnight are the hours that you would like to operate Monday
1569 through Saturday.
1570
1571 Ms. Banks - You can put that down, but in a sense, I want my
1572 Saturdays off. But I have had parents in the past who did need to work on
1573 Saturday. So, that means I'm tied down with kids on the weekend, too.
1574
1575 Ms. Dwyer - I think that was limited to 7 a.m. I think that was in
1576 case it was overnight on Friday.
1577
1578 Mr. Blankinship - Exactly.
1579
1580 Ms. Dwyer - Any other questions for Ms. Banks?
1581
1582 Mr. Nunnally - You say you like your Saturdays off. Would you have
1583 a problem with 7 a.m. to midnight Monday through Friday?
1584
1585 Ms. Banks - I wouldn't have any problems with that, but—and
1586 when I interview my parents, I should be the one who tells them, "I really don't
1587 want to work Saturday, you can find someone else on Saturdays," and that's
1588 what they do. So, licenses have a list of parents who can operate certain times,
1589 but I'm in a position now where I can say I need my weekends off. I don't really
1590 want the law to say I have to have it off, because there might be someone who

1591 doesn't even have a relative in Virginia, and I might feel the need or might just
1592 want to help that parent.
1593
1594 Ms. Dwyer - I'm not clear, then.
1595
1596 Ms. Banks - I would like for the conditional use permit to say I can
1597 work Monday through Saturday night.
1598
1599 Ms. Dwyer - From 6 a.m. to 12:30 a.m.
1600
1601 Ms. Banks - Yes.
1602
1603 Ms. Harris - You said 7 a.m.
1604
1605 Ms. Dwyer - Oh, you said 7 a.m.
1606
1607 Ms. Banks - Seven.
1608
1609 Mr. Nunnally - Seven to midnight.
1610
1611 Ms. Banks - Yes.
1612
1613 Ms. Dwyer - All right. That concludes the case. Thank you, Ms.
1614 Banks.
1615
1616 Ms. Banks - Thank you.
1617
1618 Ms. Dwyer - We'll take a five-minute recess.
1619
1620 **BOARD TAKES A FIVE-MINUTE RECESS**
1621
1622 **DECISION**
1623
1624 Mr. Nunnally - I move we approve it.
1625
1626 Ms. Harris - Second.
1627
1628 Mr. Nunnally - I don't think it will be detrimental to the neighborhood,
1629 and I think she's running a splendid daycare service there, so all the people said.
1630
1631 Ms. Dwyer - Do we have any amendments to the conditions?
1632
1633 Mr. Nunnally - I thought we changed the time, didn't we?
1634
1635 Ms. Harris - Yes. Monday through Saturday, 7 a.m. to 12 midnight.
1636 So, it's to cut back on the hours. No signs in the yard.

1637
1638 Ms. Dwyer - Which would an additional condition six.
1639
1640 Ms. Harris - Additional condition. I believe we addressed the
1641 concerns of the neighbors.
1642
1643 Ms. Dwyer - Do we have a second?
1644
1645 Ms. Harris - I second.
1646
1647 Mr. Blankinship - Yes.
1648
1649 Ms. Dwyer - Okay.
1650
1651 Ms. Harris - I believe we addressed the concerns of the neighbors
1652 and incorporated many of their suggestions by cutting back the hours, and with
1653 no sign in the yard. I think it was established that this is a reputable, very
1654 desirable operation. So, hopefully we've accommodated most of the concerns.
1655
1656 Ms. Dwyer - Any other discussion? All in favor say aye. All
1657 opposed say no. The ayes have it; the motion passes.
1658
1659 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
1660 Ms. Harris, the Board **approved** application **UP-026-08, Martha R. Banks'**
1661 request for a conditional use permit pursuant to Section 24-12(g) to operate a 24-
1662 hour family day home with employees at 3216 Arthurwood Place (Huntwood)
1663 (Parcel 806-727-5394), zoned R-3, One-family Residence District (Varina). The
1664 Board approved the conditional use permit subject to the following conditions:
1665
1666 1. [AMENDED] The hours of operation for the family day home shall be limited
1667 to 7:00 AM - 12:00 Midnight Monday through Saturday. Daycare services shall
1668 not be provided on Sunday.
1669
1670 2. Outside employees shall be limited to a maximum of 3 between the hours of
1671 6:00 AM to 6:00 PM Monday through Friday. After 6PM, only permanent
1672 residents of the dwelling shall provide daycare service in the home and shall
1673 adhere to the Ratio of Adults to Children from the Virginia DSS Standards for
1674 Licensed Family Day Homes.
1675
1676 3. No more than 12 children, exclusive of the provider's own children, may
1677 receive daycare services at any one time.
1678
1679 4. Employees of the daycare business shall park on-site, not on the street.
1680
1681 5. After 6:00 PM, the family day home operation shall be limited to the care of
1682 not more than 3 children (toddlers to 12 years of age) or 2 infants.

1729 Ms. Chisholm - They're going to be starting in the 190's.
1730
1731 Ms. Harris - The square footage?
1732
1733 Ms. Chisholm - They range from about 1,800 square feet up to about
1734 2,600.
1735
1736 Ms. Harris - Okay. I have a question about the trailer. In the floor
1737 plan, we see that there's a trailer with interior plumbing, an interior bathroom.
1738 You're not going to use this one?
1739
1740 Ms. Chisholm - Our plans are not to hook up the bathroom inside.
1741 We'll bring a port-a-john out on site and have that screened.
1742
1743 Ms. Harris - Why?
1744
1745 Ms. Chisholm - I'm not sure if we have—We can't tie it in right now to
1746 the plumbing, so I don't know if all of that has been developed. The other
1747 alternative is to do like a septic tank system. For the short duration that we're
1748 going to keep the trailer out there, it's actually very costly.
1749
1750 Mr. Wright - That's in Condition #4.
1751
1752 Ms. Dwyer - Have you read the conditions, Ms. Chisholm?
1753
1754 Ms. Chisholm - I have, yes.
1755
1756 Ms. Dwyer - You agree to those?
1757
1758 Ms. Chisholm - Yes.
1759
1760 Ms. Harris - I saw that in the condition, but I also saw that they
1761 could actually include a john, or let's say a bathroom someplace in accordance to
1762 what you submitted to us. I just wondered why you would use a port-a-john and
1763 not use the bathroom facilities that are mentioned or shown on the floor plan.
1764 And you say it's a cost factor.
1765
1766 Ms. Chisholm - It's costly, and we're going to be there for such a short
1767 duration it'll make it easier to remove the trailer quickly and expediently when
1768 we're able to move into our model.
1769
1770 Ms. Dwyer - And you don't have a sewer system to connect to at
1771 this point.
1772
1773 Ms. Chisholm - No, not at this point.
1774

1775 Mr. Wright - To run to July 1st. That's the idea, isn't it?
1776
1777 Ms. Dwyer - Correct.
1778
1779 Mr. Witte - So, you're actually going to build a model to replace
1780 the trailer.
1781
1782 Ms. Chisholm - Yes.
1783
1784 Mr. Witte - Okay.
1785
1786 Ms. Dwyer - Any other questions by Board members? That
1787 concludes the case. Thank you, Ms. Chisholm.
1788
1789 Ms. Chisholm - Thank you.

1790

1791 **DECISION**

1792

1793 Ms. Harris - I move that we approve this temporary use permit. It
1794 will not adversely affect the neighborhood, health, or welfare of the community.
1795 They did address the question regarding the fact that this is a temporary sales
1796 trailer that will be replaced or removed when the model home is erected.

1797

1798 Ms. Dwyer - Motion by Ms. Harris.

1799

1800 Mr. Nunnally - I seconded it.

1801

1802 Ms. Dwyer - Motion by Ms. Harris, second by Mr. Nunnally. Any
1803 discussion? All in favor say aye. All opposed say no. The ayes have it; the
1804 motion passes.

1805

1806 After an advertised public hearing and on a motion by Ms. Harris, seconded by
1807 Mr. Nunnally, the Board **approved** application **UP-027-08, Centex Homes'**
1808 request for a temporary conditional use permit pursuant to Section 24-116(c)(1)
1809 to place a temporary sales trailer at 4956 Cedar Summit Road (Cedar Run)
1810 (Parcel 813-730-3067), zoned R-3C, One-family Residence District (Conditional)
1811 (Fairfield). The Board approved the temporary conditional use permit subject to
1812 the following conditions:

1813

1814 1. Only the improvements shown on the plan filed with the application may be
1815 constructed pursuant to this approval. No substantial changes or additions to the
1816 layout may be made without the approval of the Board of Zoning Appeals. Any
1817 additional improvements shall comply with the applicable regulations of the
1818 County Code.

1819

1820 2. The trailer shall be skirted on all sides with a durable material as required by
1821 the building code for a permanent installation.

1822
1823 3. A detailed landscaping and lighting plan shall be submitted to the Planning
1824 Department with the building permit for review and approval. Approved
1825 landscaping shall be installed prior to the issuance of the certificate of
1826 occupancy. All landscaping shall be maintained in a healthy condition at all
1827 times. Dead plant materials shall be removed within a reasonable time and
1828 replaced during the normal planting season.

1829
1830 4. The port-a-john(s) shall be located behind or beside the trailer and screened
1831 from public view by means of an opaque fence.

1832
1833 5. The trailer shall be removed from the property on or before July 1, 2009, at
1834 which time this permit shall expire.

1835
1836
1837 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5
1838 Negative: 0
1839 Absent: 0

1840
1841
1842 Mr. Blankinship - Madam Chairman, the next two cases are
1843 companions, and I'll call them both together, if you don't mind.

1844
1845 **A-028-08 THE FATHER MCDONALD COLUMBIAN CENTER**
1846 requests a variance from Section 24-96(a) to allow off-site parking at 2324 Pump
1847 Road (Parcel 740-752-4205), zoned A-1, Agricultural District (Tuckahoe). The
1848 parking lot location requirement is not met. The applicant requests permission to
1849 use an adjacent off-site parking lot during the construction of a new Knights of
1850 Columbus building.

1851
1852 **UP-029-08 THE FATHER MCDONALD COLUMBIAN CENTER**
1853 requests a conditional use permit pursuant to Sections 24-52(a) and 24-12(b) to
1854 replace the existing recreation facility at 2324 Pump Road (Parcel 740-752-
1855 4205), zoned A-1, Agricultural District (Tuckahoe).

1856
1857 Ms. Dwyer - Is anyone here to speak to this case?

1858
1859 Mr. Witte - Before we begin, Madam Chairman.

1860
1861 Ms. Dwyer - Mr. Witte.

1862
1863 Mr. Witte - Since the Columbian Center is operated by the
1864 Knights of Columbus, and I am also a member of the Knights—not this council—I
1865 think I should abstain from this case. [Mr. Witte left the building.]

1866
1867 Ms. Dwyer - All right. Thank you, Mr. Witte. Is there anyone here
1868 to speak to this case? Please raise your right hand to be sworn.
1869
1870 Mr. Blankinship - Do you swear the testimony you're about to give is the
1871 truth and nothing but the truth so help you God?
1872
1873 Ms. Dwyer - Good morning.
1874
1875 Mr. Kucera - Good morning. Can you hear me?
1876
1877 Ms. Dwyer - Yes.
1878
1879 Mr. Kucera - Okay. My name is Jonathan J. Kucera, architect. I'm a
1880 consulting architect to the Knights of Columbus. I've been working with them on
1881 this project for over a year. This is a concluding phase in their process of
1882 analyzing the potential to design a smaller Knights of Columbus facility on a
1883 subset of the original Columbian Center property, which currently is 22+ acres.
1884 They are under contract to sell the majority of the property to Third Presbyterian
1885 Church. In order to proceed with their plans to develop this property subsequent
1886 to the sale, they need the two items requested. One is a variance to allow
1887 temporary use of the existing parking lot as parking for the existing building, and
1888 parking for the new building until such time as the new building is completed, the
1889 old building torn down, and the new parking lot built. That is a temporary use of
1890 the existing parking to satisfy code requirements for onsite parking for the new
1891 facility, as well as the existing facility, because once it's sold, then the existing
1892 parking is part of the old parcel.
1893
1894 Ms. Dwyer - The existing parking will be sold to the Third
1895 Presbyterian Church.
1896
1897 Mr. Kucera - Yes. If you look at the diagram that you're looking at,
1898 the smaller portion outlined with the red dotted line is the new parcel. It's access
1899 will be deed granted through the old site being sold. But until such time as the
1900 new parking is built, the existing building will operate, and the new building is
1901 being built. Both will require the use of the existing parking, which will also be
1902 guaranteed by agreement with the purchaser.
1903
1904 Ms. Dwyer - How many parking spaces are now available?
1905
1906 Mr. Kucera - The existing parking is somewhere in the order of 150
1907 spaces.
1908
1909 Ms. Dwyer - What's the square footage of your existing building?
1910

1911 Mr. Kucera - The square footage of the existing building is
1912 approximately 1,200 square feet—I mean 12,000. I'm sorry.
1913

1914 Ms. Dwyer - Twelve thousand. The square footage of the new
1915 building is 7,200?
1916

1917 Mr. Kucera - As shown on the plans now it's 7,200 square feet.
1918 There is a potential, if their budget will allow, to expand the basement to a full
1919 basement, which would take the total square footage up to 9,000 square feet. But
1920 the majority of the basement space would be for storage for the various church-
1921 related or community-related clubs that will continue to use the new building for
1922 their activities.
1923

1924 Ms. Dwyer - So, you'll only have 80 parking spaces, though, for
1925 the new facility.
1926

1927 Mr. Kucera - That's correct.
1928

1929 Ms. Dwyer - If you wanted to expand to 9,000, wouldn't you need
1930 90 spaces?
1931

1932 Mr. Kucera - Well, according to the zoning code, the parking
1933 requirement is one space for every 100 square feet of the building used for the
1934 assembly function. It's classified as an assembly use. Therefore, that calculation
1935 on the approximately 3,200 square feet of space on the upper level used for
1936 assembly is 32 spaces.
1937

1938 Ms. Dwyer - Okay. If you expanded into the basement, would that
1939 be used for assembly purposes?
1940

1941 Mr. Kucera - If it were, it would only be a portion of the space.
1942

1943 Ms. Dwyer - Okay.
1944

1945 Mr. Kucera - Even if we used the same proportion of space in the
1946 basement, which would put you at 6,400 square feet, the ratio then being 64
1947 spaces, and we are providing, on the current plan, 80 spaces.
1948

1949 Ms. Dwyer - As a practical matter, have you needed the 150 for
1950 the facility that you—
1951

1952 Mr. Kucera - No. The 150 spaces relate to the storage use of the
1953 entire property by the Columbian Center for a broad spectrum of their own and
1954 mostly community-based uses—social gatherings, sports events, and so forth.
1955 The usage pattern of the Knights of Columbus has changed, which is one of the
1956 reasons why they have elected to downsize their building, and downsize their

1957 property. They have represented to me that the future uses of the Knights of
1958 Columbus building for their own uses will be a smaller set of uses than they
1959 historically have had. And the same for some of their sponsored groups—Boy
1960 Scouts—I have a list of the uses that I'll introduce when I talk about the
1961 conditional use, because I would like for that to go on record as their response to
1962 one of the questions.
1963

1964 Mr. Wright - Are we talking about the use permit now, or the
1965 variance?
1966

1967 Ms. Dwyer - Both cases were called at the same time. I was
1968 mostly interested in the parking situation.
1969

1970 Mr. Wright - I thought we were talking about the use permit now.
1971

1972 Mr. Kucera - Could I close on a comment?
1973

1974 Ms. Dwyer - Sure.
1975

1976 Mr. Kucera - My comments regarding the variance in stating that
1977 this is a temporary variance, which expires at such time as the entire
1978 development on the residual 3.38-acre parcel is completed. That completion
1979 involves the construction of the new building, then the demolition of the old
1980 building, and then the reconstruction of the site, under where the old building
1981 exists, for the new parking lot. Once all that work is completed, as per the
1982 conditions, then this temporary variance will expire because they will then have
1983 satisfied all of the code requirements for their new site.
1984

1985 Ms. Dwyer - That's one of the conditions that has been proposed
1986 by staff.
1987

1988 Mr. Kucera - Yes. The conditions stated in the request for variance,
1989 all three of those conditions are agreeable to the applicant.
1990

1991 Ms. Dwyer - There is some question as to whether this is in fact a
1992 variance.
1993

1994 Mr. Blankinship - The code uses the word, "variance," but we treat it
1995 really as a use permit. The code does call it a variance, so we have styled it that
1996 way.
1997

1998 Ms. Dwyer - We should probably get that addressed. We won't
1999 belabor that point, then.
2000

2001 Mr. Kucera - One other point I'd like to make is that in both this
2002 variance request and the conditional use permit, they are conditional upon the

2003 actual sale of the property. I've learned this morning that it's moving closer to a
2004 certainty with a closing in December. Should for any reason that purchase fall
2005 through, then the applicant would like to revert to their original—
2006

2007 Mr. Blankinship - Just continue to operate as they do now.
2008

2009 Mr. Kucera - Yes.
2010

2011 Ms. Dwyer - So, you would withdraw these formally, or how would
2012 that—
2013

2014 Mr. Wright - Put a condition in there to that affect.
2015

2016 Mr. Blankinship - Normally, your rules require that if the applicant
2017 doesn't do something to act on a permit, then it expires. I think we'll just treat it
2018 that way.
2019

2020 Mr. Wright - What was it, a year?
2021

2022 Mr. Blankinship - Yes. Well, a year for one, and two years for the other.
2023 I can't remember off the top of my head which is which.
2024

2025 Mr. Wright - I think it's two for the variance.
2026

2027 Mr. Blankinship - I think you're right. Two for the variance, and one for
2028 the use permit.
2029

2030 Mr. Kucera - In the case of having an actual time limit for the
2031 variance, I would ask that that be either extended or removed, because while we
2032 are staging ourselves directly into design and engineering for the site as soon as
2033 closing occurs, we would not want to be held to a specific time limit, not knowing
2034 how quickly some other aspects of the development are going to occur, some of
2035 which are dependent upon the purchaser's activities.
2036

2037 Mr. Wright - Wouldn't this condition override that? The way this
2038 condition is proposed, if you don't complete these plans and so forth, the
2039 variance would never apply.
2040

2041 Ms. Dwyer - Where does it say that?
2042

2043 Mr. Blankinship - If they don't sell the property, then the variance is
2044 moot because they have all the parking on site.
2045

2046 Mr. Kucera - The closing on the sale of the property, then our
2047 access and our parking occur on the purchaser's property. So, this variance
2048 needs to come into play upon closing and transfer of the property.

2049
2050 Mr. Blankinship - Right.
2051
2052 Mr. Kucera - We're just asking that we not be held to a specific
2053 time limit for the expiration of the variance as a temporary variance.
2054
2055 Mr. Blankinship - So, if the property does close, if the sale does close,
2056 then both the use permit and variance become applicable. If the sale does not
2057 close, then neither the use permit nor the variance will come about.
2058
2059 Mr. Wright - We could put a provision in here that would be
2060 effective when the property does sell.
2061
2062 Mr. Blankinship - That's how we'll treat it.
2063
2064 Ms. Dwyer - His concern is that it not expire, though.
2065
2066 Mr. Blankinship - Right.
2067
2068 Ms. Dwyer - If the sale does go through, you don't want the
2069 variance to expire in two years. Is that what you're saying?
2070
2071 Mr. Blankinship - Right. If the sale goes through and the use permit
2072 takes effect, that would be the trigger, I think. Even if they don't have their
2073 building permit yet after two years, I think they'd still—
2074
2075 Ms. Dwyer - Because they don't have to complete the building in
2076 two years, they have to get started on it.
2077
2078 Mr. Blankinship - Again, the operational activity is one of the phrases in
2079 there. If they're using the Columbian Center month to month, and the parking is
2080 in fact on other people's property, then they are making use of that variance. I
2081 think you're all right on that.
2082
2083 Ms. Dwyer - Okay.
2084
2085 Ms. Harris - Mr. Blankinship, I have a question about the report.
2086
2087 Mr. Blankinship - I'm not sure Mr. Kucera's finished. Maybe we should
2088 let—
2089
2090 Mr. Kucera - Oh, I've finished my comments with regard to the
2091 request for temporary variance.
2092
2093 Mr. Blankinship - Does the Board want to separate the two questions,
2094 or do you want him to go ahead and present the use permit?

2095
2096 Ms. Harris - This deals with the conditional use permit, yes.
2097
2098 Ms. Dwyer - Let him go ahead.
2099
2100 Mr. Blankinship - Let's go ahead and do your report.
2101
2102 Mr. Kucera - Okay. The conditional use is necessary either to
2103 amend the current conditional use or, as I understand from our consulting
2104 engineer, Monty Lewis—I should have introduced you I'm sorry. Monty may
2105 speak to any of these questions if I can't answer them. We need the conditional
2106 use permit because the size of the lot changes as we go from the original 22
2107 acres down to the current 3.38-acre site, and the documents were submitted with
2108 the application. On initial review, we saw that there were some additional
2109 conditions requested beyond what the existing conditional use provides to the
2110 applicant. Then in e-mail traffic Monday, Tuesday, and Wednesday of this week,
2111 I noticed that there was a proposed modification to those conditions, but I didn't
2112 see that in the booklet up front.
2113
2114 Mr. Blankinship - That was passed out to the Board members at the
2115 beginning of the meeting.
2116
2117 Mr. Wright - Basically, it has to do with change of hours, doesn't
2118 it?
2119
2120 Mr. Blankinship - There were two or three very small changes. Maybe
2121 we should walk you through those.
2122
2123 Mr. Kucera - I would be glad to read through these so it's clear to
2124 everybody involved what the conditions are.
2125
2126 Mr. Blankinship - They've seen the earlier ones, so I think it will
2127 probably be more efficient to them to just hear the changes.
2128
2129 Mr. Blankinship - Okay.
2130
2131 Mr. Blankinship - On #1, we added a second sentence regarding a
2132 storm water retention pond. That is not shown on the plans that were submitted,
2133 but it will be necessary. We just wanted to make it clear that that item will be
2134 added to the plans. I don't think we changed #2. Number 3 we just added the
2135 phrase at the end of the first sentence so that it says, "for every 100 square feet
2136 of floor area used for assembly." If they build a larger building, and part of it is for
2137 storage, that would not count as the 1 to 100 ratio. The hours were changed a
2138 little bit: 8:00 to 1:00 indoors, and 8:00 to 10:00 outdoors. On the last condition,
2139 we just cleaned up the language a little bit. We had a complaint, many years ago
2140 now, regarding use of the property for commercial activity. The Knights were

2141 renting it to a business that was holding a business use there. They were
2142 required to stop that. We've never had any complaints about weddings or social
2143 functions, or just renting the property to non-members for social or recreational
2144 functions. So, the language was just cleaned up a little.

2145
2146 Mr. Wright - Are you satisfied with the permitted uses of the
2147 building, because you recommend that we have a condition delineating the
2148 permitting uses.

2149
2150 Mr. Blankinship - Number 7 is what I was looking for there.

2151
2152 Mr. Wright - So, that takes care of the staff's concern.

2153
2154 Mr. Blankinship - Yes sir.

2155
2156 Mr. Wright - Okay. Thanks.

2157
2158 Mr. Kucera - I'd like to add a few comments to these revised
2159 conditions. First of all, are we now looking at this as being a new conditional use
2160 permit, or an amendment to the original?

2161
2162 Mr. Blankinship - It's an amendment, but it's replacing the original.

2163
2164 Mr. Kucera - Okay. On item #1, I'd just like it to be on record that
2165 we may increase the size of the basement. I think we're satisfying the parking
2166 requirements, but I would not want to be limited to the exhibit as shown where we
2167 illustrate the basement as being a partial basement.

2168
2169 Mr. Blankinship - Would the footprint of the building change?

2170
2171 Mr. Kucera - The footprint would not change. It's a budget and a
2172 constructability issue where for a nominal amount of additional expense, they get
2173 a full basement because you already have two walls there. It's more of a design
2174 and development issue, but we don't want to be limited by not being able to do
2175 that.

2176
2177 Mr. Blankinship - Right.

2178
2179 Mr. Kucera - On item #4, I understand through conversations that
2180 Monty Lewis had with you that the 10:00 deadline for activities applies to the
2181 activity itself, and if there are cleanup activities subsequent to the event, that can
2182 occur after the 10:00 period.

2183
2184 Mr. Blankinship - That's correct.

2185

2186 Mr. Kucera - Okay. As to item 7, we have a list of the activities
2187 from the Knights of Columbus that explains the events that take place now in the
2188 existing building. Council #395, Knights of Columbus, Richmond Assembly,
2189 which is another Knights of Columbus group; the K-cettes, which is a Knights of
2190 Columbus women's group, the Catholic Women's Club; West End Catholic Men's
2191 Group; Boy Scouts; Cub Scouts; Henrico County voting precinct; Knights of
2192 Columbus bingo; birthday parties; educational and financial seminars; dance and
2193 aerobics classes. The representative of the Knights has said that once the new
2194 building is built, it's likely that only the top ten of those activities would occur in
2195 the new building.
2196
2197 Mr. Blankinship - Which two would not continue after that?
2198
2199 Mr. Kucera - Educational and financial seminars, and dance and
2200 aerobics classes.
2201
2202 Mr. Blankinship - Everything else you read would continue.
2203
2204 Mr. Kucera - Yes.
2205
2206 Ms. Dwyer - All right. Any questions by Board members?
2207
2208 Ms. Harris - Would you answer the question about the mission of
2209 the Columbian Center? I notice that you said that it has to be activities related to
2210 the mission of the organization. Are you familiar with the mission?
2211
2212 Mr. Blankinship - You're looking at the old condition. That's part of the
2213 language that I removed.
2214
2215 Ms. Harris - You removed that. Okay.
2216
2217 Mr. Blankinship - It would now say, "Sponsored by the Father
2218 McDonald Columbian Center and its members."
2219
2220 Ms. Harris - Okay. I notice that we talked about 19 acres
2221 remaining unencumbered. Does that mean just until it's sold?
2222
2223 Mr. Kucera - Right now there is a contract to purchase the 19 acres
2224 by Third Presbyterian Church. They have plans to develop that property initially
2225 as a recreational property for the church. Long-term plans include a new church
2226 on that property. That's a separate preliminary plan of development that they
2227 have applied or submitted to the County that's not part of this case.
2228
2229 Ms. Harris - Would we still keep the 19 acres being unencumbered
2230 in our report?
2231

2232 Mr. Blankinship - Yes ma'am.
2233
2234 Ms. Harris - Okay. Because at the time of the sale it is.
2235
2236 Mr. Blankinship - Right.
2237
2238 Ms. Harris - Okay. You said that the code was later amended.
2239 The staff report requires a provisional use permit rather than a conditional use
2240 permit.
2241
2242 Mr. Blankinship - Yes ma'am.
2243
2244 Ms. Harris - Now we were going to amend the existing conditional
2245 use permit.
2246
2247 Mr. Blankinship - Yes ma'am.
2248
2249 Ms. Harris - What about the provisional use permit? What
2250 happened to that?
2251
2252 Mr. Blankinship - There has never been a provisional use permit on the
2253 property. So, rather than switching the format of the hearing and everything in the
2254 middle of their use, since they are continuing essentially the same use, we've
2255 decided not to require the provisional use permit, but to proceed this way instead.
2256
2257 Ms. Harris - Okay. I notice the Police Department suggestions for
2258 crime prevention. Have you had any problems with break-ins, and robberies,
2259 and all that? They seem to be very specific in their suggestions.
2260
2261 Mr. Kucera - The reason that their report is included here I think is
2262 because they had submitted a report as part of our preliminary plan of
2263 development review. I can't speak to any specific incidents on the property.
2264 Perhaps a representative of the Knights could speak to that.
2265
2266 Ms. Dwyer - Don't they always submit a report, Mr. Blankinship, for
2267 plans of development?
2268
2269 Mr. Blankinship - Frequently, yes ma'am.
2270
2271 Mr. Kucera - That's my understanding, that this is their way of
2272 introducing that level of design for security as part of the permitting process. This
2273 is Rick Kirkland. He's president of the Knights of Columbus.
2274
2275 Mr. Kirkland - Good morning.
2276
2277 Ms. Harris - Good morning.

2278

2279 Mr. Kirkland - Madam Chairman and Board members. Funny being
2280 on this side. We have had no break-ins or vandalism to the main building in the
2281 past five years. That's how long I've been on the Board. We have had some
2282 incidents in the rear pavilion, but they have been cleared up, and the police are
2283 aware of that. We have a strong police presence on the site most of the time. I
2284 don't know of any to the main building.

2285

2286 Ms. Dwyer - Thank you, Mr. Kirkland. Any other questions by
2287 Board members about either the variance or the special exception? Do you have
2288 anything else you wanted to add?

2289

2290 Mr. Kucera - Before I yield the floor, I would ask if our civil
2291 engineer, Monty Lewis, has anything to add. Only if there are any questions that
2292 he might address.

2293

2294 Ms. Dwyer - I'll give everybody a chance to look at their notes.
2295 Any more questions? Okay. Thank you, that concludes the case.

2296

2297 Mr. Kucera - Thank you.

2298

2299 Mr. Blankinship - Madam Chairman, I think there were some other
2300 people who wanted to speak.

2301

2302 Ms. Dwyer - Oh, I'm sorry. I didn't see—That's right. All right.
2303 That doesn't conclude the case; we have some more speakers. Is there anyone
2304 else who wanted to speak? We have two more speakers. Good morning.

2305

2306 Ms. McCue - Good morning. My name is Carol McCue, and I live in
2307 a home that is directly behind the existing Knights of Columbus facility, the
2308 Columbian Center. My main concern, and the reason I'm here today, is to
2309 request that the Board place some requirements on the Columbian Center on the
2310 future use of the new facility to make sure that there is not any noise, or that the
2311 noise is abated. I've actually lived in my home for about 15 years. I have
2312 previously called over to the Columbian Center. I have met with a Board about
2313 ten years ago regarding my complaints about noise during parties that they hold
2314 mainly on the weekend nights after 10:00 and 11:00 where they keep back doors
2315 open. The noise comes into my home. I close the back doors on every room in
2316 my house, and I still hear this thumping noise from the music in the parties.
2317 They've also recently had a trash company that's been picking up the dumpster
2318 at 5:30 a.m. during the week, and on Saturday mornings. So, I would like for the
2319 Board to consider requesting that the Columbian Center, when they build the
2320 new facility, put an 8-foot-tall evergreen tree buffer along the property line, which
2321 backs up to the homes in the Eagles Ridge neighborhood; that you prohibit
2322 construction and any construction related activities prior to 8:00 a.m. in any given
2323 day; that you prohibit dumpster pickup prior to 8:00 a.m. on any given day; and

2324 that you require that doors and windows remain closed when there are parties
2325 and events inside the Columbian Center to reduce the noise.

2326
2327 I had a question. I'm not sure I quite understood the list of uses. I wasn't sure
2328 whether it sounded like they were not planning to have wedding receptions and
2329 parties like that anymore. If they're not, I don't understand why the facility is
2330 allowed to operate until 1:00 a.m., given the list of uses that they were
2331 requesting.

2332
2333 Ms. Dwyer - My understanding is that they will be permitted to
2334 have wedding receptions and that sort of thing. That's not excluded.

2335
2336 Ms. McCue - Okay. That's my request then, that we do something
2337 to abate the noise after 10:00 and 11:00 on the weekends, because as I've said,
2338 I have sat in my bedroom trying to go to sleep after 11:00 and 12:00 on Friday
2339 and Saturday nights hearing this music. I've called over there, as I said,
2340 previously. I don't get a favorable response. I haven't received an
2341 acknowledgement that my concern is actually even a legitimate concern. That's
2342 why I'm requesting that the Board please consider—

2343
2344 Ms. Harris - Ms. McCue, how do you spell your last name?

2345
2346 Ms. McCue - M-c-c-u-e.

2347
2348 Ms. Harris - Okay. Do you have an association, Eagles?

2349
2350 Ms. McCue - We do. It's a voluntary neighborhood association.

2351
2352 Ms. Harris - So, they're not very active. Is that what you're
2353 saying?

2354
2355 Ms. McCue - That's correct. Actually, the time that I did go over to
2356 the Columbian Center and I met with the Board, I went with the president of the
2357 neighborhood association. That, as I said, was probably about 10 or 12 years
2358 ago. At that time, the neighborhood association was pretty active. But they've
2359 pretty much limited their activities recently.

2360
2361 Ms. Dwyer - Where do you live?

2362
2363 Ms. McCue - I don't know if you have another plot line up there, but
2364 I can show you my—

2365
2366 Ms. Dwyer - Just tell me your address.

2367
2368 Ms. McCue - It's 2246 Oak Bay Lane. My house actually—I think
2369 that little square you have there where the dumpster is. Yes, I'm 2246.

2370
2371 Mr. Wright - You're 2246.
2372
2373 Ms. Dwyer - You're directly behind.
2374
2375 Mr. Wright - Directly behind it.
2376
2377 Ms. McCue - Yes, I am.
2378
2379 Ms. Dwyer - Your request for the tree buffer is for noise abatement
2380 or—
2381
2382 Ms. McCue - And sight, too. The trees that are behind our homes
2383 right now are just things like oak trees where all the leaves fall off in the winter. I
2384 have some Leyland cypresses planted behind my house, but I would like some
2385 additional sight and noise buffer.
2386
2387 Mr. Wright - Your concerns would be doors and windows closed
2388 after 11:00 p.m.
2389
2390 Ms. McCue - Well, when they have functions over there, yes. I
2391 would like the doors and windows to remain closed. Right now what happens is
2392 that there's a kitchen door that faces back onto my property, and it's almost
2393 always open at night when there are parties over there. So, the loud music from
2394 the parties is coming out through there.
2395
2396 Ms. Harris - Have you seen the plans of the new facility?
2397
2398 Ms. McCue - Yes. Mr. Blankinship had e-mailed me the information
2399 that was sent to the—
2400
2401 Ms. Harris - Do you think the kitchen will still be a problem for you
2402 as far as noise based on where they're going to place the new building?
2403
2404 Ms. McCue - My understanding is I think that little white square that
2405 that's behind my house is the dumpster, and the kitchen door faces back out that
2406 way. So yes, if that door is allowed to remain open, I think it will be a problem.
2407
2408 Mr. Wright - And the dumpster not emptied prior to 8:00 a.m.
2409
2410 Ms. McCue - Correct. I mean, recently the trash company has
2411 been picking it up at 5:30 on Monday morning, and Saturday morning, which is
2412 not a very pleasant experience because it is extremely loud.
2413
2414 Ms. Harris - What about 7:00 a.m. Why do you say 8:00 a.m.?
2415

2416 Ms. McCue - Well, on the weekend, I really don't want to get up
2417 before 8:00 a.m. I would appreciate being allowed to sleep until at least 8:00.

2418
2419 Ms. Harris - Are you the only neighbor who has had these
2420 complaints?

2421
2422 Ms. McCue - No, I'm not. One of my neighbors is here. He wanted
2423 to speak to this issue. The person who lives on the other side of me had work
2424 commitments this morning, and I believe he was going to send, or try to send an
2425 e-mail to Mr. Blankinship saying that he reported the request that I was going to
2426 make to you this morning.

2427
2428 Ms. Harris - How long have they been your neighbors, for 15
2429 years?

2430
2431 Ms. McCue - The Columbian Center?

2432
2433 Ms. Harris - Yes.

2434
2435 Ms. McCue - I've lived there since the neighborhood was built, and
2436 it's about 15 years.

2437
2438 Ms. Harris - They were there first, is what you're saying?

2439
2440 Ms. McCue - Yes ma'am.

2441
2442 Ms. Harris - Okay.

2443
2444 Ms. Dwyer - Any questions by Board members of this witness?
2445 Thank you, ma'am.

2446
2447 Mr. Rogers - Good morning. My name is Brian Rogers—R-o-g-e-r-
2448 s. I live at 2250, which is next door to Carol. If you enlarge that, you can see.
2449 I'm also almost directly behind the Columbian Center as well. I don't want to be
2450 redundant. Everything that Carol said is accurate. One of my concerns—and I
2451 just heard about this today—was the retention pond. Can someone show me
2452 where that retention pond is going to be located?

2453
2454 Mr. Blankinship - Just to the west of the parking area that's just to the
2455 west of the new building. So, where that dashed property line is shown—that's
2456 the proposed property line—it would probably straddle that, be on both sides.

2457
2458 Mr. Rogers - So, it's going to be down there. Okay. A concern I
2459 have is during this construction there's a lot of runoff that comes down to the
2460 parking lot where the rescue squad is. It's shown up there. I am concerned

2461 about some drainage issues onto our property during the construction phase of
2462 this, and if those things have been taken into account.
2463
2464 Mr. Wright - Aren't they required to put up a barrier now when they
2465 do construction.
2466
2467 Mr. Blankinship - Yes. It's part of the erosion and sedimentation control.
2468
2469 Mr. Rogers - Okay. It's an issue now. There's a dry creek bed that
2470 runs right along the purple and red line there. During heavy storms, that fills up,
2471 and it does come over into our property as it is now. With further construction,
2472 that could be an issue. Anybody care to speak to that?
2473
2474 Ms. Dwyer - We can't, but the applicant can.
2475
2476 Mr. Rogers - Okay. The other thing, too, is where's the deck going
2477 to go on this? Is it going to go off the rear here? My concern with the deck is that
2478 it becomes a smoking court, and it's awfully near our property. So, if you're going
2479 to be having parties and things like that, and that becomes the smoking court,
2480 then that's going to drift over onto our property line. That's an issue for us.
2481
2482 Ms. Harris - Do you know how many feet it is between your
2483 property and the Center?
2484
2485 Mr. Rogers - Currently, I'm directly behind. It's probably 200 feet
2486 maybe.
2487
2488 Mr. Blankinship - We are requiring a 50-foot wooded buffer between the
2489 two.
2490
2491 Ms. Harris - Mr. Rogers, when you purchased your property, did
2492 you know that the center was there?
2493
2494 Mr. Rogers - Yes, I did.
2495
2496 Ms. Harris - What did you expect from the center?
2497
2498 Mr. Rogers - Well, I expected them to be reasonable.
2499
2500 Ms. Harris - Quiet?
2501
2502 Mr. Rogers - I'm sorry?
2503
2504 Ms. Harris - You expected quietness from the center?
2505

2506 Mr. Rogers - Well, I expect a reasonable—I mean, I understand
2507 weddings and things like that. When I listened to the list of things that were going
2508 on, I noticed that weddings were not mentioned. Usually, when they have a
2509 wedding or a party, that's—You know, 11:00, 11:30, even 12:00 I can handle on
2510 the weekends. But when you're starting to get to 1:00—I have two small children,
2511 and one of their rooms faces the Columbian Center. For that reason, I think it
2512 can be an issue.

2513
2514 Ms. Dwyer - Did you have anything else you wanted to add?

2515
2516 Mr. Rogers - That's it.

2517
2518 Ms. Dwyer - Any questions—

2519
2520 Mr. Rogers - I'm really concerned, though, about the drainage.

2521
2522 Ms. Dwyer - Okay. You might want to have a seat up close, and
2523 we'll ask their engineer to speak to the drainage issues.

2524
2525 Mr. Rogers - Okay. Thank you.

2526
2527 Ms. Dwyer - Mr. Lewis, would you please come forward and
2528 respond to the statements and concerns about the drainage?

2529
2530 Mr. Lewis - Yes. My name is Monty Lewis. I'm with Lewis and
2531 Associates. We're the civil engineers on this job. As Mr. Blankinship pointed out,
2532 the retention basin will be—See that dashed blue line? That's where it's going to
2533 be located. *(Who has that, Paul? Move it on up. Up. Keep on going up. Now to*
2534 *the left. Yes, right in there. Right in there is where the basin's going to be.)* That
2535 basin is to handle runoff from out entire site. So, we're going to gather all the
2536 drainage up, and put it into that basin. Also, during construction, we're worried
2537 about sediment. That's where the sediment control basin is also going to be. It's
2538 going to double as a control for sediment at first, and then we'll convert it to a
2539 retention basin. A lot of that drainage now just comes right into those woods,
2540 and into Mr. Rogers' back yard, probably. There is another basin that is the
2541 rescue squad's. The rescue squad's area drains off of that gray area into almost
2542 like where you see "plantation pipeline." They have their retention basin in that
2543 area. That now runs into the woods and kind of meanders around the woods. It
2544 might go over into his property, it might make it's way this way. Once we capture
2545 our drainage, it will help the situation a whole lot, but he may still have drainage
2546 coming from the rescue squad.

2547
2548 Ms. Dwyer - If the drainage is coming from this parcel to Mr.
2549 Rogers now, how will it be captured and diverted to this new retention basin?

2550

2551 Mr. Lewis - We'll have a curb and gutter, and catch basins, and
2552 pipe around the building to the basin. That will be designed to transport a 50-year
2553 storm. Normally, pipes are designed to handle 10 years, but we're going to
2554 oversize it for 50, because we have to get a 50-year storm to that basin for the
2555 County requirements.

2556
2557 Ms. Harris - Is that land fairly level, or do we have—Is that
2558 subdivision low-lying?

2559
2560 Mr. Lewis - It's very flat back in that wooded area, in that 50-foot
2561 wooded area. It's fairly flat. It gently comes towards the subdivision. We are still
2562 going to maintain that 50-foot buffer. The only thing that will go through the buffer
2563 is probably sanitary sewer. We won't have any basins in the buffer. We're not
2564 going to put a storm sewer back there to capture that drainage. We're going to
2565 capture it outside the 50 feet before it comes off of our parking lot.

2566
2567 Ms. Dwyer - Thank you. Any questions by Board members? All
2568 right. Can the applicant come forward again? If you have any rebuttal
2569 statements, you can make them now, and if there are any questions by Board
2570 members.

2571
2572 Mr. Kucera - I'd like to address a couple of the comments, and then
2573 I'd like to ask a representative of the Knights to address the question about music
2574 and time of activity.

2575
2576 Monty has addressed the drainage issues. As far as the deck and smoking, the
2577 layout of the proposed building has actually two decks, a rear elevated deck
2578 facing more or less southwest along the long rear side, and then there's another
2579 deck—which will probably be concrete on grade—along the northwest side. I
2580 think it's certainly possible for the operations of the new center to dictate which of
2581 those would be used for a smoking area. That, I think, would be a decision by the
2582 Knights of Columbus. I think the distance of the deck from the residential sites is
2583 well over 150 feet, probably bordering on 200 feet, depending on where the deck
2584 is. So, I question how big an issue that is for cigarette smoking that would occur
2585 on the deck. As far as an evergreen buffer, a noise buffer, I don't know how
2586 much that would contribute to reducing any noise generated by primarily band
2587 activity. There is an existing 50-foot substantial hardwood tree buffer that will be
2588 retained. I think the applicant would certainly be willing to include a Leyland
2589 cypress or similar evergreen additional buffer closer to the property line as part of
2590 the landscape plan. My only concern there would be how well it would thrive
2591 under a canopy of 50- to 80-foot deciduous trees.

2592
2593 Ms. Dwyer - That would be my concern, too. If you have a 50-foot
2594 wooded buffer, would the evergreen screen function, would it grow, would it
2595 thrive in that area.

2596

2597 Mr. Kucera - I think if that becomes an additional condition, I think
2598 the applicant would agree to landscape measures that are designed to minimize
2599 the noise transmission from the Knights of Columbus building to the adjacent
2600 residential properties, but specifying exactly what that is might be going a step
2601 too far.
2602
2603 Ms. Dwyer - So, enhanced landscape between this building and
2604 the property line.
2605
2606 Mr. Kucera - For sound and visual attenuation.
2607
2608 Ms. Dwyer - So, for example, you might be able to put some
2609 evergreens closer to the deck? Outside the buffer? I'm not sure how much
2610 space you have there.
2611
2612 Mr. Kucera - Yes, possibly. In order for them to be effective, they'd
2613 have to grow up pretty high. I think we would agree to a condition of landscape
2614 measures designed to—
2615
2616 Ms. Dwyer - How would you quantify that?
2617
2618 Mr. Blankinship - In the past, we've just added a condition requiring
2619 them to submit a landscaping plan. We'd review it, and negotiate a solution
2620 with—
2621
2622 Ms. Dwyer - With staff?
2623
2624 Mr. Blankinship - Yes.
2625
2626 Ms. Dwyer - And you're agreeable to that.
2627
2628 Mr. Kucera - Yes.
2629
2630 Ms. Dwyer - As a condition.
2631
2632 Mr. Kucera - Rick, would you like to address noise, hours of
2633 operation?
2634
2635 Mr. Kirkland - Again, my name is Rick Kirkland. We will make sure
2636 that the kitchen door stays closed. Dumpster hours? We can change that.
2637 When we build our new building, we will make every effort to place the dumpster
2638 as far as possible away from the residents that have had questions today. We
2639 do have a really good tree line there, and we really do not want to disturb that.
2640 We've taken a lot of particular design into this project to keep all the trees there,
2641 as many as possible, and to minimize it just for sound and aesthetics. We still
2642 have weddings going on at the facility. We have weddings booked up for the

2643 next couple of months that are already on the books. We have no future plans in
2644 this existing facility at this time to book any more weddings that we don't have
2645 right now. Our function right now is to keep the existing building going so all the
2646 groups that were listed can stay in there and meet, but not cost us any more
2647 money. As has been mentioned quite a times, we have tight budget constrains
2648 on the new project. So, we are happy to work with the neighbors. In fact, the
2649 neighbors have worked with us quite a few times when they found people
2650 trespassing on the rear of our property and made us aware of it. Are there any
2651 other situations?

2652
2653 Ms. Dwyer - Beyond the weddings that you already have booked,
2654 you're not going to book any additional weddings?

2655
2656 Mr. Kirkland - For the existing building.

2657
2658 Ms. Dwyer - Oh, okay.

2659
2660 Mr. Kirkland - The new building will be so much smaller, and so
2661 much more broken up, that it probably will not be really a good use to have
2662 weddings there. It will not be such a large main room. The design, as you've
2663 seen before, is kind of broken up into small rooms with partitions. It really
2664 wouldn't be conducive to a large wedding. Now, I'm not saying we wouldn't have
2665 a wedding reception or something there. If I was having a wedding with over 100
2666 people, it would be tight, especially if they brought all their friends, and
2667 neighbors, and everything else.

2668
2669 Ms. Dwyer - So, you would agree to a condition that says that the
2670 windows and doors will be closed during parties?

2671
2672 Mr. Kirkland - Yes. We have no windows that open; they're all fixed
2673 sash.

2674
2675 Ms. Dwyer - Okay.

2676
2677 Mr. Kirkland - No windows open in this building, in the existing
2678 building. The only thing is that back kitchen door does stay open. We've made a
2679 lot of the—particularly two people—aware of it. It's also a situation where
2680 someone could walk in, and we don't want that to happen either. So, I will make
2681 it known today when I get back to have that door closed at all times, except when
2682 we take the trash out. And we will move the dumpsters. We can't really move the
2683 dumpsters right now, but we will change the hours for when they're picked up.

2684
2685 Ms. Dwyer - To what hours?

2686
2687 Mr. Kirkland - I would eliminate Saturday.

2688

2689 Ms. Dwyer - Okay.
2690
2691 Mr. Kirkland - We will tell them not to pick it up until after 8:00, since
2692 that's what the nice lady wanted.
2693
2694 Ms. Dwyer - If you have a party on a Friday night—
2695
2696 Mr. Kirkland - We have two dumpsters; we can handle it.
2697
2698 Ms. Dwyer - It's not an issue having trash sit around for a couple of
2699 days?
2700
2701 Mr. Kirkland - No. It's not an issue because right now, the two we
2702 have there handle everything we have. We can tell the dumpster gentlemen to
2703 come on Monday morning first thing after 8:00, and that would handle anything
2704 that we have on Friday night or Saturday. We don't book the place every
2705 Saturday. We just have sometimes a run where we might do a Friday and
2706 Saturday back to back. It's very seldom.
2707
2708 Ms. Dwyer - Okay. Any other questions by Board members?
2709 Thank you. Any other statements by the applicant?
2710
2711 Mr. Kucera - I will close by saying that it's been my experience in
2712 working with the Knights of Columbus on the design so far, and my knowledge of
2713 their 40-year history is that they have been a good and responsible neighbor.
2714 They have provided a community asset, and it's their expectation to continue to
2715 be a good neighbor, and to provide their facility as a community asset going
2716 forward.
2717
2718 Ms. Dwyer - Would you be available to speak to Mr. Rogers about
2719 any more questions he may have about the drainage issue?
2720
2721 Mr. Lewis - Yes.
2722
2723 Ms. Dwyer - You will? Okay. Mr. Lewis, thank you. Any other
2724 questions by anyone? That concludes the case.
2725
2726 **DECISION**
2727
2728 Ms. Harris - I move that we approve this variance/use—
2729
2730 Ms. Dwyer - Let's just do one at a time.
2731
2732 Mr. Blankinship - Let's take the use permit first, if you would.
2733

2734 Ms. Harris - I move that we approve the use permit. The condition
2735 should be added to enhance landscaping by submitting a landscaping plan.
2736 Change the dumpster hours to no Saturdays, and not before 8:00 a.m. on the
2737 other days.
2738

2739 Ms. Dwyer - That would be condition 9.
2740

2741 Mr. Wright - That's two, isn't it? That would be 9 and 10, if you do
2742 two of them, the dumpster and the landscape.
2743

2744 Mr. Blankinship - The landscape I think we would add to Condition #3.
2745

2746 Ms. Harris - Okay.
2747

2748 Mr. Wright - Okay.
2749

2750 Ms. Dwyer - Okay.
2751

2752 Mr. Wright - How about closing the doors and windows after 11:00
2753 p.m.?
2754

2755 Ms. Dwyer - You meant Condition 2, Mr. Blankinship?
2756

2757 Mr. Blankinship - Yes, I'm sorry.
2758

2759 Ms. Dwyer - Let's back up here to make sure that we're all on the
2760 same page. So, they're going to submit a landscape plan, and that's an addition
2761 to Condition 2. Then additional Condition 8 will be to change the dumpster hours
2762 so there's no pickup on Saturday, and pickup after 8:00 a.m. And there's another
2763 condition about doors and windows.
2764

2765 Mr. Wright - Yes. The doors and windows shall be closed after
2766 11:00 p.m.
2767

2768 Ms. Harris - Yes, to alleviate the noise.
2769

2770 Ms. Dwyer - So, what are we saying specifically? Doors and
2771 windows closed after 10:00?
2772

2773 Ms. Harris - After 11:00 p.m.
2774

2775 Ms. Dwyer - After 11:00.
2776

2777 Mr. Blankinship - Well, 11 p.m. is their—Oh, no it's not—1:00 is their—
2778
2779 Ms. Dwyer - 1:00.

2780
2781 Mr. Wright - It's 1:00 a.m. I'll second the motion on it with those
2782 changes.
2783
2784 Ms. Dwyer - All right.
2785
2786 Mr. Wright - That's for the use permit.
2787
2788 Ms. Dwyer - Right. Motion by Ms. Harris, seconded by Mr. Wright.
2789 Any discussion?
2790
2791 Ms. Harris - I need to say that I think we handled the concerns of
2792 the neighbor as far as affecting the health, safety, and welfare of the community.
2793 I believe we took into consideration with these additional conditions the
2794 information that we heard from the neighborhood.
2795
2796 Ms. Dwyer - I agree with you, Ms. Harris. It seems that we have
2797 addressed everything other than smoking on the deck, which it seems to me with
2798 the 50-foot buffer, that should not be an issue. It's an outdoor use for smoke, I'm
2799 sure it will dissipate. It seems to me that we have addressed all the issues, and
2800 the applicant has agreed to those conditions.
2801
2802 Ms. Harris - The suggestion about the 8-foot tall trees, we don't
2803 know if they would survive.
2804
2805 Mr. Wright - That's going to be in the landscaping.
2806
2807 Ms. Harris - That'll be in the landscaping plan? Good.
2808
2809 Ms. Dwyer - Any more discussion on the use permit?
2810
2811 Mr. Blankinship - I'm sorry. Who seconded that motion?
2812
2813 Mr. Wright - I did.
2814
2815 Mr. Blankinship - Mr. Wright?
2816
2817 Ms. Dwyer - Mr. Wright.
2818
2819 Mr. Blankinship - Thank you.
2820
2821 Ms. Dwyer - Motion by Ms. Harris, seconded by Mr. Wright. All in
2822 favor say aye. All opposed say no. The ayes have it; the motion passes.
2823
2824 Mr. Blankinship - That's four to zero with Mr. Witte abstaining.
2825

2826 Ms. Dwyer - Okay.

2827

2828 After an advertised public hearing and on a motion by Ms. Harris, seconded by
2829 Mr. Wright, the Board **approved** application **UP-029-08, The Father McDonald**
2830 **Columbian Center's** request for a conditional use permit pursuant to Sections
2831 24-52(a) and 24-12(b) to replace the existing recreation facility at 2324 Pump
2832 Road (Parcel 740-752-4205), zoned A-1, Agricultural District (Tuckahoe). The
2833 Board approved the conditional use permit subject to the following conditions:

2834

2835 1. Only the improvements shown on the plot plan and building design filed with
2836 the application may be constructed pursuant to this approval. A stormwater
2837 retention pond will be added to the area west of the proposed building. Any
2838 additional improvements shall comply with the applicable regulations of the
2839 County Code. Any substantial changes or additions to the design or location of
2840 the improvements may require a new use permit.

2841

2842 2. [AMENDED] A 50-foot wooded buffer shall be maintained along the property
2843 lines adjoining residential property. A detailed landscaping and lighting plan shall
2844 be submitted to the Planning Department with the building permit for review and
2845 approval. Any utility easements or other necessary intrusions shall run generally
2846 perpendicular to the buffer to minimize clearing, and disturbed areas shall be
2847 restored to the extent reasonably practical.

2848

2849 3. Off-street parking shall be provided at a rate of one space for every 100
2850 square feet of floor area used for assembly. The parking lot, driveways, and
2851 loading areas shall be subject to the requirements of Section 24-98 of the County
2852 Code.

2853

2854 4. Hours of operation shall be limited to 8:00 am - 1:00 am for indoor activities
2855 and 8:00 am - 10:00 pm for outdoor activities.

2856

2857 5. The property shall be maintained and operated such that it does not become
2858 a nuisance to the surrounding neighborhood.

2859

2860 6. The applicant shall comply with the Division of Police recommendations
2861 regarding Crime Prevention Through Environmental Design as outlined in a
2862 memorandum dated November 3, 2008 and filed with this case.

2863

2864 7. The property shall be used only for social, recreational, and educational
2865 activities sponsored by the Father McDonald Columbian Center and its
2866 members. It shall not be used for business activity of any kind.

2867

2868 8. [ADDED] No construction activity, dumpster pickup, or other loud activities
2869 shall be conducted on the site prior to 8:00 AM Monday through Friday, and not
2870 on Saturday or Sunday.

2871
2872 9. [ADDED] Doors and windows shall be kept closed after 11:00 PM.

2873
2874
2875 Affirmative: Dwyer, Harris, Nunnally, Wright 4
2876 Negative: 0
2877 Absent: 0
2878 Abstain: 1

2879
2880

2881 **DECISION**

2882

2883 Ms. Dwyer - All right, A-028-08, which would be the variance, so
2884 called, for the Father McDonald Columbian Center.

2885

2886 Mr. Wright - I move we approve it.

2887

2888 Ms. Harris - Second.

2889

2890 Mr. Wright - On the grounds it is a temporary variance, and I think
2891 we put enough conditions in to take care of the situation that it will not be
2892 permanent. It's sort of like a use permit.

2893

2894 Ms. Dwyer - It really is a use permit.

2895

2896 Mr. Wright - It will not affect the health, safety, and welfare of the
2897 neighborhood.

2898

2899 Ms. Dwyer - All right.

2900

2901 Mr. Wright - And it's in keeping with the intent of the ordinance.

2902

2903 Ms. Dwyer - What this allows them to do is to use the existing
2904 parking lot during construction of the new building, and it will terminate after that.
2905 Do I have a second?

2906

2907 Ms. Harris - Second.

2908

2909 Ms. Dwyer - Motion by Mr. Wright, seconded by Ms. Harris. Any
2910 discussion? All in favor say aye. All opposed say no. The ayes have it; the
2911 motion passes with one abstention.

2912

2913 After an advertised public hearing and on a motion by Mr. Wright, seconded by
2914 Ms. Harris, the Board **approved** application **A-028-08, The Father McDonald**
2915 **Columbian Center's** request for a variance from Section 24-96(a) to allow off-
2916 site parking at 2324 Pump Road (Parcel 740-752-4205), zoned A-1, Agricultural
2917 District (Tuckahoe). The Board approved the variance subject to the following
2918 conditions:

2919
2920 1. This approval applies only to the requirement of Section 24-96(a) that parking
2921 shall be located "on the premises to be served." All other applicable regulations
2922 of the County Code shall remain in force.

2923
2924 2. This approval is subject to the conditions of conditional use permit UP-029-08.

2925
2926 3. When the building and parking areas shown on the plans filed with application
2927 UP-029-08 are completed, all parking for the Father McDonald Columbian Center
2928 shall be located on the premises to be served, and this approval shall expire.

2929
2930

2931 Affirmative:	Dwyer, Harris, Nunnally, Wright	4
2932 Negative:		0
2933 Absent:		0
2934 Abstain:		1

2935
2936

2937 [Mr. Witte returned to the building.]

2938
2939

2940 **A-029-08** **EMERALD LAND DEVELOPMENT** requests a
2941 variance from Section 24-95(b) to build a one-family dwelling at 21 Evergreen
2942 Avenue (Bungalow City) (Parcel 817-727-6100), zoned R-3, One-family
2943 Residence District (Varina). The lot width requirement is not met. The applicant
2944 has 50 feet lot width where the Code requires 65 feet lot width. The applicant
2945 requests a variance of 15 feet lot width.

2946

2947 Ms. Dwyer - Is there anyone here to speak to this case? Please
2948 stand so that you can be sworn.

2949

2950 Mr. Blankinship - Will you raise your right hand please? Do you swear
2951 the testimony you're about to give is the truth and nothing but the truth so help
2952 you God?

2953

2954 Ms. Dwyer - Will the applicant come forward and state your name?

2955

2956 Mr. Baker - Good morning, Madam Chair, members of the Board,
2957 staff members. I'm losing my voice as soon as I get up here. That's not a good
2958 sign. My name's Mark Baker. I'm a consultant, and I'm working with Emerald

2959 Land Development, who is the contract purchaser of the property at 21
2960 Evergreen Avenue. The request is a waiver of the lot width requirement. They
2961 currently have 50 feet. It would be required to have 65 feet under the current
2962 regulations. The variance of 15 feet would permit the construction of a single-
2963 family dwelling.

2964
2965 A little bit about the background. The property is located on the east side of
2966 Evergreen Avenue. It's between Nine Mile Road and Second Street. It's within
2967 the Bungalow City subdivision, which was platted in 1920. The lots within the
2968 subdivision were platted as 25-foot wide lots. The lots were sold in the
2969 development in combination of 50-foot, 75-foot, and 100-foot lots, although fewer
2970 50 foot than 75 and 100, as noted by staff. The subject property consists of two
2971 lots—678 and 679 from the initial subdivision. The exception standards would be
2972 applicable, which is an 8,000-square-foot lot area, and 65 feet of lot width. The
2973 lot area is met at 8,250 square feet. The lot width is not. Again, 50 feet instead of
2974 65. Interestingly, per the staff report, the lots were originally sold together. Again,
2975 that was with the intent of being developed. These were broken up in pairs,
2976 triples, and four or more. The lots were sold individually as 25-foot lots in 1946.
2977 Interestingly, they were buildable lots at that time. Technically two single-family
2978 dwellings could have been built on those lots under the conditions that were
2979 applicable at that time. The lots are now in common ownership, so they've been
2980 brought back together.

2981
2982 The request is to construct one single-family dwelling on those two lots, so it
2983 would be a consolidation of the two lots. I think this is consistent with the intent
2984 of the original subdivision. Just a word on flexibility. We had some information
2985 that we submitted at the last minute, and I don't think it made it into your
2986 package. I'm going to go ahead and pass this your way right now. This is an
2987 elevation and plan for a second floor plan. We had initially submitted a 20-foot
2988 wide single-family dwelling. You will see in your packet that that is reflected on
2989 the survey, which reflects 15-foot setbacks. So, a 20-foot structure, 15-foot
2990 setback, with a 50-foot lot. We've not submitted additional plans for a 30-foot
2991 wide, single-family dwelling, which would result in a 10-foot setback. In either
2992 case, 10 feet or 15 feet, the minimum standard would be met. The minimum
2993 zoning standard for a side yard setback would be met. Given the market, and
2994 the fact that this is going to be built for an owner occupant, we request a little
2995 flexibility on the single-family dwelling. First of all, we submitted two plans now.
2996 We would hope that we could bring something in that was consistent in character
2997 with those two plans, but perhaps not be exact one way or the other. The second
2998 is that we had hoped that rather than the 15-foot setback, which is reflected in
2999 your package, that we would need a 10-foot side yard setback.

3000
3001 Looking at the evaluation criteria, the first thing you look at is the threshold
3002 question, as determined in the Cochran case. That is whether the effect of the
3003 zoning ordinance upon the property under consideration, as it stands, interferes
3004 with all reasonable beneficial uses of the property, taken as a whole. And yes, in

3005 this condition, the threshold language definitely applies. Staff notes the property
3006 predates 1960 in the current configuration, so the Cochran test is applicable.
3007 Taken as a whole, there's no reasonable beneficial use of the property, absent
3008 the requested variance.

3009

3010 I want to take a moment to talk about hardship, the staff references in the staff
3011 report, Case A-007-08. It's a similar case in the same subdivision. It was denied
3012 in April. Because it was in the staff report, I felt the need to just briefly address
3013 that. It's a similar case. Again, the same neighborhood. I think I need to speak to
3014 the threshold question and make a distinction between those two cases. In that
3015 case, the case that was denied in April, you were dealing with an owner applicant
3016 who purchased the property at a tax sale, at auction, knowing there was an
3017 issue. So, knowing that there was a zoning issue. It was a \$2,200 purchase of
3018 the property at tax auction. The major factor in that disapproval, as I understand
3019 it in reading the motion, was that it was a self-created hardship. That motion was
3020 made by Mr. Nunnally, and seconded by Ms. Dwyer. In this case, I represent a
3021 contract purchaser, so we're not dealing with that same situation.

3022

3023 Mr. Gidley - [Off mike.] [Inaudible.]

3024

3025 Mr. Baker - I'm sorry?

3026

3027 Mr. Gidley - [Off mike.] And I believe because it was detrimental.
3028 That was one of the reasons, was the fact a lot of the neighbors came out
3029 against it.

3030

3031 Mr. Baker - I believe that you are correct in that there was
3032 discussion regarding—As is appropriate in any of these cases, you'll find that one
3033 of the tests is, is this detrimental or not. There was discussion as to whether it
3034 was detrimental. There was also a discussion as to whether this was a recurring
3035 issue. There was concern. But the actual motion that was made was that the first
3036 test was not met, and therefore that subsequent discussion, whether it was in
3037 fact detrimental or not in the minds of the Board, that never reached the test of
3038 being voted on because—And there was repeated conversation within the
3039 minutes that suggest that we won't even consider that, because it's a self-created
3040 hardship. That phrased was used.

3041

3042 Male - [Off mike.] That was [inaudible].

3043

3044 Mr. Baker - Absolutely. And I wouldn't dispute that at all. Okay,
3045 now, where was I? Again, in this case we're dealing with a contract purchaser.
3046 As a result, it's not a hardship that's been created to purchase. The current
3047 property owner purchased the two properties for 25,000 in 1980. Again, we're not
3048 dealing with a self-created hardship. If we go and look at the three tests, the first
3049 is, is the property affected by exceptional narrowness, shallowness, size, or
3050 shape, topographic condition, or other extraordinary situation or condition. I

3051 would suggest the exceptional condition is that the property is in fact narrow. The
3052 properties were sold, as staff discussed in their report and I mentioned before, in
3053 25-foot chunks. This property consists of two of those pieces. Staff recognizes
3054 that there are examples of 50-foot lots, although they are not typical in the
3055 neighborhood. These are two lots that according to staff were technically
3056 developable according to the code in 1946. They were sold independently at that
3057 time. The lots have been recombined.
3058

3059 There is no opportunity to acquire additional lots on either side; both of those
3060 properties are developed. There is no opportunity to acquire land from neighbors.
3061 Twenty-three to the north is too close. Again, I can't go onto a neighbor's
3062 property and measure, but as I can estimate off of the mapping software that I
3063 have, the Courthouse Retrieval System, I get a setback on the adjacent property
3064 of approximately 21 feet, and they have a driveway way in that intervening
3065 setback, as well as a shed or some sort of structure. So, they don't have the land
3066 to give. If you look at 19 to the south, you're dealing with three lots what is,
3067 presumable—I believe that's three lots, and I don't believe they have 15 feet to
3068 give without creating their own issue from a lot-width standpoint. That being said,
3069 they also have a driveway on the northern side of the property right here—if you
3070 can follow that bouncing marker—which would also prevent them from being able
3071 to give additional land to somehow satisfy a 65-foot lot width on 21.
3072

3073 The lot is otherwise sufficient in size to meet County lot area requirements,
3074 setback requirements, and permit the development of a single-family dwelling. I
3075 need to make sure I stress that despite that we're dealing with a substandard
3076 width, we're able to exceed the actual side yard setback requirements that would
3077 be required at 10 feet. I believe 7-1/2 feet would be required, and a total of 15.
3078 So, we'd be at 10 and a total of 20.
3079

3080 The second test is the variance would not be a substantial detriment to the
3081 adjacent property, and that the character of the district will not be changed. Well,
3082 staff notes that 50-foot lots are rare for the area, but they're not unheard of. You
3083 can't suggest that they are not part of the established character, at least at some
3084 level. There are some 50-foot lots. The subdivision was clearly not originally
3085 platted and sold with the intent of leaving this 50-foot piece undeveloped.
3086

3087 Mr. Nunnally - Mr. Baker, I understand that, but I don't think there
3088 are any 50-foot lots up there. Houses are built on more than 50-foot lots on that
3089 street. You take right across the street from this house. Somebody has a brick
3090 rancher on there, and it looks like about 150 feet frontage. All the rest of the
3091 houses that I saw up there looked like there were on more than 50-foot lots. I
3092 know they're on more than 50-foot lots, and some of them are 100 or 150. It
3093 looks like that brick rancher is 150 feet, and that's right across the street from the
3094 one you're talking about.
3095

3096 Mr. Baker - It's definitely hard to discern when you throw in the
3097 vacant lots that are abundant in the neighborhood. It adds even additional
3098 spacing between dwellings. What I would argue is that I think there are
3099 somewhere around the neighborhood of 800 lots in the neighborhood, and that
3100 there are instances where they were sold as two lots, and developed accordingly,
3101 although it may not be in this immediate block. Again, I would argue that it was
3102 the original intent of it to be sold as two 25-foot lots in same manor that someone
3103 bought three 25-foot lots and the intent was to develop it as such, and it just
3104 never was. Again, a legal lot of record that we're just now coming around to deal
3105 with the non-conformity through the variance.

3106
3107 I do want to get into talking a little bit about the size of lots, and the characteristic
3108 of a development where development has occurred on side-by-side lots. It's
3109 really difficult on a block-by-block basis to get a sense of what this neighborhood
3110 would have looked like had it all been built out on three lots or a combination of
3111 three and four, or a combination of two, and three, and four, because there is so
3112 much vacancy within it. I'll get to that in a second. Let me just continue through
3113 addressing the issue of detriment.

3114
3115 First, from a design standpoint, the submitted home design is a quality house,
3116 and it's a reasonable fit given the variety of dwelling types in the area. There are
3117 one- and two-story dwellings. There are many one-story dwellings, but there are
3118 two-story dwellings within the neighborhood as well. There is a variety of home
3119 sizes. Front yard setbacks were consistent. From a side yard setback, first from a
3120 zoning perspective. I've indicated we would exceed what would be required by
3121 the normal zoning. Second, is when you talk about the side yard setback, I know
3122 that your side yard setback is from your home to the actual property line. When
3123 you're talking about the character of the neighborhood, when you're talking about
3124 the rhythm of development that occurs when you have side-by-side development,
3125 when you're talking about two side yards that equate with really a distance
3126 between buildings. That gives you that character of development, the building
3127 space, building space rhythm. In this block, certainly, it's difficult to get a handle
3128 on that. I mean, 15, 13, 11, 9, 10, 12, 14 are vacant. Eighteen is on an unusually
3129 large lot. I would say that's not characteristic of the neighborhood. Twenty is
3130 vacant. If you were to move to the north and look where you do start to establish
3131 a rhythm—and again, within the same subdivision that was created with the
3132 same intent. If you look at, for instance—I have some photographs, actually. If
3133 you look at lots 38 through 46, which is on the west side. Let me minimize this a
3134 second because I want to show you. Okay. We'll be looking at—Can you pan just
3135 to the north on this?

3136
3137 Mr. Gidley - [Off mike.] I can just zoom in.

3138
3139 Mr. Blankinship - No, that's—

3140
3141 Mr. Baker - Or zoom out perhaps.

3142
3143 Mr. Blankinship - Yes, that's it.
3144
3145 Mr. Gidley - [Off mike.] This is as far as it goes.
3146
3147 Mr. Baker - Oh, you don't go any further than that?
3148
3149 Mr. Blankinship - That's not live G.I.S.
3150
3151 Mr. Baker - Oh, okay. I wanted to look at 25 through 28 which is
3152 actually 26 through 30, which is shown here. I also wanted to look at 38 through
3153 46, and 33 through 45, which are representative of side-by-side development,
3154 and more of a typical subdivision fashion, which were all done and consistent
3155 with the intent of the neighborhood. So, here we have pictures of 38 through 46
3156 Evergreen. These are four houses. These are just to the north on the west side
3157 of Evergreen. Four houses. Again, I use that CRS mapping software to try to
3158 estimate. I come up with somewhere around 30 feet between these houses.
3159 Again, these are 30 feet between houses.
3160
3161 Ms. Dwyer - What's the lot width for those lots?
3162
3163 Mr. Baker - Those are 75.
3164
3165 Ms. Dwyer - We're talking about 50. You're asking for a 50.
3166
3167 Mr. Baker - We're asking for a 50. What I'm getting at is that
3168 rhythm of building setback, building setback, which is what you essentially have,
3169 a 30-foot rhythm in between these buildings in terms of setbacks, building to
3170 building.
3171
3172 If we go on to—I think as you look at these, I think you have to note that where
3173 development occurred is conceived by the original subdivision. You don't have
3174 large standing undeveloped lots with existing vegetation between homes. If you
3175 buy a home and there's a lot adjacent to you, and it's overgrown with trees, that's
3176 a nice benefit to you, but it's not necessarily what the subdivision was originally
3177 intended for. Again, moving to—There's another shot of 38 to 46. Just an
3178 indication of how close some of these houses are together. Just one more shot
3179 again.
3180
3181 If we look at 33 through 45, again, it's another row of consistently-developed lots
3182 within the neighborhood. These are 75 as well. These are on the east side of
3183 Evergreen, just to the north of this property. Again, we're talking a house with a
3184 setback of—In this case, one of these setbacks is as little as 22 feet, but typically
3185 around 30 feet is the rhythm of setback between the houses. And this is 33
3186 through 45, again. Here's another view of it. Again, you're seeing that there is
3187 also a variety in terms of two-story and one-story dwellings.

3188

3189 This is the north side of the subject property. So, I you want to talk about the
3190 subject property and the adjacent, and what kind of rhythm can we expect to see
3191 here. This piece of property, this home, is, by my estimate—again through the
3192 mapping software; I didn't go out there and actually measure it on the site—is
3193 approximately 20 feet from the property line. That 20 feet—Or 21 feet. That 21
3194 feet in conjunction with the 10-foot setback that we're proposing gives you that
3195 same rhythm. You have a 30-foot distance between the houses. Again, we're
3196 meeting the zoning requirement on the property, but overall, you're getting a 30-
3197 foot space between buildings. Again, you can also see the driveway in this
3198 situation, which would prevent that owner—We didn't contact them. That would
3199 prevent that owner from being able to say hey, I'll give you 15 feet from my piece
3200 of property in order to allow you to achieve 65 feet and just go pull a permit, you
3201 know, do a lot line adjustment.

3202

3203 Here's the property to the south. Again, same situation, the driveway, which is in
3204 between the lot and the house. And here, by my estimation, it's around 31 feet.
3205 Again, the 31 feet plus the 10 feet gives you 40 feet. When you talk about the
3206 rhythm of houses, the void space between the houses, and the setback, I think
3207 you're consistent in terms of what we're proposing. I've probably beat that to
3208 death, but.

3209

3210 Let me go ahead and minimize this.

3211

3212 Ms. Dwyer - The flexibility you're asking for, you've given us a plat
3213 that shows a 15-foot side yard setback, and you're suggesting that you only have
3214 10?

3215

3216 Mr. Baker - Yes ma'am. And that reflects that second set of
3217 drawings that I handed out, which is actually a larger home at 1440 square feet.

3218

3219 Okay. I think if you talk about property values, when you talk about detriment
3220 from a property-value standpoint. The property to the north, 23, is assessed at
3221 \$76,600. The property to the south, 19, is assessed at \$101,500. That property
3222 actually sold for \$85,000 in March of 2008. We have a target sales price in
3223 hopefully the \$160,000 to \$180,000 range. It's more likely that proposed
3224 investment of a single-family will increase the values of the adjacent, rather than
3225 being a detriment. I'll just leave it at that.

3226

3227 From a dwelling size standpoint. If you look at 23, you have an 888-square-foot
3228 house. If you look at 19, you have a 984-square-foot house. These are certainly
3229 small. They're small by today's standards; they're small by the subdivision
3230 standards. I took all of the lots that front on Evergreen, which were developed
3231 between second and [unintelligible], so it's a two-block stretch. They were
3232 developed with single-family dwellings. Those dwelling range from 888 square
3233 feet at the smallest, to 2,000 square feet at the largest. So, that gives you an

3234 average of those 27 house of 1,127. We're proposing a house at 1,440 square
3235 feet. That's actually almost exactly in the middle of that range between 888 and
3236 2,000.

3237

3238 Finally, the third test is that the condition or situation of the property concerned—
3239 Actually, before I get to that, I did want to say that finally from a County
3240 perspective, we're talking about is this going to be a detriment or not. I think if
3241 we look at this from the County's perspective, it's certainly a positive thing. This
3242 is an infill development opportunity. You've seen me in here before working with
3243 the same developer. We look at these as great opportunities to really achieve
3244 infill development in a greener way, infill development in a way where we're not
3245 taxing the infrastructure in the same manner. They are certainly quality dwellings,
3246 and it's certainly an ownership opportunity. So, if you consider collectively a
3247 number of infill opportunities as the alternative to a larger subdivision, which we
3248 would be clearing vacant land, I think it's positive to go back and recapture some
3249 of these missed development opportunities.

3250

3251 Again, back to test number three. The test is that the condition or situation of the
3252 property concerned is not of so general or recurring in nature as to make it
3253 reasonably practical for the formulation of a general regulation to be adopted as
3254 an amendment to the ordinance. Staff notes that the Board occasionally sees
3255 requests for lot width variances in this neighborhood. Staff indicated that A-007-
3256 08 was denied by the Board in April due to the negative impacts the development
3257 would have imposed on adjacent property. We discussed that. Those certainly
3258 were raised. They were certainly discussed by the Board. Technically, it was
3259 denied based on the fact that it did not meet the threshold requirement, it was a
3260 self-created hardship. I think the other thing to point about that case is that also
3261 was a case that involved a waiver of a lot area requirement. In that sense, it was
3262 a case that the scope of it was a little larger than ours in that we do meet the lot
3263 area requirement.

3264

3265 As to this case and the recurring issues, definitely nothing suggests that a
3266 general regulation must be appropriate. On a County-wide basis, this is not a
3267 generally recurring problem, to our knowledge. This is just evidence of the
3268 natural difficulty in legislating ordinance requirements that can address 100% of
3269 the possible scenarios that can take place in subdivisions. Locally, there may be
3270 additional future requests, the merits of which will vary on a case-by-case basis.
3271 Staff mentioned in the comments that each of these needs to be looked at
3272 individually. In this case, I would suggest that the fact that there's no adjacent
3273 vacant land for acquisition to distinguish this request from some of the other 50-
3274 foot lot groupings. Certainly, this request is clearly distinguishable from the past
3275 case, the April cause that was denied, based on the fact that they did not even
3276 meet the threshold question.

3277

3278 So, in summary, we're dealing with a property taken as whole for which there is
3279 no reasonable use without a variance. Staff also agreed with that in their

3280 comments. The owner has a reasonable expectation for the beneficial use of the
3281 property, which as it stands today cannot be accommodated. The three tests are
3282 met. And we talked about the flexibility, the idea of the 10-foot side yards, and
3283 the idea of we've shown you two home plans. And we'd like to do something
3284 consistent with the character of those.

3285

3286 Thank you for your consideration. We ask you to rule in favor of the applicant
3287 based on the demonstrated hardship. I'll take any questions you might have.

3288

3289 Ms. Dwyer - Thank you, Mr. Baker. Any questions by Board
3290 members? No questions? Thank you, Mr. Baker. We had other people who
3291 wanted to speak. Please come to the podium. Good morning.

3292

3293 Mr. Burrell - Good morning. My name is William Burrell. I live at
3294 5716 Nine Mile Road, and I'm speaking in opposition of granting this variance.

3295

3296 First of all, there are eight homes in the immediate area within Bungalow City that
3297 are up for sale. They've been up for sale for over a period of nine months. I
3298 understand with the economy and so forth, but still, it's been over nine months
3299 that the houses have been vacant and they're up for sale. Liberty Homes is
3300 building a subdivision a quarter of a mile up from Nine Mile Road, and I believe
3301 they're asking for 15 homes to go in that home site. When I built my house back
3302 in 1988—I've been a lifelong resident of Bungalow City. I was a past president of
3303 the civic association. It was a volunteer association, so we are currently not
3304 active now.

3305

3306 I was a lot finder for Ed Donovan during the '70's when we first got water and
3307 sewage in our neighborhood. Prior to that, homes had to meet the requirements
3308 of 75 feet in order to have proper sewage and well water. Now, the requirement
3309 with the water and sewage is 65 feet. So, what we're doing now is if this
3310 variance is granted at 65 feet, it's opening the door for precedence on Bungalow
3311 City. We don't want these houses in our neighborhood. It dictates a clustering.
3312 Just about all the 75-foot lots are gone in Bungalow City, and the buildings.
3313 Through tax sales and other means, have acquired a lot of the 50-foot lots that
3314 are adjoined. We don't want these in our neighborhood. It decreases the
3315 property value of the homes. Right now, my house is assessed at 183. The fair
3316 market value is 225. The people from the New Bridge subdivision across the
3317 street have a tendency to come over into our neighborhood. By having a lot of
3318 the homes that they're building now—A \$160,000 home is a nice home, but it's
3319 not a \$300,000 home, which would attract a different clientele of purchaser.
3320 Those people are coming over and enjoying the park and so forth, and co-
3321 mingling with the people in the neighborhood. It's fine to do that; however, the
3322 attraction of certain people to the neighbor is unnecessary.

3323

3324 The properties at 19 Evergreen Avenue and 17 Evergreen Avenue are not
3325 owner-occupied. They have been rental properties for the last two years.

3326 Property 19 is for sale, and that's the property adjoining to 21 Evergreen Avenue.
3327 As he so stated, if the variance is granted, it's only going to give 10 feet side
3328 yard, which 10 feet, how long is that, how wide is that when most of the homes
3329 that were built on the 75-foot lots show at least 30 feet in between the side
3330 homes. Therefore, at 10 feet, the house at 21, you could almost jump out the
3331 window and hit the side of the house at 19.

3332
3333 In closing, I ask you all, do not grant the variance, because it decreases the
3334 property values, and if people want to buy \$160,000 homes, they need to go
3335 somewhere else, and build those homes in that neighborhood. Like I said, they
3336 have Liberty Homes up the street within a quarter of a mile of the neighborhood.
3337 That offers a much better home, and a subdivision of its own with the normal
3338 houses.

3339
3340 Ms. Dwyer - Thank you, Mr. Burrell. Any questions by Board
3341 members for Mr. Burrell? Is there anyone else to speak to this case? I would
3342 ask you not to be repetitive.

3343
3344 Mr. Gray - Good morning. My name is Herman Gray.

3345
3346 Ms. Dwyer - Gray?

3347
3348 Mr. Gray - Gray. G-r-a-y. I actually live on Evergreen Avenue.

3349
3350 Mr. Wright - You live where?

3351
3352 Mr. Gray - On Evergreen Avenue.

3353
3354 Mr. Wright - What's your number?

3355
3356 Mr. Gray - 28. I'm a couple of doors down from 21.

3357
3358 Ms. Dwyer - Okay.

3359
3360 Mr. Gray - They were talking about the consistency of the
3361 neighborhood. I mean, just by the diagram alone, that matches nothing in the
3362 neighborhood. Nothing. You talk about square footage. You're going up in the
3363 air to try to accomplish this. In that entire block, we may only have about two 2-
3364 story houses, maybe three. But none of them are built on a lot that size, not one.
3365 If you allow this to come in, he's going to change the structure of the entire
3366 neighborhood. Now, talking about detriment, I don't have any statistics or
3367 anything, but if you get a lot that you know is under the code, then you created
3368 this yourself, knowing that you can't acquire anything on either side. As the
3369 gentleman brought up about empty lots in the neighborhood, there were plenty of
3370 opportunities to acquire other pieces of property in that neighborhood, if he
3371 actually wanted to add to the value of the neighborhood.

3372

3373 Like I said, you can look at the entire neighborhood. Mainly, we're ranch-style
3374 homes there. Everybody has that certain size lot. My father lives at 18. He moved
3375 down here with that size lot, the same reason I did, to get a way from the
3376 closeness. If you allow this to come in, you may establish something where
3377 you're going to take away from all of that.

3378

3379 I thank you for listening to me this morning.

3380

3381 Ms. Dwyer - Thank you, sir. Any questions by Board members?
3382 Anyone else to speak to the case?

3383

3384 Mr. Ham - Good morning.

3385

3386 Ms. Dwyer - Good morning.

3387

3388 Mr. Ham - My name is Nathaniel Ham—H-a-m. I live at 27
3389 Evergreen Avenue. I had a conversation with the gentleman next door at 23
3390 Evergreen. At the time we were talking, he wanted to put a two-family home
3391 there. I told him like this, no, you can't do this. So now if you all let him have this
3392 piece of property to put a home there, that will leave the door open for him to tear
3393 that house down that he has there, which the house is run down. He can tear
3394 that house down and put two there at 50-foot lengths. That would be next door to
3395 me. I hope you don't let him build a house there on that piece of property
3396 because it will hurt the neighborhood. Thank you.

3397

3398 Ms. Dwyer - Thank you, sir. Any questions by Board members?
3399 So, your concern is that if we approve this, it will establish a precedent in the
3400 neighborhood that will open the door to smaller lots being developed.

3401

3402 Mr. Ham - Yes.

3403

3404 Ms. Dwyer - Okay. Thank you. Any other speakers?

3405

3406 Mr. Gray - Good morning.

3407

3408 Ms. Dwyer - Good morning.

3409

3410 Mr. Gray - My name is Hamilton L. Gray—G-r-a-y. I live across
3411 the street from where he is talking about building his house.

3412

3413 Mr. Wright - What number?

3414

3415 Mr. Gray - 18. I brought this here so you can look at it. There's
3416 no way I want him to build that thing across from me. My carport is bigger than
3417 what he's going to build across the street. When I first came to Bungalow, we

3418 had to have 75 feet to build on. All those pictures he showed you were back in
3419 the 1930's when they had to have septic tanks and wells. That's why they built
3420 smaller houses. You couldn't build a big house on the lot because you wouldn't
3421 have anywhere to put your septic tank. That's all I wanted to say. Thank you.

3422

3423 Ms. Dwyer - Thank you, sir. Would you like your photographs
3424 back?

3425

3426 Mr. Gray - Yes, I appreciate it.

3427

3428 Ms. Harris - When did you move into Bungalow City?

3429

3430 Mr. Gray - '82.

3431

3432 Ms. Dwyer - Thank you, sir. Any other speakers against the case?
3433 The applicant will come forward. You may have three minutes to rebut.

3434

3435 Mr. Baker - I certainly appreciate the neighbors' concerns. I think,
3436 though, at the end of the day, this is really about a property rights' questions. It's
3437 a legal lot of record. It was created for this purpose, it was sold for this purpose.
3438 It's been carried in one way or another in its current configuration. We were just
3439 looking forward to come around full circle and develop it as this particular lot was
3440 originally intended. There certainly were some concerns that were raised about
3441 the neighborhood as a whole, vacancies, number of properties for sale,
3442 individuals from adjacent neighborhoods coming into the neighborhood. I don't
3443 know that really is applicable in any way to our specific request. There was
3444 some mention of concern about quality. It was mentioned that Liberty Homes
3445 was, I believe, building a quality product down the street that people could go
3446 and potentially purchase. We've been dealing with Liberty Homes as a potential
3447 builder on this site. If quality is that big of a concern, that second set of drawings,
3448 the larger house, is something that we would be willing to—You know, we would
3449 prefer not to, but we would be willing to commit to that if you want to lock that in.

3450

3451 I think that's essentially it. I think there was concern over this being repetitive, or
3452 this being a precedent. Again, I think you're going to have to deal with those
3453 issues on a case-by-case basis. It's not setting a precedent. We've established
3454 specific conditions based on the way that we're approaching this that we think
3455 provides that same rhythm—again, from a development standpoint—as some of
3456 these existing lots, and certainly with regards to 23 if they were to try to break
3457 that up and create—tear down a structure, create more in the lots. You know
3458 better than any that that is something that would be able to come before this
3459 body in the form of a variance and still meet the hardship test. That's essentially
3460 it again. We view it as a property rights' issue, and staff had indicated that
3461 without some relief, it's a [unintelligible]. Thank you.

3462

3463 Ms. Dwyer - Thank you, sir. Any questions by Board members?
3464 That concludes the case.

3465

3466 **DECISION**

3467

3468 Mr. Nunnally - I move we deny it. The reason for it is I think it will be
3469 detrimental to the other properties close by there.

3470

3471 Ms. Harris - I second that motion. I think when we look at the three
3472 criteria as far as the size of the lot being 50 feet instead of the required 65 feet,
3473 we will see one violation there. As far as being a substantial detriment to
3474 adjacent property and the character of the district, because there are other lots
3475 within that neighborhood, we may have recurring cases asking to build on
3476 substandard lots. As far as being recurring, because there are several—we think
3477 someone said 800 lots—we might be revisiting this type of thing. I think it's
3478 important that we set the right precedence here. That's why I'm seconding the
3479 motion.

3480

3481 Ms. Dwyer - Motion by Mr. Nunnally, seconded by Ms. Harris. Any
3482 discussion?

3483

3484 Mr. Wright - I just want to say this. I think this is an unconstitutional
3485 taking of property. I realize it's narrow, but based on the presentation, I think
3486 there would be sufficient area between this house and the other houses. If you
3487 go look at the others, I think it'll be about the same. I think the house would be an
3488 improvement to those on either side of it. I think it would improve the
3489 neighborhood rather than be detrimental to the neighborhood.

3490

3491 Ms. Dwyer - I agree with Ms. Harris that I think it would be
3492 detrimental to the neighborhood because the vast majority of the lots are on lots
3493 that exceed 50 feet. I think it would be detrimental to the neighborhood in the
3494 sense that it would inject a two-story house among single-story houses, it would
3495 place a house on a 50-foot lot where others are so much wider lots, not to
3496 mention the fact that it would be a substandard lot. I also think this is a recurring
3497 issue that should be addressed by the legislature. Any more discussion?

3498

3499 Mr. Wright - It hasn't been addressed in 35, 40 years, or 60 years.

3500

3501 Mr. Witte - I personally feel that it may put some life into the
3502 neighborhood with a new home, since there are so many for sale. I feel like it
3503 probably would improve the overall neighborhood, with the exception of a few
3504 houses.

3505

3506 Ms. Dwyer - Any more discussion? Motion to deny by Mr.
3507 Nunnally, seconded by Ms. Harris. All in favor say aye. All opposed say no. The
3508 ayes have it; the motion carries three to two.

3509

3510 After an advertised public hearing and on a motion by Mr. Nunnally seconded by
3511 Ms. Harris, the Board **denied** application **A-029-08, Emerald Land**
3512 **Development's** request for a variance from Section 24-95(b) to build a one-
3513 family dwelling at 21 Evergreen Avenue (Bungalow City) (Parcel 817-727-6100),
3514 zoned R-3, One-family Residence District (Varina).

3515

3516

3517	Affirmative:	Dwyer, Harris, Nunnally	3
3518	Negative:	Wright, Witte	2
3519	Absent:		0

3520

3521

3522 **UP-028-08** **A & F I, LLC** requests a conditional use permit
3523 pursuant to Sections 24-52(d) and 24-103 to extract materials from the earth at
3524 3740 Charles City Road (Parcels 828-701-0583 and 827-702-8810), zoned A-1,
3525 Agricultural District (Varina).

3526

3527 Ms. Dwyer - All those who are interested in speaking to this case,
3528 please come forward and be sworn.

3529

3530 Mr. Blankinship - Will you raise your right hand please? Do you swear
3531 the testimony you're about to give is the truth and nothing but the truth so help
3532 you God?

3533

3534 Ms. Dwyer - Good morning. Please state your name and your
3535 case.

3536

3537 Mr. Mitchell - Good morning. Mitch Mitchell with Timmons Group,
3538 representing the Charles City Road case.

3539

3540 Mr. Wright - I didn't catch your last name.

3541

3542 Mr. Mitchell - Mitchell—M-i-t-c-h-e-l-l.

3543

3544 Mr. Wright - Pull that microphone up. I don't know why we can't
3545 get some sensitive microphones in the County, but I can't halfway hear what's
3546 being said.

3547

3548 Mr. Mitchell - Good morning. Mitch Mitchell with Timmons Group.
3549 M-i-t-c-h-e-l-l.

3550

3551 Ms. Dwyer - And state your case.

3552

3553 Mr. Mitchell - The purpose is to remove material from the site as
3554 [unintelligible] site for development on another property.

3555
3556 Ms. Dwyer - Have you read the conditions suggested by staff?
3557
3558 Mr. Mitchell - Yes, we have.
3559
3560 Ms. Dwyer - Are you in agreement with all of those conditions?
3561
3562 Mr. Mitchell - Yes.
3563
3564 Ms. Dwyer - Okay.
3565
3566 Mr. Wright - Tell us a little bit about what you want to do.
3567
3568 Mr. Mitchell - I'll let the owner speak to that, just to make sure I
3569 don't—
3570
3571 Mr. Wright - Give us some idea of what we're talking about for the
3572 record.
3573
3574 Mr. Dudding - Sure. My name is Carlton Dudding—D-u-d-d-i-n-g.
3575 Some time ago, a company approached us. We have this parcel there, right
3576 there on Beulah and Charles City Road. The company who was awarded the
3577 contract for the airport connector, from Pocahontas Parkway in the airport, was
3578 looking for some material in that area so they could construct that project. The
3579 material on this project is really good, and it's very suitable for that. So, our
3580 intent is to go ahead and do this borrow area, supply them materials so they can
3581 do the road construction there for the airport connector.
3582
3583 Mr. Wright - How long will this go on?
3584
3585 Mr. Dudding - The last time we spoke with them, I think they were
3586 finishing up some engineering because they had been awarded, I guess it was—
3587 And VDOT had finally approved their contract. I think they were looking at a 24-
3588 to 30-month window, and I think that the schedule that's here within this
3589 conditional use permit application reflects that time period. I think we're looking
3590 at to have most of the material, if not all of it, removed by the end of I think it's
3591 2010, with most of the, "putting the site back into shape" by the end of 2011.
3592
3593 Mr. Wright - The staff report indicates that when you complete this,
3594 you will restored to a grade which is about two feet above the existing grade?
3595
3596 Mr. Dudding - Yes, in the one area, sir.
3597
3598 Mr. Wright - Would you have any problem limiting that to what
3599 exists now?
3600

3601 Mr. Dudding - No.
3602
3603 Ms. Dwyer - That's what Condition 35 requires. It requires the site
3604 to be filled only to the elevation existing prior to—
3605
3606 Mr. Wright - I just wanted to point that out. You said you've read
3607 the conditions—
3608
3609 Mr. Dudding - Yes sir.
3610
3611 Mr. Wright - —and you're agreeable to the conditions?
3612
3613 Mr. Dudding - Absolutely.
3614
3615 Ms. Dwyer - Condition 33 states that backfill shall be compacted to
3616 95% density and a lift of six inches. That is the kind of standard I've been looking
3617 for for years. I'm really happy to see it.
3618
3619 Mr. Blankinship - We're recommending it here because the County is
3620 looking at putting a road on the property.
3621
3622 Ms. Dwyer - Right.
3623
3624 Mr. Blankinship - We didn't want to have them come and disturb all that
3625 soil, and then the County be in the position of having to re-compact it in order to
3626 do that road.
3627
3628 Ms. Dwyer - Right. But, I mean, I have been looking for years for
3629 an objective standard for how the land would be restored, some kind of objective
3630 compaction standard, and this seems to be it. This is not just for the road area,
3631 this is for the entire site, as I understand it.
3632
3633 Mr. Dudding - Yes.
3634
3635 Ms. Dwyer - But will it be sufficient to support a roadway in the
3636 future?
3637
3638 Mr. Dudding - Absolutely. In our meeting with staff when we were
3639 contemplating this, that was one of the critical concerns that when they finally
3640 did—They're redoing Beulah Road is part of, I think of the master plan or the
3641 road plan.
3642
3643 Ms. Dwyer - Right.
3644

3645 Mr. Dudding - And that was a primary concern of theirs, so we had
3646 to satisfy. And we're happy to satisfy that, so when it becomes time to construct
3647 that, it's a fairly straightforward process.
3648

3649 Ms. Dwyer - If you wanted to build houses on this site as well, is
3650 this an appropriate standard to use for that?
3651

3652 Mr. Dudding - Yes, and actually for other things as well. I think that
3653 area, in particularly the—I've gone to some of the meetings on the Henrico
3654 County 2026. The area is A-1, but it has the ability to go to industrial. It may be
3655 industrial now, I'm not sure which. I think that area is planned industrial in the
3656 future as part of that development around the airport.
3657

3658 Mr. Witte - Has the backfill been rated to CBR to any degree?
3659

3660 Mr. Dudding - No. The primary backfill that we'll use on that will—As
3661 long as we meet that 95% compaction and the six-inch list, we should be fine. I
3662 don't think it's been rated to any kind of CBR. I don't know that that's warranted
3663 on this.
3664

3665 Mr. Nunnally - When you're delivering this material, taking this
3666 material from the property, what kind of route are you going to take? What roads
3667 are you going to use?
3668

3669 Mr. Dudding - The reason this site was very attractive to the
3670 company doing the connector, it's only 1.9 miles from there down to where that
3671 project starts there at the airport, so you'll be going straight down Charles City
3672 Road.
3673

3674 Mr. Nunnally - Charles City Road. You're not going to come up
3675 Beulah Road at all.
3676

3677 Mr. Dudding - Not to the best of my knowledge. I think everything
3678 goes the other direction from there.
3679

3680 Ms. Harris - Do you have other sites in this area such as this?
3681

3682 Mr. Dudding - Borrow areas? Well, the one thing we do have is—
3683 One of the partners of this property is also one of the partners in the East End
3684 Landfill, and we operate that construction and demolition debris landfill there.
3685 That's the only other property we have in the area, ma'am.
3686

3687 Ms. Harris - Where is that one located?
3688

3689 Mr. Dudding - Darbytown Road.
3690

3691 Ms. Harris - Darbytown Road?
3692
3693 Mr. Dudding - Yes ma'am.
3694
3695 Mr. Witte - Where is the construction entrance going to be?
3696
3697 Mr. Dudding - Right on the side of Beulah.
3698
3699 Mr. Witte - Okay. So, they'll be coming out onto Beulah Road.
3700
3701 Mr. Dudding - Yes, I misspoke. Yes, we'll come out onto Beulah
3702 and then turn right onto Charles City, or turn west on Charles City.
3703
3704 Mr. Wright - That's what I was going say, because that's what it
3705 says.
3706
3707 Mr. Witte - How much traffic do you anticipate once mining
3708 starts? Dump truck wise.
3709
3710 Mr. Dudding - I think they were looking at probably 1,000 or 1,500
3711 tons a day. So, for a period of about a year, you'd be looking at 50 to 75 trucks a
3712 day.
3713
3714 Ms. Harris - Aren't there other sites near your proposed site?
3715 Aren't there other sites doing the same thing with all the trucks on this road,
3716 Charles City Road in that area?
3717
3718 Mr. Dudding - Not that I'm aware of. I think one company had an old
3719 borrow pit over there that had used when they constructed 295. But I'm not
3720 aware of any other borrow pits over there, at least to my knowledge, doing any
3721 borrow right now. I think there's mainly residential construction. Mitch, are you
3722 aware of any?
3723
3724 Mr. Blankinship - There are two that have been approved by this Board
3725 previously along the right-of-way of 895—one at Britton Road, and one at
3726 Monahan Road. Both of those were renewed in the last year specifically to
3727 provide for the airport connector project.
3728
3729 Ms. Harris - They all use Charles City Road, right, as a point of
3730 exit?
3731
3732 Mr. Blankinship - They would probably have to travel for part of
3733 Charles City Road. Those sites don't front on Charles City Road.
3734
3735 Ms. Harris - Thank you.
3736

3737 Ms. Dwyer - Mr. Blankinship, I'm concerned about a conflict in the
3738 case because the conditions required the site to be restored to the elevation that
3739 existed prior to excavation, but the staff report seems to indicate that the
3740 proposal was to restore it so that it was two feet above.

3741
3742 Mr. Blankinship - Right.

3743
3744 Ms. Dwyer - So, is there a document that says that it will be
3745 restored to two feet above? I just want to make sure that we don't leave here with
3746 conflicting documents.

3747
3748 Mr. Blankinship - The way we resolve that is one of the conditions
3749 requires them to submit their erosion and sediment control plan, which it takes a
3750 lot of engineering to get from here to that.

3751
3752 Ms. Dwyer - Right.

3753
3754 Mr. Blankinship - When we review that plan, we will ensure that it
3755 complies with Condition 35.

3756
3757 Mr. Witte - That erosion control plan will list the elevations, the
3758 topo?

3759
3760 Mr. Blankinship - Yes, sir.

3761
3762 Ms. Dwyer - Are there any other questions of the applicant by
3763 Board members? Anyone else to speak to the case? Please come forward.

3764
3765 Mr. Blankinship - Will you raise your right hand please? Do you swear
3766 the testimony you're about to give is the truth and nothing but the truth so help
3767 you God?

3768
3769 Mr. Higginbotham - Members of the Board, my name is Jay
3770 Higginbotham. I was before you in March, I believe. At that time, we did get the
3771 approval of two possible pits for the site. The one pit was off Britton Road, which
3772 would require traffic up and down Britton Road and onto Charles City Road. But
3773 the other pit, the Spanos' track, was off Monahan, and that would allow off-road
3774 trucks to haul to the site and avoid the traffic on Charles City Road coming in on
3775 that end of the project.

3776
3777 I just wanted to make the Board aware that the Commission also asked—and I
3778 don't think they required it, and I can't remember who asked—but did ask me not
3779 to open up a borrow pit on the north side of 895, which was part of our larger pit.
3780 We actually constructed 895. And in March, I agreed that we would not open that
3781 section north of 895. I don't have the plat to show you, but it's certainly in the

3782 record, and on the current use permit, too. If you have any questions, I'll be glad
3783 to—

3784
3785 Ms. Dwyer - And who do you represent?
3786

3787 Mr. Higginbotham - Henrico Properties actually owns the real estate, and I
3788 work for English Construction Company.
3789

3790 Ms. Dwyer - And your point is? I'm sorry, I missed your point.
3791

3792 Mr. Higginbotham - Well, the question I think Mrs. Dwyer asked, did the
3793 material have to go on the road. The Spanos pit, which you approved, does not
3794 require material to be trucked up and down the road.
3795

3796 Ms. Dwyer - Are you talking about the other—
3797

3798 Mr. Higginbotham - The other pit that you approved in March, yes ma'am.
3799

3800 Ms. Dwyer - All right. Any questions of Mr. Higginbotham by Board
3801 members? Thank you.
3802

3803 Mr. Higginbotham - Thank you.
3804

3805 Ms. Dwyer - That completes the case.
3806

3807 **DECISION**
3808

3809 Mr. Wright - I move we approve it. I think that based on testimony,
3810 it will not affect the health, safety, and welfare of the area, or the persons working
3811 in the neighborhood. It will be in accordance with the zoning ordinance, the spirit
3812 of the ordinance.
3813

3814 Mr. Nunnally - Second.
3815

3816 Ms. Dwyer - Motion by Mr. Wright, seconded by Mr. Nunnally to
3817 approve this conditional use permit. Any discussion?
3818

3819 Ms. Harris - Yes. I definitely feel that it will affect the health and
3820 safety putting more trucks on Charles City Road. There are so many mining
3821 sites, and borrow pits, and landfills in the Darbytown/Charles City area, that I
3822 can't in good conscious approve, though the work might be worthwhile. I think
3823 there are enough sites to extract material for whatever purpose was earmarked
3824 here.
3825

3826 Mr. Wright - This will only be for 1.9 miles. That's the stint of the
3827 trucks on the road, almost as far as I can see. It's not like it's going to be a long
3828 haul on the road.

3829
3830 Ms. Harris - I use that road sometimes. Though I live in the
3831 Fairfield District, I do use that road sometimes. It is very dangerous when you
3832 come from Airport Drive and turn into Charles City Road, because those trucks
3833 really move out, and you better be ready to step on the accelerator to get out of
3834 their way. So, I would definitely oppose this.

3835
3836 Mr. Wright - Another thing, too, Ms. Harris, is if this were going to
3837 be a long-term thing, I would be opposed to it.

3838
3839 Ms. Harris - Yes, yes. I understand.

3840
3841 Mr. Wright - It's going to be a very short term, very small area. The
3842 area that it's going to be used for is right there at it. It makes sense, rather than
3843 hauling it from other distances there.

3844
3845 Ms. Dwyer - Any more discussion?

3846
3847 Mr. Witte - Yes. I do have some concerns about the traffic, the
3848 size of the trucks, and the speed, but I think that could probably be taken care of
3849 by the police department, and maybe the road department by changing the
3850 speed limit for that 1.9 miles or whatever. I do feel that the purpose for the airport
3851 connector is very important for the area and the region. I think it would be more
3852 important for the police department and road department to look at the damage
3853 that may be caused, rather than us.

3854
3855 Ms. Dwyer - All right. Thank you, Mr. Witte. Any other discussion.
3856 All right. Motion by Mr. Wright, seconded by Mr. Nunnally. All in favor of the
3857 motion to approve the conditional use permit request say aye. All opposed say
3858 no. The ayes have it; the motion carries four to one.

3859
3860 After an advertised public hearing and on a motion by Mr. Wright, seconded by
3861 Mr. Nunnally, the Board **approved** application **UP-028-08**, the **A & F I, LLC**
3862 request for a conditional use permit pursuant to Sections 24-52(d) and 24-103 to
3863 extract materials from the earth at 3740 Charles City Road (Parcels 828-701-
3864 0583 and 827-702-8810), zoned A-1, Agricultural District (Varina). The Board
3865 approved the conditional use permit subject to the following conditions:

3866
3867 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24
3868 of the County Code. The operation shall be conducted in accordance with the
3869 plans and narrative submitted with the application, except as noted below.

3870

3871 2. Before beginning any work, the applicant shall provide a financial guaranty in
3872 an amount of \$3,000 per acre for each acre of land to be disturbed, for a total of
3873 \$25,350, guaranteeing that the land will be restored to a reasonably level and
3874 drainable condition, consistent with the elevation before the beginning of
3875 excavation. This permit does not become valid until the financial guaranty has
3876 been approved by the County Attorney. The financial guaranty may provide for
3877 termination after 90 days notice in writing to the County. In the event of
3878 termination, this permit shall be void, and work incident thereto shall cease.
3879 Within the next 90 days the applicant shall restore the land as provided for under
3880 the conditions of this use permit. Termination of such financial guaranty shall not
3881 relieve the applicant from its obligation to indemnify the County of Henrico for any
3882 breach of the conditions of this use permit. If this condition is not satisfied within
3883 90 days of approval, the use permit shall be void.

3884

3885 3. Before beginning any work, the applicant shall apply for and obtain approval
3886 of erosion and sedimentation control plans from the Department of Public Works
3887 (DPW). The erosion control bond necessary for approval of the plan shall remain
3888 active throughout the life of the project until release by DPW. Throughout the life
3889 of the operation, the applicant shall continuously satisfy DPW that erosion and
3890 sedimentation control is performed and maintained in accordance with the
3891 approved plan. The applicant shall provide certification from a licensed
3892 professional engineer that dams, embankments and sediment control structures
3893 meet the approved design criteria as set forth by the State. If this condition is not
3894 satisfied within 90 days of approval, the use permit shall be void.

3895

3896 4. Before beginning any work, the applicant shall obtain a mine license from the
3897 Virginia Department of Mines, Minerals and Energy. If this condition is not
3898 satisfied within 90 days of approval, the use permit shall be void.

3899

3900 5. Before beginning any work, the areas approved for mining under this permit
3901 shall be delineated on the ground by five-foot-high metal posts at least five
3902 inches in diameter and painted in alternate one foot stripes of red and white.
3903 These posts shall be so located as to clearly define the area in which the mining
3904 is permitted. They shall be located, and their location certified, by a certified land
3905 surveyor. If this condition is not satisfied within 90 days of approval, the use
3906 permit shall be void.

3907

3908 6. In the event that the approval of this use permit is appealed, all conditions
3909 requiring action within 90 days will be deemed satisfied if the required actions are
3910 taken within 90 days of final action on the appeal.

3911

3912 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all
3913 state and local regulations administered under such act applicable to the
3914 property, and shall furnish to the Planning Department copies of all reports
3915 required by such act or regulations.

3916

- 3917 8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight
3918 Savings Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.
3919
- 3920 9. No operations of any kind are to be conducted at the site on Saturdays,
3921 Sundays, or national holidays.
3922
- 3923 10. All means of access to the property shall be from the proposed entrance
3924 onto Beulah Road as shown on the plans submitted with this application.
3925
- 3926 11. The applicant shall erect and maintain gates at all entrances to the property.
3927 These gates shall be locked at all times, except when authorized representatives
3928 of the applicant are on the property.
3929
- 3930 12. The applicant shall post and maintain a sign at the entrance to the mining
3931 site stating the name of the operator, the use permit number, the mine license
3932 number, and the telephone number of the operator. The sign shall be 12 square
3933 feet in area and the letters shall be three inches high.
3934
- 3935 13. The applicant shall post and maintain "No Trespassing" signs every 250 feet
3936 along the perimeter of the property. The letters shall be three inches high. The
3937 applicant shall furnish the Chief of Police a letter authorizing the Division of
3938 Police to enforce the "No Trespassing" regulations, and agreeing to send a
3939 representative to testify in court as required or requested by the Division of
3940 Police.
3941
- 3942 14. Standard "Truck Entering Highway" signs shall be erected on Beulah Road
3943 on each side of the entrances to the property. These signs will be placed by the
3944 County, at the applicant's expense.
3945
- 3946 15. The applicant shall post and maintain a standard stop sign at the entrance to
3947 Beulah Road.
3948
- 3949 16. The applicant shall provide a flagman to control traffic from the site onto the
3950 public road, with the flagman yielding the right of way to the public road traffic at
3951 all times. This flagman will be required whenever the Division of Police deems
3952 necessary.
3953
- 3954 17. The entrance road shall be paved from its intersection with Beulah Road for
3955 its entire length, at a width of 24 feet. All roads used in connection with this use
3956 permit shall be effectively treated with calcium chloride or other wetting agents to
3957 eliminate any dust nuisance.
3958
- 3959 18. The operation shall be so scheduled that trucks will travel at regular intervals
3960 and not in groups of three or more.
3961

- 3962 19. Trucks shall be loaded in a way to prevent overloading or spilling of
3963 materials of any kind on any public road.
3964
- 3965 20. The applicant shall maintain the property, fences, and roads in a safe and
3966 secure condition indefinitely, or convert the property to some other safe use.
3967
- 3968 21. If, in the course of its preliminary investigation or operations, the applicant
3969 discovers evidence of cultural or historical resources, or an endangered species,
3970 or a significant habitat, it shall notify appropriate authorities and provide them
3971 with an opportunity to investigate the site. The applicant shall report the results of
3972 any such investigation to the Planning Department.
3973
- 3974 22. If water wells located on surrounding properties are adversely affected, and
3975 the extraction operations on this site are suspected as the cause, the effected
3976 property owners may present to the Board evidence that the extraction operation
3977 is a contributing factor. After a hearing by the Board, this use permit may be
3978 revoked or suspended, and the operator may be required to correct the problem.
3979
- 3980 23. Open and vertical excavations having a depth of 10 feet or more, for a period
3981 of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to
3982 protect the public safety.
3983
- 3984 24. Topsoil shall not be removed from any part of the property outside of the
3985 area in which mining is authorized. Sufficient topsoil shall be stockpiled on the
3986 property for respreading in a layer with five inches of minimum depth. All topsoil
3987 shall be stockpiled within the authorized mining area and provided with adequate
3988 erosion control protection. If the site does not yield sufficient topsoil, additional
3989 topsoil shall be brought to the site to provide the required five-inch layer of cover.
3990 All topsoil shall be treated with a mixture of seed, fertilizer, and lime as
3991 recommended by the County after soil tests have been provided to the County.
3992
- 3993 25. No offsite-generated materials shall be deposited on the mining site without
3994 prior written approval of the Director of Planning. To obtain such approval, the
3995 operator shall submit a request stating the origin, nature and quantity of material
3996 to be deposited, and certifying that no contaminated or hazardous material will be
3997 included. The material to be deposited on the site shall be limited to imperishable
3998 materials such as stone, bricks, tile, sand, gravel, soil, asphalt, concrete and like
3999 materials, and shall not include any hazardous materials as defined by the
4000 Virginia Hazardous Waste Management Regulations.
4001
- 4002 26. A superintendent, who shall be personally familiar with all the terms and
4003 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the
4004 terms and conditions of this use permit, shall be present at the beginning and
4005 conclusion of operations each work day to see that all the conditions of the Code
4006 and this use permit are observed.
4007

4008 27. A progress report shall be submitted to the Board on December 1, 2009.
4009 This progress report must contain information concerning how much property has
4010 been mined to date of the report, the amount of land left to be mined, how much
4011 rehabilitation has been performed, when and how the remaining amount of land
4012 will be rehabilitated, and any other pertinent information about the operation that
4013 would be helpful to the Board.

4014
4015 28. Excavation shall be discontinued by December 1, 2010, and restoration
4016 accomplished by not later than December 1, 2011, unless a new permit is
4017 granted by the Board of Zoning Appeals.

4018
4019 29. The rehabilitation of the property shall take place simultaneously with the
4020 mining process. Rehabilitation shall not be considered completed until the mined
4021 area is covered completely with permanent vegetation.

4022
4023 30. All drainage and erosion and sediment control measures shall conform to the
4024 standards and specifications of the Mineral Mining Manual Drainage Handbook.

4025
4026 31. The applicant shall determine the extent of any cemetery on the property
4027 and report the results to the Planning Department prior to any clearing or grading
4028 on the property.

4029
4030 32. The applicant shall provide clarification in regards to the expected timeline
4031 for the extraction of the materials from the earth and the restoration of the site.

4032
4033 33. The backfill shall be compacted to 95 % density in lifts of 6 inches with
4034 suitable material. The compaction of the backfill shall be verified through a
4035 geotechnical service and the report provided to the Planning and Public Works
4036 Departments. This condition shall be added to the notes regarding the
4037 Restoration Sequence on Sheet C2.1.

4038
4039 34. Adequate sight distance shall be provided for the proposed construction
4040 entrance onto existing Beulah Road.

4041
4042 35. The site shall be filled only to the elevation existing prior to excavation.

4043
4044 36. Failure to comply with any of the foregoing conditions shall automatically
4045 void this permit.

4046
4047
4048 Affirmative: Dwyer, Nunnally, Witte, Wright 4
4049 Negative: Harris 1
4050 Absent: 0

4051
4052

4053 Ms. Dwyer - Mr. Blankinship, just for clarification on the UP-029-
4054 08, the Columbian Center, we did receive revised conditions today, and I just
4055 wanted to clarify that it's those revised conditions that we were approving.
4056

4057 Mr. Blankinship - Yes ma'am. With further amendments at the motion.
4058

4059 Ms. Dwyer - Right. Minutes for October 23, 2008. Any additions,
4060 corrections?
4061

4062 Mr. Wright - On page 8, line 314.
4063

4064 Ms. Dwyer - Page 8, line 314.
4065

4066 Mr. Wright - I don't know what I said, but I didn't say, "Maybe
4067 across a deed." That doesn't make a word—I don't know what to do with that. I
4068 can't figure out how that would fit. Maybe it should have been, "Maybe a deed,"
4069 or something like that. It's not that big a deal, but it didn't make much sense.
4070

4071 Ms. Dwyer - Do you want to strike, "across"?
4072

4073 Mr. Wright - Let's strike, "across."
4074

4075 Ms. Dwyer - All right.
4076

4077 Mr. Wright - And page 55, line 2481. I don't know who said "no."
4078 It doesn't say.
4079

4080 Mr. Nunnally - What line is that?
4081

4082 Mr. Wright - 2481. "No. And my reason for it is," so and so. I
4083 think we should identify who says that, don't you?
4084

4085 Mr. Blankinship - I think it's Ms. Dwyer continuing to speak.
4086

4087 Mr. Gidley - She was the only one voting "no" anyway.
4088

4089 Mr. Wright - Yes, but 2479 says, "All in favor say aye; all opposed
4090 say no. The ayes have it." It just appears to me it should say Ms. Dwyer.
4091

4092 Mr. Blankinship - All right.
4093

4094 Ms. Harris - Delete that, "no," because it continues. Do you see
4095 it? "All opposed say no. The ayes have it; the motion passes. And my reason
4096 for opposition is."
4097

4098 Ms. Dwyer - Okay.

4099
4100 Mr. Wright - That's all I have.
4101
4102 Ms. Dwyer - All right.
4103
4104 Ms. Harris - Okay, I have three. On page 28, line 1231.
4105
4106 Ms. Dwyer - Page what, 28?
4107
4108 Ms. Harris - Page 28, line 1231. It should be "of" instead of "for."
4109 On page 29, line 1301, it should be "referred" instead of "reference"
4110
4111 Ms. Dwyer - Okay.
4112
4113 Ms. Harris - On page 36, line 1598, it should be "feel" instead of
4114 "fee."
4115
4116 Ms. Dwyer - Any other additions, corrections to the minutes? Can I
4117 have a motion regarding the minutes?
4118
4119 Mr. Wright - I move it be approved as corrected.
4120
4121 Ms. Harris - Second.
4122
4123 Ms. Dwyer - Motion by Mr. Wright, seconded by Ms. Harris. All in
4124 favor say aye. All opposed say no. The ayes have it; the motion passes.
4125
4126 Ms. Dwyer - Any new business?
4127
4128 Mr. Blankinship - No ma'am. We do have one case for next month.
4129
4130 Mr. Wright - Is that all?
4131
4132 Ms. Harris - Wow.
4133
4134 Mr. Blankinship - The one that was deferred from last month to next
4135 month.
4136
4137 Mr. Wright - That's our Christmas present.
4138
4139 Mr. Blankinship - That's right.
4140
4141 Ms. Dwyer - Motion for adjournment.
4142
4143 Mr. Wright - And we do meet here next month.
4144

4145 Mr. Blankinship - We meet here again.
4146
4147 Mr. Witte - I'll make the motion.
4148
4149 Ms. Harris - Second.
4150
4151 Ms. Dwyer - Motion by Mr. Witte, seconded by Ms. Harris. All in
4152 favor say aye. All opposed say no. The ayes have it; the motion passes.
4153
4154 There being no further business, the Board adjourned until the December 18,
4155 2008 meeting at 9 a.m.
4156
4157
4158
4159
4160
4161
4162 Elizabeth G. Dwyer
4163 Chairman
4164
4165
4166
4167
4168
4169 Benjamin Blankinship, AICP
4170 Secretary
4171
4172