

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY**
3 **ADMINISTRATION BUILDING IN THE GOVERNMENT CENTER AT PARHAM**
4 **AND HUNGARY SPRING ROADS, ON THURSDAY APRIL 28, 2016 AT 9:00**
5 **A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
6 **DISPATCH APRIL 11, 2016, AND APRIL 18, 2016.**

7
Members Present: Greg Baka, Acting Chairman
Dennis J. Berman
Helen E. Harris
William M. Mackey, Jr.

Member Absent: Gentry Bell, Chairman

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

8
9 Mr. Baka - Good morning. It's now 9 a.m. and welcome to the
10 April 28, 2016, meeting of the Henrico County Board of Zoning Appeals. Would
11 you please rise and say the Pledge of Allegiance with us?
12

13 Thank you. Mr. Blankinship, are there any deferrals or withdrawals.
14

15 Mr. Blankinship - There are not, Mr. Chair. Good morning members of
16 the Board, ladies and gentlemen. The rules for this meeting are as follows: Acting
17 as secretary, I will call each case. And as I'm speaking, the applicant should
18 come down to the podium. We will then ask everyone who intends to speak to
19 that case to stand and be sworn in. Then a member of our staff will give a brief
20 introduction to the case, and then the applicant will have their opportunity to
21 present the case. After the applicant has spoken, anyone else who wishes to
22 speak will be given the opportunity. After everyone has spoken, the applicant,
23 and only the applicant, will have an opportunity for rebuttal. After the Board has
24 heard all of the evidence on that case, they will proceed to the next public
25 hearing. There are three public hearings on this morning's agenda. After all three
26 hearings, then they will go back through the agenda and vote on each case. So if
27 you wish to hear their decision on a specific case, you can either stay until the
28 end of the meeting, or you can check the Planning Department website—we get
29 it updated usually within the hour of the end of the meeting—or you can call the
30 Planning Department this afternoon.
31

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

36 With that, Mr. Chair, I believe we're ready.

37

38 Mr. Baka - Okay. Mr. Blankinship, would you go ahead and call
39 our first case?

40

41 Mr. Blankinship - CUP2016-00004, Bradford Homes Incorporated.

42

43 **CUP2016-00004 BRADFORD HOMES, INC.** requests a conditional
44 use permit pursuant to Section 24-95(i)(4) of the County Code to allow a pool in
45 the side yard at 9004 River Trace Court (MOORELAND LANDING) (Parcel 743-
46 731-3359) zoned One-Family Residence District (R-1) (Tuckahoe).

47

48 Mr. Blankinship - Would everyone who intends to speak to this case
49 please stand and be sworn in? I'm hoping that's you. The nick of time. If you all
50 remain standing, please, and raise your right hands. Do you swear the testimony
51 you're about to give is the truth, the whole truth, and nothing but the truth so help
52 you God?

53

54 Male - I do.

55

56 Mr. Blankinship - Thank you. You all can come on down so that it's
57 convenient when it's ready to start. Mr. Madrigal?

58

59 Mr. Madrigal - Good morning, everybody, Mr. Chair, members of the
60 Board.

61

62 Before you is a request to allow an in-ground swimming pool in the side yard of a
63 residential lot. The property is located in the West End of the County in the
64 Mooreland Landing subdivision. It is one of the few remaining undeveloped lots
65 within this existing subdivision. The property is a reverse corner lot, is slightly
66 over an acre in size, and fronts on Walsing Drive.

67

68 The applicant purchased the lot in June 2015 and recently obtained a building
69 permit to construct a two-story, 5,384-square-foot residence with an attached
70 three-car garage and a detached two-car garage. The home is currently under
71 construction. Although the lot fronts on Walsing Drive, the new home will be
72 oriented towards River Trace Court, which is a side street, technically a side
73 yard.

74

75 As part of the lot's overall development, the applicant wishes to install a 648-
76 square-foot in-ground swimming behind the home and adjacent to the detached
77 garage. Although the pool will be behind the residence, it will technically be
78 located in an interior side yard of the lot necessitating the approval of a use
79 permit. We'll get on to evaluation.

80

81 The property is zoned R-1 and is designed SR-1 on the 2026 Land Use Plan. A
82 one-family dwelling is consistent with both of these designations. Since
83 swimming pools are a customarily incidental accessory use to dwellings, staff
84 considers the proposed pool consistent with both designations by extension.
85

86 Staff does not anticipate any substantial detrimental impacts on adjacent or
87 nearby property if the request is approved. The lots in the subdivision are large,
88 and the homes are generously spaced apart reducing potentially nuisances
89 associated with a pool. Additionally, several homes in the immediate vicinity have
90 in-ground pools.
91

92 The property most impacted by the proposed pool is adjacent and north of the
93 subject lot. This property also has an in-ground swimming pool located in the
94 side yard, which was approved by way of variance in 2001. With the applicant's
95 current design, the proposed pool will be approximately 100 feet distant from the
96 adjacent home to the north seen here. Any privacy issues will be partially
97 mitigated by distance, existing screening, and new landscaping on the applicant's
98 lot. The adjacent lot to the east should not be affected since the proposed pool
99 will be screened by the applicant's detached garage and existing trees located
100 along this portion of the common property line. You can see those trees here.
101

102 In conclusion, the proposed pool will be consistent with both the zoning and
103 Comprehensive Plan designations. The applicant's proposed improvements are
104 consistent with the existing development pattern and character of the
105 neighborhood. The large nature of the lots and ample spacing between homes
106 aids in minimizing impacts associated with pools. Additionally, the existing and
107 proposed landscaping will further aid to reduce visual and noise impacts. Based
108 on these findings, staff recommends approval subject to conditions.
109

110 This concludes my presentation. I stand ready to answer any questions on this
111 case.
112

113 Mr. Baka - Any questions of Mr. Madrigal? Yes, Ms. Harris.
114

115 Ms. Harris - On the application, it says "please provide a complete
116 description of the proposed use, building, structure, or activity." Can you read
117 that first line? Do you have that application for the conditional use permit?
118

119 Mr. Blankinship - It looks like it was intentionally whited out. The second
120 line begins a complete sentence.
121

122 Ms. Harris - Okay. So there is no other information we need?
123

124 Mr. Madrigal - Yes, I guess they whited it out. They didn't like what it
125 said and just went with that second line.
126

127 Ms. Harris - All right, thanks so much. Okay, another question. Are
128 those new plantings on the revised plan that we have? Those circles.
129
130 Mr. Madrigal - Yes, that semi-circular landscape wall. And then you
131 see the trees and shrubs and all that.
132
133 Mr. Blankinship - Can you put them on the screen?
134
135 Mr. Madrigal - Yes.
136
137 Ms. Harris - I saw the trees on the property, plus we have a copy
138 of that in our report. But I was wondering about the—
139
140 Mr. Madrigal - Right here?
141
142 Mr. Blankinship - Yes.
143
144 Ms. Harris - Yes. Are they currently there?
145
146 Mr. Madrigal - No. The site's under construction, so this is the
147 property on the day we went. At the time, they had just finished taking down the
148 trees that were there. And they were in the process of doing the groundwork and
149 starting the foundation. Basically, the applicant purchased the lot. He submitted a
150 building plan. And basically I provided the proposed plot plan. So it shows the
151 layout of the proposed home and the other structures.
152
153 Ms. Harris - Okay. Now you mentioned that there are some
154 adjacent homes with pools. Can you point out the 611 and 620 Walsing Drive
155 locations?
156
157 Mr. Madrigal - Sure. Here's our subject lot. This is the property to the
158 north. They have an in-ground swimming pool here. This lot has an in-ground
159 swimming pool. Let's see. This lot has I think some sort of a pond. This property
160 here has a pool. The property over here has a pool. This property over here has
161 a pool. So the applicant is basically surrounded by homes with pools. And that's
162 just in this immediate area.
163
164 Ms. Harris - All right. And I know they have a second-story home.
165 So they cannot see in their neighbor's backyards, the backyards of these homes
166 with pools?
167
168 Mr. Madrigal - This home here to the north, they'll have some partial
169 view into the proposed pool. But they do have a row of trees, these river birch
170 trees here. Here they're barely starting to bud, so that's going to fill in, and it
171 should block the view into the applicant's lot. And then that will be further
172 enhanced with that landscaping that he's proposing here.

173
174 Ms. Harris - Okay. We know the pool will be enclosed. What type
175 of fencing are they going to use, do you know?
176
177 Mr. Madrigal - I don't know.
178
179 Ms. Harris - Okay.
180
181 Mr. Madrigal - That's why we required a condition that they provide
182 some screening—fencing to satisfy building code and then to screen primarily
183 from the street. And I'll show you a picture. This is on Walsing Drive. And they've
184 kept all these trees here along the street property line. You'll be able to see the
185 pool probably somewhere in this area. That's why we put in that condition that
186 the screen satisfy the building code and to also provide some partial screening,
187 or if not, complete screening of the pool.
188
189 Ms. Harris - All right. Thank you.
190
191 Mr. Baka - Any other questions of Mr. Madrigal? All right, thank
192 you very much.
193
194 Mr. Madrigal - Thank you.
195
196 Mr. Baka - At this time, would the applicant please come and
197 address the case? Yes sir, would you please come and address the case?
198
199 Mr. Groom - I'm the applicant. I'm sorry I'm a few minutes late.
200
201 Mr. Baka - Okay, thank you. Please state your name for the
202 record.
203
204 Mr. Blankinship - Before you do that, please raise your right hand. Do
205 you swear the testimony you're about to give is the truth, the whole truth, and
206 nothing but the truth so help you God?
207
208 Mr. Groom - I do.
209
210 Mr. Blankinship - Thank you.
211
212 Mr. Baka - Please proceed and explain your case.
213
214 Mr. Groom - Okay. My name is Brad Groom. And my wife and I are
215 building the home here on Walsing Drive and planning to put a pool in our yard.
216 The way our lot is configured, I guess it's being on a corner we chose to front
217 River Trace Court. So technically, we're facing the side yard based on the
218 planning code. I believe the property behind us on Walsing Drive—which fronts

219 Forest Ridge Court—had a similar scenario where they had to apply for a similar
220 permit since they also are fronting the side yard.

221
222 With that said, we are planning pool based on the plat that we sent in. To help
223 with screening and to help screen our backyard anyway, we're putting a wall
224 along Walsing Drive. And I believe it's shown as a fence, but going through the
225 neighborhood, architectural review, we changed that to a brick wall. And then
226 along the rear of the property, it will be a fence.

227
228 Mr. Baka - Question on that wall. Is that shown on the landscape
229 plan we have here?

230
231 Mr. Groom - If you look, there's a dotted line.

232
233 Mr. Blankinship - You can use the mouse on the podium there.

234
235 Mr. Groom - Okay. Thank you. So right here is where it's shown.
236 You can barely read that. That says "fence."

237
238 Mr. Baka - And the height of that retaining wall?

239
240 Mr. Groom - Six foot tall. And then that fence continues along the
241 rear property line here. And then it'll return back to our detached garage as well.
242 And then in addition to that, we'll have these large trees in the back to help
243 provide privacy for the neighbor as well as us with regard to the pool. And then
244 for the pool barrier, we're going to do an auto cover, so that satisfies the
245 requirement for safety. But the auto cover itself does not provide screening. The
246 fence around the property will provide the screening.

247
248 Mr. Baka - The type of materials you would use in that six-foot
249 fence would be?

250
251 Mr. Groom - Along Walsing, it will be a brick wall. And then at
252 some point we will turn—and I'm not sure exactly how far the return will be. It will
253 be brick. And then we'll be moving to a wood privacy fence or a metal fence. One
254 of the two. A lot of that is going through the neighborhood association, which they
255 have their requirements. They want to limit the visibility of a wood fence from
256 Walsing Drive since it's more of a high-traffic road.

257
258 Mr. Blankinship - Let me just mention there are also zoning
259 requirements for the height of fences in the front yard. So we should discuss that,
260 too, before anything gets finalized.

261
262 Mr. Groom - Okay.

263
264 Mr. Blankinship - But it's not really on the table for this morning.

265
266 Mr. Groom - Okay. Thank you.
267
268 Mr. Baka - Are there any other questions?
269
270 Ms. Harris - Mr. Groom, the brick wall that you described, is that
271 similar to other walls or brick walls or fences in Mooreland Landing.
272
273 Mr. Groom - Yes ma'am. Originally with our neighborhood
274 submittal we had put in a wood fence. But they wanted to see similar
275 characteristics of other homes. Along Walsing, most what you see are brick and
276 then some aluminum fencing.
277
278 Mr. Mackey - I had a question. Mr. Groom, would the proposed
279 fence be the same height as the brick wall?
280
281 Mr. Groom - Yes sir.
282
283 Mr. Baka - If there are no other questions at this time, thank you
284 very much.
285
286 Mr. Groom - Okay, thank you.
287
288 Mr. Baka - We'll vote on the case later. Thank you.
289
290 Mr. Blankinship - Is there anyone else in the audience who'd like to
291 speak to this case?
292
293 Mr. Baka - Please come to the podium.
294
295 Mr. Blankinship - I apologize for my mistake earlier, but I'm glad you
296 were sworn in anyway.
297
298 Ms. DePalma - Hi there. This is my husband, Michael DePalma. I'm
299 Arpita DePalma. We purchased the lot across the street.
300
301 Mr. Berman - 9005?
302
303 Mr. Blankinship - Miguel will get it on the screen here in just a second.
304 There we go.
305
306 Ms. DePalma - That little pie-shaped lot, that's our lot there. We're
307 actually in the process of starting building as well. We had not gotten a chance to
308 talk to Brad about the layout and the fencing. We just wanted to make sure from
309 our home—the front of our home is going to be facing that street—that we won't
310 have a direct view of the pool.

311
312 Mr. DePalma - This would be the view from our—
313
314 Mr. Baka - Correct.
315
316 Ms. DePalma - Correct. But it sounds like he's got the fencing there,
317 which is appropriate. I just don't know in terms of height—if you mention that
318 there's height requirements, if they are not permitted to have a six-foot wall—how
319 that will impact us. If it's lower than that, then we would probably have a view of
320 that pool from our yard. If that happens, can we put in some plantings or
321 whatever to hide that pool a little bit from our front view?
322
323 Mr. Blankinship - Either you or Mr. Groom could put plantings there that
324 would serve. In the front yard, if the fence is taller than 3 feet, 6 inches, there's
325 an additional approval that's necessary. And that's discretionary, so it may not be
326 approved. I didn't want him to leave here thinking that that was an absolute. He
327 could pull the wall back to the corner of the house, and at that point it would be in
328 the side yard. And there it can be up to seven feet high. So he has several
329 options for how to work around this. I didn't want us to get bogged down in it this
330 morning. But since you raised the issue, I think there are several possible ways
331 that your concerns could be resolved.
332
333 Ms. DePalma - Okay. How do we do that, if we want to talk about
334 putting that fencing there or a different landscape plan? We wouldn't be able to
335 put plants in our yard without it hindering our house, like hiding our house.
336
337 Mr. Blankinship - Right.
338
339 Ms. DePalma - So we're thinking that if there are plantings there
340 instead, if there can't be that wall, then that would have to be in the yard around
341 the pool. So how does that get approved or how does that proceed with having to
342 do that?
343
344 Mr. Blankinship - If you'd like to have some specificity on that this
345 morning, I guess you'll have to discuss it with Mr. Groom.
346
347 Ms. DePalma - Okay.
348
349 Mr. Blankinship - Perhaps in the next few minutes. As I say, the Board
350 won't actually make the decision on the case until after the other two public
351 hearings, so you do have a few minutes to put your heads together. Does
352 anybody else have any ideas on that?
353
354 Mr. Baka - Any ideas on reconciling the issue of the height of the
355 fence along—
356

357 Mr. Blankinship - Right.
358
359 Mr. Baka - I guess my question—in the staff report when I saw
360 the property, we go back to Miguel's comment. At the bottom of page 2 in the
361 staff report it says "An existing landscaping buffer with river birch trees running
362 along the common property line and proposed vegetative screening on the
363 applicant's lot." So does that proposed screening include any specific height?
364
365 Mr. Blankinship - Based on this plan, that screening is really on the
366 other side of the pool.
367
368 Mr. Baka - This was one of my concerns when seeing it. The
369 existing trees on Walsing are so tall that there's no understory.
370
371 Mr. Blankinship - Yes.
372
373 Mr. Baka - That's what the landscape architects call it. You can
374 see straight through it from ground level. Unless other Board members have a
375 question, perhaps I have a question for the applicant—
376
377 Mr. Mackey - I can wait until after you.
378
379 Mr. Baka - —specifically about if the applicant would be willing to
380 go ahead and install some type of specific landscaping that would cover the
381 lower heights between 3 feet or 6 feet for that understory.
382
383 Mr. Mackey - If I'm not mistaken, this fence is being used to
384 safeguard from the pool. They may have to work out something with their
385 homeowners' association, but I thought it's a minimum of four feet. It has to be.
386
387 Mr. Blankinship - He mentioned that he's going to have an automatic
388 cover over the pool.
389
390 Mr. Mackey - Oh, so that will—okay.
391
392 Mr. Blankinship - If you have that, you don't have to have a four-foot
393 fence. You're correct.
394
395 Mr. Mackey - Okay. Thank you.
396
397 Mr. Baka - Are there any other questions? Could you spell your
398 last name for the record?
399
400 Ms. DePalma - DePalma. D-e, capital p, a-l-m-a.
401

402 Mr. Baka - Okay Thank you. Are there any other questions for
403 the DePalmas?
404
405 Mr. DePalma - I just want to make sure I understand correctly. The
406 approval for the height of the fence—in other words, the start and stopping point
407 for side yard versus front yard here is what dictates how high the fence can be?
408
409 Mr. Blankinship - That's correct.
410
411 Mr. DePalma - The front yard is no higher than three feet.
412
413 Mr. Baka - Six inches.
414
415 Mr. Blankinship - Three feet, six inches.
416
417 Mr. DePalma - The side yard can be up to seven.
418
419 Mr. Blankinship - The Planning Commission—not this body, but the
420 Planning Commission can approval an alternative fence height. If you drive
421 through Mooreland Farms, you'll probably see quite a few brick fences that are
422 taller than that in the front yards. Those would have been approved by alternative
423 fence height approval. That is one of the alternatives. Another would be pulling it
424 back to the side yard, and a third would be using landscaping with a shorter wall.
425 There are several potential solutions here.
426
427 Ms. DePalma - So Mr. Groom is intending to put a six-foot fence
428 there, which I think is fine. Who has the final say? Like if the ARC comes back
429 and says, "No, we don't want that," who has that final say?
430
431 Mr. Blankinship - He would have to have approval of both the ARC and
432 the Planning Commission.
433
434 Ms. DePalma - So if they say no—
435
436 Mr. Blankinship - If either body says no, then it's no.
437
438 Ms. DePalma - Okay, got it.
439
440 Mr. Blankinship - But again, throughout Mooreland Farms you do see
441 cases where they've been approved. I'm not saying it's unlikely that it would be
442 approved.
443
444 Ms. DePalma - It just depends on who's on the board at that time,
445 from what we've seen.
446

447 Mr. Blankinship - And certainly the ARC's word would carry some
448 weight with the Planning Commission when the application came to them. If they
449 were in support of it, that would be weighed by the Planning Commission.

450
451 Ms. DePalma - Okay. All right. Thank you.

452
453 Mr. Baka - Thank you. Question for Mr. Groom? Is there anyone
454 else who would wish to speak to this case? Could I ask Mr. Groom a couple
455 questions? I guess the one question I have is would you be willing to consider an
456 either/or scenario? Either a six-foot fence would be constructed in the front yard
457 to mitigate any visual impact—and we realize it would require both the approval
458 of both the ARC and the Planning Commission—or if it is not approved by either
459 body, would you then be willing to install—help me out, Miguel—general
460 landscaping of a general height of let's say three to six feet. So something that
461 would—

462
463 Mr. Blankinship - Provide equivalent screening.

464
465 Mr. Baka - Provide equivalent screening of that lower understory.

466
467 Mr. Groom - Yes sir.

468
469 Mr. Baka - Okay.

470
471 Mr. Groom - Our goal is to have a private backyard. The
472 neighborhood association has already approved a brick wall there. Yes, this was
473 news to me that we needed the Planning Commission to also approve it. So what
474 is the process for that?

475
476 Mr. Blankinship - We can work that out later.

477
478 Mr. Groom - Okay. All right.

479
480 Mr. Baka - There are two steps—your local ARC and then the
481 Planning Commission here.

482
483 Mr. Groom - Correct.

484
485 Mr. Baka - So in that scenario, if either one of those were denied,
486 then the applicant would still be constructing suitable landscaping to screen your
487 view from across the street. Would that generally be acceptable? I think that's
488 what we're looking for.

489
490 Mr. Groom - Just a quick clarification. If we file a permit for the
491 pool, it can proceed without the approval of the Planning Commission, assuming

492 that once we have that approval we can put in a brick wall. But prior to that, it's
493 assumed that we would have landscaping. Is that—?

494
495 Mr. Blankinship - Yes.

496
497 Mr. Baka - Yes.

498
499 Mr. Blankinship - We'll work with you on that.

500
501 Mr. Groom - Okay.

502
503 Mr. Baka - Good. So we'll incorporate that. I would suggest that
504 the Board incorporate that into one proposed condition. And have you also read
505 the other five conditions in the staff report that don't address landscaping?

506
507 Mr. Groom - I did read them, but let me just review them real fast.
508 And just to clarify once again. The fence—technically the building code is being
509 met by the auto cover.

510
511 Mr. Blankinship - Yes.

512
513 Mr. Groom - So this should probably read a little differently.

514
515 Mr. Blankinship - That is the intent of the condition that you satisfy the
516 building code. And the privacy screening.

517
518 Mr. Groom - Right. But we're just using two different mechanisms
519 for that.

520
521 Mr. Blankinship - Right.

522
523 Mr. Groom - Okay. We have a fence for screening, and then we
524 have an auto cover for building code requirements. So can that be modified as a
525 note just so it's—?

526
527 Mr. Blankinship - How would you prefer it to read?

528
529 Mr. Groom - Or that we shall install a fence or landscaping to serve
530 for privacy screening and also must meet the building code by fence or auto
531 cover.

532
533 Mr. Blankinship - Staff has no objection to that if the Board is satisfied
534 with it. When the time comes, we can take that up.

535
536 Mr. Blankinship - All right.

537

538 Mr. Groom - Thank you.

539

540 Mr. Baka - Thank you. At this time, we'll call our next case.

541

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

545

546 Mr. Baka - Is there a motion on this case? I so move that we
547 approve this case. There are five conditions, but I would like to propose an
548 adjustment in the language to the fifth condition that we spoke about on
549 landscaping. I had written that down. The applicant shall install a fence or
550 adequate landscaping to serve as privacy screening around the swimming pool
551 to serve the dual purpose—I'm repeating myself—serve the dual purpose of
552 privacy screening from the street and to satisfy the building code.

553

554 Mr. Blankinship - The applicant's concern there was that—he felt the
555 condition was ambiguous, and he would like you to clarify that the fence is for
556 screening and that he would have to comply with the building code either with a
557 fence or an auto cover. And then we also wanted to add something about the
558 brick fence. Either a brick fence six feet in height or landscaping to provide
559 equivalent screening between the pool and Walsing Drive. That was the
560 DePalma's concern.

561

562 Mr. Berman - My concern about stipulating the auto cover in lieu of
563 the building code or for the building code is that the building code could change
564 at any time. Not likely, but I hate to stipulate something and then have it be
565 invalidated by a building code change.

566

567 Mr. Baka - So therefore it may not be necessary to change the
568 staff comment that says "to satisfy the building code."

569

570 Ms. Harris - I want to second it, but I thought you would still say to
571 satisfy the building code. We just would not specify that it only regards the auto
572 cover because there might be other things. But you still want them to satisfy the
573 building code.

574

575 Mr. Baka - Correct. We still want them to satisfy the building
576 code. I guess I would agree that we should not indicate the need for the auto
577 cover.

578

579 Mr. Blankinship - But the Board would be satisfied with anything that
580 satisfied the building code as far as that requirement's concerned.

581

582 Mr. Mackey - Yes.

583

584 Mr. Baka - Correct.
585
586 Mr. Blankinship - Okay. We can craft that.
587
588 Mr. Baka - You can craft that?
589
590 Mr. Blankinship - I understand where you're headed.
591
592 Mr. Baka - Okay.
593
594 Ms. Harris - Then I second that motion.
595
596 Mr. Baka - All right, there's a motion and a second.
597
598 Mr. Blankinship - Can we have a little statement about the findings?
599
600 Mr. Baka - Yes. I find that this application does not adversely
601 impact the health, safety or welfare of the community or surrounding properties.
602 And it is consistent with the other uses and swimming pools within the
603 neighborhood.
604
605 At this time, all those in favor of the motion say aye. Opposed say nay. The ayes
606 have it.
607
608 After an advertised public hearing and on a motion by Mr. Baka, seconded by
609 Ms. Harris, the Board **approved** application **CUP2016-00004, BRADFORD**
610 **HOMES, INC.'s** request for a conditional use permit pursuant to Section 24-
611 95(i)(4) of the County Code to allow a pool in the side yard at 9004 River Trace
612 Court (MOORELAND LANDING) (Parcel 743-731-3359) zoned One-Family
613 Residence District (R-1) (Tuckahoe). The Board approved the conditional use
614 permit subject to the following conditions:
615
616 1. This conditional use permit applies only to the location of an in ground
617 swimming pool in the side yard. All other applicable regulations of the County
618 Code shall remain in force.
619
620 2. Only the improvements shown on the plot plan filed with the application may
621 be constructed pursuant to this approval. Any additional improvements shall
622 comply with the applicable regulations of the County Code. Any substantial
623 changes or additions to the design or location of the improvements shall require
624 a new conditional use permit.
625
626 3. The proposed in ground swimming pool shall be located at least 10 feet from
627 the dwelling and 6 feet from other accessory structures.
628

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

631
632 5. The applicant shall install a six-foot-tall brick fence, or landscaping that
633 provides equivalent screening, to provide privacy screening from the street. The
634 applicant shall also satisfy the Building Code requirement for security of the pool.

635
636

637 Affirmative:	Baka, Berman, Harris, Mackey	4
638 Negative:		0
639 Absent:	Bell	1

640
641

642 [At this point, the transcript continues with the public hearing on the next case.]
643

644 Mr. Blankinship - The Chair has reminded me. There is a requirement
645 in the state code that in order to rule in favor of the applicant, there have to be at
646 least three affirmative votes from the Board. With a five-member board, that's a
647 simple majority. This morning we're missing one member, as you can see. So
648 you actually would have to have a three-to-one vote, which really would be
649 required anyway. A two-to-two vote would normally be a tie, but in this case it
650 would constitute a denial. So we just want to make sure everyone is aware that if
651 you like, you have the right to defer for a month in order to be heard by the full
652 five-member board.

653
654 **CUP2016-00005 KRISHNA LINGA** requests a conditional use permit
655 pursuant to Section 24-116(d)(1) of the County Code to hold a special event at
656 2230 E Parham Road (Parcel 775-758-3658) zoned General Residence District
657 (Conditional) (R-6C) (Fairfield).

658
659 Mr. Blankinship - Would everyone who intends to speak to this case,
660 please stand and be sworn in. Do you swear the testimony you're about to give is
661 the truth, the whole truth, and nothing but the truth so help you God? Thank you.
662 Mr. Madrigal?

663
664 Mr. Madrigal - Mr. Chair, members of the Board. Before you is a
665 request for a temporary event at a place of worship. The applicant would like to
666 host a one-day festival at the Natural Path Meditation Center entitled Human
667 Festival 2.0. The event is tentatively scheduled for Saturday, August 6, 2016,
668 from 10 a.m. to 7 p.m. with an alternate rain date for the following Saturday.

669
670 The emphasis of the event is to introduce the community to the services offered
671 at the center, explain the various health benefits associated with meditation, and
672 provide a venue for local health-related businesses and organizations to promote
673 their goods and services.
674

675 This will be a free event, open to the general public. The applicant expects to
676 draw approximately 1,000 to 1,500 people throughout the day to the 3.89-acre
677 site. The applicant will be hosting hourly meditation sessions and expert talks,
678 which will occur within the existing 8,300-square-foot building. Food and vendor
679 displays will occur on the adjacent 1.22-acre lot to the east, identified as Parcel C
680 on the layout plan. There will be approximately 30 to 40 vendor stations
681 surrounding a 400-square-foot stage at the center of Parcel C. There will also be
682 a designated children's area for arts and crafts towards the rear of the lot. Setup
683 will occur the day before, and breakdown will occur immediately after the event.
684

685 The site was originally developed in 1990 as a bank with drive-through. The
686 applicant purchased the property in June 2014 and subsequently enclosed the
687 drive-through and converted the building to a place of worship. Here on the
688 screen you can see where the drive-through has been enclosed.
689

690 Limited parking will be provided on site with the majority of the parking being
691 provided off site at neighboring lots to the west and across the street to the
692 south. There are approximately 56 parking stalls on site with access to the
693 property and adjacent lots being provided by way of a shared drive. You can see
694 the shared drive here from Parham and then going all the way to Woodman.
695

696 A similar event was held last year on the property on a smaller scale and was
697 limited to the organization's members, which did not require a conditional use
698 permit at the time. Staff is not aware of any complaints resulting from the smaller
699 event. We'll go on to the evaluation consistency finding.
700

701 The property is zoned R-6C and is designated as Office and SR-2 on the 2026
702 Land Use Plan. A place of worship is permitted by right in the R-6 district and is
703 consistent with the Comprehensive Plan designations. This will be the first large-
704 scale event to be hosted at the site. With exception to the parking, the property is
705 sufficiently sized to host the proposed festival.
706

707 Because outreach is customary and incidental to a place of worship, the festival
708 is considered an accessory use and is consistent with both zoning and the
709 Comprehensive Plan designations.
710

711 Staff does not anticipate any lasting or negative impacts to the adjoining
712 properties or the community at large from the event. The closest homes are
713 approximately 300 feet to the north of the site, and adjacent businesses are
714 either closed or have limited hours of operation on the date of the event.
715

716 Although there is limited parking on site, the applicant has procured parking on
717 adjacent and neighboring properties by way of a shared parking arrangement.
718 You can see here by notation on these two adjacent lots and then across the
719 street here.
720

721 In order to mitigate any potential safety issues resulting from guest parking
722 occurring at the church site across Parham Road, volunteers for the organization
723 will be shuttling guests across the street, and pedestrian traffic will be prohibited
724 as a condition of approval in order to ensure safety.

725
726 In conclusion, the applicant's request is consistent with the zoning and
727 Comprehensive Plan designation. There does not appear to be any lasting of
728 substantial impacts associated with a one-day festival. A smaller-scale event was
729 held last year resulting in no complaints that staff is aware of, and specific
730 conditions of approval have been prepared to mitigate any adverse impacts and
731 assure public safety. For these reasons, staff recommends approval subject to
732 the conditions.

733
734 This concludes my presentation.

735
736 Mr. Baka - Any questions of Mr. Madrigal? If there are no
737 questions for staff, thank you very much. Would you please come forward? Good
738 morning. Would you please state your name for the record and spell it?

739
740 Mr. Lodha - Sure. My name is Tanmay Lodha. Spelling T-a-n-m-a-
741 y. And last name Lodha—L-o-d-h-a-.

742
743 Mr. Baka - Thank you. Please proceed with your case.

744
745 Mr. Lodha - Good morning, Board members and everyone present
746 here. My name is Tanmay Lodha, and I have been practicing meditation for over
747 five years. I do have two of my other people with me who have been practicing
748 meditation for a long time.

749
750 I'm a volunteer at SRCM that teaches this technique, meditation, free of cost to
751 all of those interested. We would like to host a one-day festival at the Natural
752 Path Meditation Center at 2230 East Parham Road, Richmond. The goal of the
753 event is to bring the community together to learn, share, and celebrate
754 mind/body/spirit connection and peace and harmony among people. There will
755 be engaging talks from experts on yoga, natural healing, nutrition, spirituality,
756 along with meditation sessions. The festival will also provide a venue for local
757 businesses and organizations to promote their goods and services. Local
758 vendors will sell their food on site.

759
760 This will be a free family event open to all, and we expect about 1,000 to 1,500
761 people in attendance throughout the day. We are hoping to collaborate with the
762 Virginia Museum of Fine Arts to provide free art and craft activities to children.
763 We haven't gotten that yet, but are planning to do that. Expert talks and
764 meditation sessions will be held at the existing building, so inside the building
765 we'll do that. Food and vendor displays will occur on the open land next to the
766 building, which is Parcel C you mentioned on the map. There will be

767 approximately 30 to 40 vendor stations surrounding a 400-square-foot stage. The
768 stage will be used for vendor product and service demonstration like yoga or
769 whatever vendors want to demonstrate.

770
771 We are looking forward to hosting this event for the community. We invite
772 everyone to join us in the festival. Thank you.

773
774 Mr. Baka - Thank you very much. Are there any questions?

775
776 Ms. Harris - Yes. Mr. Lodha, I have a few questions. I notice that
777 your breakdown time will be on Monday, August 15th by 7 p.m. But businesses
778 will be open on that day—the post office, the daycare center. Will that conflict
779 with the operating hours of those two businesses?

780
781 Mr. Lodha - It should be within the property limits as we are
782 actually building and breaking down those tents. And given that there are a lot of
783 trees at the edges of the entire property, I don't expect it to interfere with anything
784 outside of the property. The day is just to make sure that the people who are
785 forwarding us the tents have the opportunity—because they might have working
786 business hours—to come and take down their tents. So it is something that we
787 getting from outside.

788
789 Ms. Harris - Okay, another question. Is the inspection time of
790 being no later than 8:00 a.m. on the event day rather close to the starting time at
791 10:00 a.m.? Suppose the inspectors find something that you need to remedy?
792 How will they have time between 8:00 a.m. and 10:00 a.m. to get those
793 corrected?

794
795 Mr. Lodha - So would it be preferable to move the inspection time
796 earlier?

797
798 Ms. Harris - I would think that that would be more practical.

799
800 Mr. Lodha - What's that?

801
802 Ms. Harris - I would think that would be more feasible.

803
804 Mr. Lodha - Okay.

805
806 Ms. Harris - What time could you—what is the latest inspection
807 time that you would want us to consider?

808
809 Mr. Blankinship - Perhaps Mr. Madrigal would be the better person to
810 respond to that.

811

812 Mr. Madrigal - Mr. Chair, Ms. Harris. That time stated, 8 a.m. the day
813 of the event, that's kind of like the drop-dead time for the last inspection that
814 should occur. That gives them a couple of hours to take care of any issues that
815 come up that have to be taken care of. Obviously, we would prefer to have
816 inspection times earlier than that. Not a 6 a.m. or anything like that for the
817 inspector's sake, but maybe the day before. That way they could deal with those
818 issues. Generally for these events, the tents are going to be set up by a company
819 that generally knows what the requirements are because they're in the business
820 of doing that. So typically it would be any minor issues that would come up that
821 should be taken care of.

822
823 Ms. Harris - So they will not inspect before the day of the event.

824
825 Mr. Madrigal - They can inspect the day before the event. It just all
826 depends on their setup.

827
828 Mr. Blankinship - If the tent is up, they can inspect it. But if hasn't been
829 put up yet, there's nothing to check.

830
831 Ms. Harris - Right.

832
833 Mr. Madrigal - Right.

834
835 Ms. Harris - We need to ask Mr. Lodha if the tents will be set up
836 the day before.

837
838 Mr. Madrigal - And that's the nature of these events is that a lot—the
839 big tent will probably be set up the day before or that process will start a day or
840 two before the event, so that's not really the issue. What really is the issue is all
841 the smaller tents and ensuring that all the smaller tents are tethered and
842 anchored correctly. If there are stairs to the stage, they need to ensure that the
843 staircase leading up to the stage meets the building code requirements for
844 handrail, access, anchoring. Those are relatively minor issues that can be
845 addressed the day of. But because of the nature of the events, a lot of this
846 activity does take place the day of the event. So people are showing up, they're
847 setting up their pop-ups, they're putting up their tables. It's just kind of managed
848 chaos on the day of the event.

849
850 Mr. Blankinship - To make sure I understand, the 8:00 a.m. time, they
851 have to have called to schedule the inspection by 8:00 a.m.

852
853 Mr. Madrigal - By 8:00 a.m., right.

854
855 Mr. Blankinship - It's not that the—the scheduled time of the inspection
856 will be prior to 8:00 a.m.; it's that they have to call the automated number and

857 schedule the inspection prior so that when staff arrives at 8:00 a.m. and pulls up
858 today's inspections, it's listed.

859
860 Mr. Madrigal - It's listed, right.

861
862 Mr. Blankinship - Yes. I think that's the intent.

863
864 Ms. Harris - How many inspections can we perform? Is there a
865 preliminary and final inspection or just the final inspection?

866
867 Mr. Madrigal - For this type of temporary event, it's typically—

868
869 Ms. Harris - One time event?

870
871 Mr. Madrigal - That's the final inspection. If there are some
872 corrections that need to take place, more than likely the inspector will probably
873 stay there until that gets done.

874
875 Ms. Harris - Okay.

876
877 Mr. Madrigal - It is a Saturday event, so there aren't any other
878 inspections, unless there are other special events that day that they're there to
879 work and take a look at.

880
881 Ms. Harris - Thank you. I have two smaller questions to ask
882 Mr. Lodha. In the report that you have, Parcel C, you talked about products.
883 What type of products are we talking about?

884
885 Mr. Lodha - It's largely going to be like the natural healers—yoga,
886 yoga studios that we have, chiropractors. Any of those people who are aligned to
887 holistic living would be the vendors. And then there will also be some food
888 vendors.

889
890 Ms. Harris - I understand that. But the products, are you talking
891 about products that these holistic healers use? I understand the services of these
892 folks, but my question is about what type of products.

893
894 Mr. Lodha - I think it's mostly going to be on the services side.
895 Products could be on the food side, if any, like in terms of juicing and things like
896 that. But largely it's going to focus mostly on the services side.

897
898 Ms. Harris - Will there be any parking at all allowed on the post
899 office property?

900
901 Mr. Lodha - No.

902

903 Ms. Harris - No parking at all.
904
905 Mr. Lodha - No parking allowed. I believe that's not permitted
906 because it's federal land.
907
908 Ms. Harris - Okay. Thank you. If someone decides that they want
909 to park on that side in the post office lot, how will you handle that?
910
911 Mr. Lodha - We are actually thinking of putting signs up there
912 saying "no parking for the festival," and making sure that at least they are aware
913 that that's not the parking space they can use. Also, on the website that we have,
914 we are going to actually post specific locations where the parking is going to
915 permitted, along with the designated parking spots for the festival. We're going to
916 try to provide information to people, making clear that these are the sites where
917 you can park as part of the festival.
918
919 Ms. Harris - Who will monitor that? I know you're going to have the
920 signage, but who will actually monitor whether or not the signage is being
921 observed?
922
923 Mr. Lodha - We could get police officers if that's actually required
924 for us to monitor that specific area to make sure that's taken care of. If I put the
925 signage, is that sufficient enough or do we need something beyond that? That's
926 actually probably a question for the Board. I can ask them.
927
928 Mr. Blankinship - Did the Police Division have any recommendation for
929 having an officer on site for traffic control? I suppose if there were complaints or
930 issues then police would respond.
931
932 Mr. Baka - Any other questions?
933
934 Ms. Harris - Not at this time. You may have a concern a little later.
935 Thank you.
936
937 Mr. Baka - Mr. Berman?
938
939 Mr. Lodha - Is there anything we can do to address that specific
940 concern, the parking concern? Is it something that we need to have a volunteer
941 to monitor? We'll have volunteers on site, so we can actually do that. But is that
942 something that we need to take care of?
943
944 Ms. Harris - I would think you would need someone assigned to
945 that task, unless you are going to use the police department.
946
947 Mr. Lodha - So we have options. We do have volunteers.
948 Volunteers are the ones that are going to actually shuttle the people from the

949 offsite parking locations to the location as well. So we'll have other volunteers
950 stationed there to make sure that they are not parking from the festival
951 perspective. I would presume that I can't stop them from parking for any other
952 reasons. But if they are coming for the festival, I think we can probably at least
953 have some volunteers over there.

954
955 Ms. Harris - Do you have a problem if we put that in condition that
956 volunteers will be used to observe the parking signage?

957
958 Mr. Lodha - Yes, we can do that, as long as it's for the festival
959 purposes. If they're doing it for other purposes, we may not have any right to do
960 that. Is that good?

961
962 Mr. Baka - Yes, that sounds reasonable. Any other questions?

963
964 Mr. Berman - Yes. I was also concerned about you having no
965 jurisdiction over whether they park there or not. I wouldn't want anybody to get in
966 an altercation over that. So we can discuss that when we vote.

967
968 The question I have and I think you were going to bring up was a big concern
969 about Parham Road. It's a busy road. There's an island between you and the
970 parking area. What type of shuttle are you proposing?

971
972 Mr. Lodha - We have vans, so we have a lot of volunteers. So
973 when we actually had an event last year, as Miguel was mentioning, there were
974 400 people. And we used the parking across the street. Those 400 people were
975 there throughout the day. So we just had two vans that were actually driving
976 people from that point to the site and then taking people back from this site to the
977 other site.

978
979 Mr. Berman - Did you have any issues with people still trying to
980 cross themselves?

981
982 Mr. Lodha - Not that I'm aware of.

983
984 Mr. Berman - Okay.

985
986 Mr. Lodha - Not that I've heard anybody say that. We are trying to
987 make sure that people are not doing that, again for safety reasons. The other
988 reason is that Saturday is also—not to say that, but Saturday is a slow day on
989 Parham just because it's a weekend. But at the same time, we do have those
990 volunteers specifically designated for that.

991
992 Mr. Berman - And you had mentioned you may not be adverse to
993 having police on site or hiring them—

994

995 Mr. Lodha - Yes.
996
997 Mr. Berman - —possibly for a crossing guard? Would that be a
998 condition you'd entertain?
999
1000 Mr. Blankinship - No crossing guard.
1001
1002 Mr. Berman - Or no crossing guard. Yes, more accurate.
1003
1004 Mr. Lodha - So you want a police officer on site doing that
1005 direction. Is that what I understand?
1006
1007 Mr. Berman - I just wanted to know if that was something if we
1008 voted on it and tried to add that condition if you'd have an issue with that.
1009
1010 Mr. Lodha - We would be fine with that. I'm consulting with . . .
1011
1012 Mr. Berman - That's quite all right.
1013
1014 Mr. Lodha - If that's okay.
1015
1016 Mr. Berman - Thank you. Did you have any—
1017
1018 Mr. Baka - I concur with Mr. Berman. I think our primary concern
1019 was to take steps to avoid pedestrians crossing Parham Road rather than waiting
1020 a few more minutes for the van to return. How many vans are you using?
1021
1022 Mr. Lodha - Two vans.
1023
1024 Mr. Baka - Two? So if both run the north side of the road at the
1025 event—I'll just throw a suggestion out there, and the Board can consider this, or
1026 Mr. Berman's comments about police. I didn't know if the idea of putting up
1027 temporary signage on that parking lot on the south side of the road to literally say
1028 no crossing Parham Road today, no pedestrians across Parham Road, or
1029 something to that effect. Or please wait for a shuttle. I think even just those
1030 words "please wait for a shuttle" are important enough that if some members of a
1031 family want to cross and others are waiting, lingering behind—
1032
1033 Mr. Lodha - We do have plans to actually have a designated site
1034 where the shuttle loading and unloading will actually happen. So we can actually
1035 put that signage up there and also have the police officer.
1036
1037 Mr. Blankinship - You could say, "Please meditate while waiting for the
1038 shuttle."
1039
1040 Mr. Lodha - Oh, yes.

1041
1042 Mr. Baka - That was my key question. Any other questions from
1043 the Board?
1044
1045 Ms. Harris - Mr. Lodha, I'm thinking that you're going to need a
1046 police officer anyway since you anticipate a crowd three times what you had in
1047 the past. And with this many people all day long, you probably are going to need
1048 the assistance of the police department.
1049
1050 Mr. Lodha - Yes, we will definitely be willing to do that. Would you
1051 have a recommendation how many police officers?
1052
1053 Mr. Blankinship - We'll put you in touch with the Division of Police.
1054
1055 Mr. Baka - And to clarify, there were no complaints, I read, last
1056 year received at that smaller event, correct?
1057
1058 Mr. Lodha - Correct, yes.
1059
1060 Mr. Baka - Okay.
1061
1062 Mr. Berman - I also do want to commend you all for reaching out to
1063 the community. I think it's very beneficial and appreciate it.
1064
1065 Mr. Lodha - Thank you. Appreciate it.
1066
1067 Mr. Baka - Thank you very much, Mr. Lodha. Miguel?
1068
1069 Mr. Madrigal - Mr. Chair, it is at the applicant's option to contact the
1070 Secondary Employment Office for the Police Department. They'll determine if an
1071 officer needs to be assigned or they can also recommend a private security
1072 company they work with. Typically it's RMC. If you decide to do that as a
1073 condition.
1074
1075 Mr. Baka - Excellent. Thank you. Are there any other folks here
1076 who would be interested in speaking to this case? Seeing none, this case is
1077 closed, and we'll move on to the next case.
1078
1079 **[After the conclusion of the public hearings, the Board discussed the case**
1080 **and made its decision. This portion of the transcript is included here for**
1081 **convenience of reference.]**
1082
1083 Mr. Baka - Is there a motion on this case?
1084

1085 Ms. Harris - I move that we approve this case and add the
1086 condition to contact the police department or a security company to handle
1087 crossing or other problems that may occur.

1088
1089 Mr. Mackey - Second.

1090
1091 Mr. Baka - Any discussion?

1092
1093 Ms. Harris - I made the motion because I feel that this type of
1094 event is healthy for the community. And if it was well received last year, certainly
1095 we have that as part of the history of approving this permit. I do have concerns
1096 about the crowd of 1,000 or more. But I think that that problem may be alleviated
1097 by the police department or a security company. Thank you.

1098
1099 Mr. Berman - I also recommend that we add a condition, given that
1100 it's in a wooded clearing, to have a portable fire hydrant—not hydrant, sorry—fire
1101 extinguisher on premise as well as a first aid kit. I know it wasn't recommended
1102 by the fire marshal, but for public safety reasons, I recommended adding that. Is
1103 that appropriate?

1104
1105 Mr. Baka - Yes. Ms. Harris would you—

1106
1107 Ms. Harris - Yes, I would agree.

1108
1109 Mr. Baka - You would agree with adding that to the motion?

1110
1111 Ms. Harris - Yes.

1112
1113 Mr. Baka - Okay. Any further discussion on this motion we have
1114 on the floor? So with those amendments, at this time we'll take a vote on the
1115 matter. All those in favor say aye. Opposed say nay.

1116
1117 After an advertised public hearing and on a motion by Ms. Harris, seconded by
1118 Mr. Mackay, the Board **approved** application **CUP2016-00005, KRISHNA**
1119 **LINGA's** request for a conditional use permit pursuant to Section 24-116(d)(1) of
1120 the County Code to hold a special event at 2230 E Parham Road (Parcel 775-
1121 758-3658) zoned General Residence District (Conditional) (R-6C) (Fairfield).
1122 The Board approved the conditional use permit subject to the following
1123 conditions:

1124
1125 1. This conditional use permit is for the approval of a one-day temporary outdoor
1126 event to be held on Saturday, August 6, 2016, between the hours of 10:00 am to
1127 7:00 pm, at the Natural Path Meditation Center. In case of event cancelation due
1128 to inclement weather, a "rain" date shall be scheduled for Saturday, August 13,
1129 2016. All other applicable regulations of the County Code shall remain in force.

1130

- 1131 2. The special event shall be limited to the main building and the 1.22-acre,
1132 undeveloped lot to the east (identified as Parcel C on the site plan). Set-up shall
1133 commence on Friday August 5, 2016, between the hours of 7:00 am to 7:00 pm.
1134 Breakdown can commence immediately after the event and conclude on
1135 Monday, August 8, 2016, at 7:00 pm. If the festival is held on the "rain" date, set-
1136 up shall commence on Friday, August 12, 2016, between the hours of 7:00 am
1137 and 7:00 pm. Breakdown can commence immediately after the event and
1138 conclude on Monday, August 15, 2016, at 7:00 pm.
1139
- 1140 3. Parking for the temporary event shall be provided on-site and at the following
1141 properties, subject to the submission of written parking agreements: 2250 E.
1142 Parham Road (accounting office), 2240 E. Parham Road (daycare center), and
1143 2101 E. Parham Road (church property). Guests parking at 2101 E. Parham
1144 Road shall be shuttled between the sites. Pedestrian traffic across E. Parham
1145 Road shall be prohibited during the event. The applicant shall provide volunteers,
1146 paid off-duty police officers, or private security staff to ensure that pedestrians do
1147 not attempt to cross E. Parham Road.
1148
- 1149 4. The applicant shall establish temporary pedestrian loading and unloading
1150 zones on parcel B (of the site plan), and at 2101 E. Parham Road. The loading
1151 and unloading zones shall occur within the property boundaries and shall not
1152 impede traffic circulation on the shared access road or public right-of-way.
1153
- 1154 5. Only the temporary improvements shown on the plot plan filed with the
1155 application may be erected pursuant to this approval. Any additional
1156 improvements shall comply with the applicable regulations of the County Code or
1157 as specified in the conditions of approval.
1158
- 1159 6. The applicant shall obtain necessary building permits for items including large
1160 tents (over 900 square feet), temporary stairs, platforms, elevated stages, and
1161 electrical generators to be used during the event. The applicant shall request
1162 building permits no later than two weeks prior the event and shall contact the
1163 Department of Building Construction and Inspections no later than 8:00 am on
1164 Friday, August 5, 2016, to schedule required inspections.
1165
- 1166 7. Temporary tents shall maintain the following setbacks from property lines: 35
1167 foot front setback, 30 rear setback, and 20 foot side setback. Temporary tents
1168 shall also maintain a minimum 10 foot setback from buildings. All temporary tents
1169 shall be properly tethered as required by the Department of Building Construction
1170 and Inspections and the Division of Fire.
1171
- 1172 8. The applicant shall provide adequate restroom facilities and handwashing
1173 stations as required by the Department of Building Construction and Inspections.
1174

1175 9. The applicant shall maintain the property so that noise and debris are
1176 controlled. The site shall be kept clean and adequate trash receptacles shall be
1177 provided during the event.

1178
1179 10. This approval is subject to the conditions of plan of development POD2014-
1180 00088.

1181
1182 11. On-site landscaping planters shall be kept free and clear of vehicles, trailers,
1183 equipment, and displays. All approved landscaping shall be maintained in a
1184 healthy condition at all times. Dead plant materials shall be removed within a
1185 reasonable time and replaced during the normal planting season.

1186
1187 12. Emergency preparedness protocols shall be developed in accordance with
1188 the written requirements of the Division of Fire (see memo dated April 12, 2016).
1189 The applicant shall provide a fire extinguisher and first aid kit for the activity on
1190 Parcel C.

1191
1192 13. Speakers for amplified sound and music shall be directed toward the main
1193 event in order to limit its impact on adjoining businesses and /or residential
1194 neighborhoods and shall not exceed 65 dB at the property line.

1195
1196 14. The sale of alcoholic beverages shall be prohibited at the event.

1197
1198 15. The applicant shall prohibit loitering on the property.

1199
1200
1201 Affirmative: Baka, Berman, Harris, Mackey 4
1202 Negative: 0
1203 Absent: Bell 1

1204
1205
1206 **[At this point, the transcript continues with the public hearing on the next**
1207 **case.]**

1208
1209 **CUP2016-00006 HOME DEPOT** requests a conditional use permit
1210 pursuant to Section 24-116(d)(1) of the County Code to allow a temporary
1211 storage yard at 11260 W Broad Street (Parcel 742-762-4307) zoned Light
1212 Industrial District (Conditional) (M-1C) and West Broad Street Overlay (WBSO)
1213 (Three Chopt).

1214
1215 Mr. Blankinship - Would everyone who intends to speak to this case
1216 please stand and be sworn in. Do you swear the testimony you're about to give is
1217 the truth, the whole truth, and nothing but the truth so help you God?

1218
1219 Thank you. Mr. Gidley.
1220

1221 Mr. Gidley - Thank you, Mr. Secretary. Good morning, Mr.
1222 Chairman, members of the Board.

1223
1224 The subject property is a Home Depot store located in Short Pump at 11260
1225 West Broad Street. The applicant is requesting permission to store mulch in the
1226 front parking lot through the end of August. Today's request notwithstanding,
1227 Home Depot already has mulch stored in the front parking lot in front of the
1228 building.

1229
1230 As you can see here, the property is part of the Brookhollow Shopping Center,
1231 which was initially developed in 1997. In addition to the Home Depot, you have
1232 Kohl's over here, the Hobby Lobby store here, Target over here, along with a
1233 number of outparcels that have been developed.

1234
1235 When the property was rezoned, the Board of Supervisors accepted several
1236 proffered conditions regulating this development. This included a requirement
1237 that reads in part, "No articles, goods, materials, or other items shall be stored in
1238 the open or exposed to public view from any street or from any land. If there is
1239 any outside display or storage area, it shall be screened from view by a wall or a
1240 screening fence of permanent construction and be designed of solid materials."
1241 The current storage of bagged goods in the middle of this parking lot is in
1242 violation of this proffer.

1243
1244 In addition to the rezoning proffer, condition #27 on the plan of development
1245 states: "Outside storage shall not be permit except within the approved garden
1246 center."

1247
1248 Since the current storage has not been approved, a notice of violation has been
1249 served on Home Depot. Here you can see some of the mulch pictures here. And
1250 here as well.

1251
1252 Evaluation. The purpose of the above conditions is to ensure a quality shopping
1253 center that is visually appealing and allows for adequate parking with a free flow
1254 of traffic. Utilizing the center of the shopping center's parking lot for storage runs
1255 counter to these efforts. In addition, Home Depot allows their parking lot to be
1256 used for storage and pickup for Penske rental trucks. Utilizing the parking lot for
1257 these uses places Home Depot and the overall shopping center in violation of
1258 their parking requirements.

1259
1260 The goal of the proffers in the plan of development is to create a quality shopping
1261 center reinforced by the inclusion of this shopping center within the West Broad
1262 Street Overlay District. Three of the goals of the Overlay District include:

- 1263
1264 1. Encouraging well-planned development sites;
1265 2. Protecting landowners from possible adverse impacts of adjoining
1266 development; and

1267 3. Enhancing the appearance and environment of Western Henrico County.

1268

1269 Placing large amount of mulch in the middle of a shopping center's parking lot is
1270 not well-planned development. Since the storage of mulch and rental trucks
1271 exceed the allotted parking for the shopping center, it can negatively impact other
1272 tenants by forcing Home Depot's customers to parking spaces that are typically
1273 utilized by the customers of those other businesses.

1274

1275 Finally, it degrades the appearance of what has been designed to be a quality
1276 shopping center. Home Depot can sell much and has done so since it first
1277 opened. The sale of mulch and other bagged goods, however, needs to occur
1278 within the confines of their garden center as required by the proffers and the plan
1279 of development.

1280

1281 As the Board is aware, in recent years Home Depot has obtained conditional use
1282 permits to allow for the storage of Christmas trees on a temporary basis. I think
1283 there has been some flexibility shown them here despite the conditions. The
1284 reasons for that are one, it only took up 14 parking spaces; two, it only lasted just
1285 over a month; and three, as was pointed out, it occurred during the down season
1286 for Home Depot. These conditions, however, are not present with this request.
1287 The mulch storage takes up to 72 parking spaces, up to five times that of the
1288 Christmas tree display. The mulch sales would last for five months, which is
1289 almost half of the entire year. And finally, it would occur during peak season for a
1290 home improvement store.

1291

1292 Finally, as a result of the recent development of a number of outparcels, what
1293 was once an abundance of excess parking when the first use permit for
1294 Christmas tree sales was approved, that has gone away and there's not nearly
1295 as much excess parking out there as there was say four or five years ago when
1296 the first use permit was approved.

1297

1298 For all of these reasons, staff has to recommend denial of this request. That
1299 concludes my presentation, and I'll be happy to any questions you may have.

1300

1301 Mr. Baka - Any questions of Mr. Gidley?

1302

1303 Ms. Harris - Yes. Mr. Gidley, I know that in condition 7, no more
1304 than 14 parking spaces shall be used for mulch storage. Where do we get the 14
1305 from? Was that because of the Christmas trees?

1306

1307 Mr. Gidley - Yes ma'am. Again, the conditions are there in case
1308 it's approved. Staff is not recommending approval. But in case it was approved,
1309 we took the 14 from the Christmas tree sales since that was the same number.

1310

1311 Ms. Harris - And the second question. Did they ever pay the fee?

1312

1313 Mr. Gidley - As of yesterday afternoon, no ma'am.
1314
1315 Ms. Harris - Okay. Did you get the name of the person making the
1316 request?
1317
1318 Mr. Blankinship - The owner's signature?
1319
1320 Mr. Gidley - The owner's signature. Who that was and their
1321 position, no ma'am.
1322
1323 Ms. Harris - Okay, thank you.
1324
1325 Mr. Baka - Other questions of Mr. Gidley? I have one. When we
1326 established 14 spaces for Christmas trees, where did that 14 come from at that
1327 time? Any guidance on where we may have gotten that number originally?
1328
1329 Mr. Gidley - I didn't handle the case. I believe maybe Mr. Madrigal
1330 would remember. I believe that was probably shown on a site plan, something we
1331 requested here and did not receive. He indicates that's the case, they showed
1332 that number on a site plan. But we've not received a site plan for this case.
1333
1334 Mr. Berman - Did the 14 spaces also include the pickup lane or is
1335 that just the storage of the trees themselves?
1336
1337 Mr. Gidley - My understanding is that would be the storage of the
1338 trees.
1339
1340 Mr. Baka - Thank you.
1341
1342 Mr. Gidley - Yes sir.
1343
1344 Mr. Baka - Would the applicant please come forward to the
1345 podium. Thank you. Good morning. Please state your names and spelling them
1346 for the record.
1347
1348 Mr. Reuther - Good morning. My name's John Reuther, spelled R-e-
1349 u-t-h-e-r.
1350
1351 Mr. Cates - I am Chip Cates—C-a-t-e-s.
1352
1353 Mr. Reuther - To address the point of payment, I do have a check
1354 for the full \$450.00 in my possession to pay for the conditional use permit.
1355
1356 Mr. Baka - Do you have that with you right now, sir?
1357
1358 Mr. Reuther - I do, yes sir.

1359
1360 Mr. Blankinship - Paul, do you want to accept that from him?
1361
1362 Mr. Baka - Thank you, sir. And then there was also a question
1363 about the signature of the application. Is that correct?
1364
1365 Mr. Blankinship - Yes.
1366
1367 Mr. Reuther - I believe the signature on the application was one of
1368 my peers. However, I believe I'm qualified to submit that request.
1369
1370 Mr. Baka - Does that satisfy staff's question?
1371
1372 Mr. Blankinship - No. It's supposed to be somebody who has the
1373 authority to make binding decisions about the real estate, buying or selling
1374 property or doing something that would encumber the real estate. We normally
1375 get a signature from somebody in Bethesda or somewhere in Maryland.
1376
1377 Mr. Baka - Could you describe your roles. Mr. Cates and also—
1378 with the company, what your current role is?
1379
1380 Mr. Reuther - Of course. To Mr. Blankinship's remark, if that's the
1381 case, then no sir, I'm not qualified. Obviously I'm not part of the leasing company
1382 for them. However, I'm the operations manager in the store. Chip is also one of
1383 the managers on duty.
1384
1385 Mr. Blankinship - Be that as it may.
1386
1387 Mr. Baka - All right. Understanding roles in the store, would you
1388 go ahead and go forward and please explain your request?
1389
1390 Mr. Reuther - Of course. Obviously, spring season for any home
1391 improvement retailer in general will allow for excess storage, particularly when
1392 we sell mulch in these quantities. When this picture was taken, we were at our
1393 full capacity and our pricing had yet to begin. If the picture would have been
1394 taken yesterday or this morning, you would see that more than half of that mulch
1395 has already turned, had been sold through. Any parcels or any driving lanes are
1396 no longer blocked. We make it a point to prevent any blockage of those driving
1397 lanes every evening and every night before the store opens for the next day. As
1398 that picture shows, that is no longer the case.
1399
1400 Additionally, having a drive-through loading area like that as the customers
1401 demand is far safer than loading right in front of our garden center. Parking there
1402 and loading slows traffic driving through from the front of our building to Target
1403 and Hobby Lobby and to Kohl's. So we feel that this would be the appropriate
1404 way to keep ourselves safe and our customers safe.

1405
1406 Mr. Berman - I have a few questions.
1407
1408 Mr. Baka - Okay. First before we go to Board questions, have
1409 you read through the staff report itself?
1410
1411 Mr. Reuther - I have, yes sir.
1412
1413 Mr. Baka - Okay. Questions from the Board?
1414
1415 Mr. Berman - Yes. First, so this Home Depot is where I've shopped
1416 for 17 years, and you all have been good corporate citizens and provide
1417 hundreds of job and a tax base, and we appreciate that. But there have been a
1418 lot of irregularities with this request. First of all, it was dated April 7th; you all had
1419 mulch out there the beginning of April. And here you stand before us at the end
1420 of April. I apologize if I'm shooting the messengers here, but I have to state this
1421 for the record.
1422
1423 So that was the first irregularity, not responding to the fees involved and being
1424 written up for it. And the fact that you're selling far more than mulch out there.
1425 You can see the sign in the picture there. In addition to the truck storage, there's
1426 sod, topsoil, stones, timbers—all the things that are also sold inside of the
1427 enclosure within your own property. So it's not just a mulch bed—or mulch pit, I
1428 think you all call it.
1429
1430 I've also witnessed injuries while I've been there to your employees. I'm not sure
1431 if—that's not our jurisdiction; that would be OSHA. But that concerns me as well.
1432 And also just totally putting five times more than the allotted amount of space. As
1433 we've already discussed, this is at a detriment to surrounding outparcels and
1434 other stores. I mean, it would be like Target and Kohl's and Hobby Lobby taking
1435 three or four or their aisles of merchandise and bringing them out into the parking
1436 lot or Panda Express extending their drive-through into the parking lot. It's an
1437 unfair advantage.
1438
1439 Mr. Reuther - Okay. As I see on one of the pictures that we have up
1440 here—unfortunately, I'm not as familiar with how they're labeled on this screen.
1441 Everything is completely enclosed in the parking areas that Home Depot is
1442 responsible for. Could you provide further insight as to what you mean? I
1443 apologize.
1444
1445 Mr. Berman - It was discussed in the intro that you're taking up
1446 extra spaces and Home Depot forces people, when it's at capacity, to park in
1447 front of the other stores. Now, one could argue that that maybe will make
1448 somebody want to go to Target because they had to park in front of Target. But I
1449 can't confirm that. You're taking up a lot of spaces. If you look at the overhead,
1450 you're taking up a fifth of the entire lot that can get quite full on the weekends.

1451

1452 My basic question is: In the past, you haven't done this. Why now do you feel
1453 compelled to put so much merchandise out there?

1454

1455 Mr. Reuther - I believe the increase in storage this year was due to
1456 us selling completely through our mulch last year and not being able to provide
1457 that service to our customers. So we ordered the extra to ensure that we have
1458 the available product for our customers.

1459

1460 Mr. Blankinship - How often do you receive shipments at the store?

1461

1462 Mr. Reuther - We probably receive shipments probably two or three
1463 times a week.

1464

1465 Mr. Baka - If I may, Mr. Berman.

1466

1467 Mr. Berman - Sure.

1468

1469 Mr. Baka - Sounds like the logistics of the operation, the
1470 operations manager elements, not necessarily lining up with how the conditions
1471 were on the site. In the original condition when it was first built it says, "Outside
1472 storage shall not be permitted except within the approved garden center." And
1473 then you have 14 spaces allowed for Christmas trees one month of the year. So I
1474 guess when you say you sold through your entire mulch inventory, typically you
1475 just get what, one or two shipments of mulch a year, a one-time shipment?

1476

1477 Mr. Reuther - No sir. They'll come on a flatbed semi-truck. There
1478 are probably 20 to 24 pallets of mulch per truck. We will see those trucks
1479 regularly, probably two or three times a week. However, they don't arrive on
1480 weekends; generally it's just Monday through Friday.

1481

1482 Mr. Baka - I think Mr. Berman knows where I may be going with
1483 this. I realize this is operations and you're the business manager, it's your
1484 business. But to talk on a logistic issue here, it almost seems to me that the
1485 scheduling and the spacing out of those deliveries is not only important, but it's
1486 paramount to avoid situations that lead to dangerous situations in the parking lot
1487 where people are unable to park in the spaces in front of the store or even just
1488 inconvenience where these customers at Home Depot might be parking in front
1489 of another store—as Mr. Berman mentioned—nearby because they can't park in
1490 front of the Home Depot on a busy Saturday.

1491

1492 Can you describe the logistics process? I realize the mulch and other products
1493 are already here right now. But is there a way to space out the delivery of these
1494 in the future?

1495

1496 Mr. Reuther - It would be desirable, of course. However, we're
1497 obviously not the only Home Depot in the area, so we're all competing, more or
1498 less, to get available loads to come and deliver these mulches to us. Additionally,
1499 our manufacturers can only make so much at a time. So as they have it available
1500 to us is when we receive it and make it available for sale. The ability for us to get
1501 it earlier in the spring will allow us to sell through thousands and thousands of
1502 bags on the weekends for when we have the sales.
1503
1504 Mr. Berman - It seems like this is a very financially based situation.
1505 We by no means want to restrict a successful business in the County.
1506
1507 Mr. Reuther - Yes sir.
1508
1509 Mr. Berman - But again, if Target wanted to increase their sales,
1510 they would move into the parking lot.
1511
1512 Mr. Reuther - Okay.
1513
1514 Mr. Berman - It just seems like you all are overreaching.
1515
1516 Mr. Baka - Sir, I hear your answer and will reply to that. I guess
1517 my observation is that we're not trying to create a normal or regular situation
1518 where products are regularly sold as a standard basis from a parking lot and not
1519 from within the enclosed building.
1520
1521 Mr. Berman - This situation doesn't exist for Lowe's, your closest
1522 competitor literally a quarter mile away because they are a self-contained parking
1523 lot. I understand that you don't have the flexibility that Lowe's has.
1524
1525 Mr. Reuther - They had a similar sale the week prior to when our
1526 sale was and had similar storage.
1527
1528 Mr. Berman - Again, they don't share their parking lot with anybody
1529 else.
1530
1531 Mr. Reuther - Yes.
1532
1533 Mr. Gidley - They've amended their POD. They amended the
1534 proffers and—
1535
1536 Mr. Blankinship - You need to be one the microphone, Paul.
1537
1538 Mr. Baka - Mr. Gidley, go ahead.
1539
1540 Mr. Gidley - Lowe's had similar conditions on their property. They
1541 had a proffer amendment, and they also amended their plan of development

1542 twice to provide for expansion of their garden center and their storage. If Home
1543 Depot can meet parking and other requirements, they can apply to amend their
1544 POD as well. I'm not sure they can meet all those requirements because, as you
1545 said, Lowe's has a lot more room over there, whereas Home Depot's in the
1546 middle of the shopping center.

1547

1548 Mr. Baka - Okay.

1549

1550 Mr. Gidley - That's how it was done through a POD amendment
1551 process where the Planning Commission approves screening and everything like
1552 that.

1553

1554 Mr. Baka - So to clarify, it wasn't that Lowe's had a standalone
1555 property by itself on the side of that access road. It's more that Lowe's had a
1556 surplus of parking spaces available. They could have some outside storage and
1557 still meet their parking requirement, whereas Home Depot is now more recently
1558 constrained by parking requirements because there has been new construction
1559 and new outparcels built at Brookfield.

1560

1561 Mr. Gidley - Lowe's was able to successfully amend their POD
1562 twice and had more success doing so because they were a standalone store, as
1563 Mr. Berman pointed out. Home Depot, which is the original tenant in this space,
1564 is surrounded by stores on two sides. So they may not be able to get approval of
1565 a POD amendment. But that would be the process to resolve the issue.

1566

1567 Mr. Baka - Okay. So may I follow up on that, Mr. Gidley?
1568 Notwithstanding the mulch that's already out there and the other products that
1569 are out there this year in 2016, but going forward in future years—2017, 2018—is
1570 it a more advisable process that Home Depot look at—since the applicant
1571 mentioned frequent sales and selling through their product, is it a more advisable
1572 process that they look at amending their POD here in the future?

1573

1574 Mr. Gidley - Yes, sir, that's what they—if they can meet the
1575 standards, they should go through that route. For instance, the proffers say any
1576 of the storage needs to be screened by a durable fence or wall or some
1577 screening method. The process to do that is to go through the Planning
1578 Commission. I'm not sure, again, that they're going to have adequate parking,
1579 but they may be able to get some small area for additional storage approved by
1580 the Planning Commission.

1581

1582 Mr. Baka - Okay.

1583

1584 Mr. Gidley - That's the process Lowe's went through. It's not a
1585 matter of Lowe's being treated differently. It's just that's the process they went
1586 through and they have more flexibility, as Mr. Berman pointed out.

1587

1588 Mr. Baka - Thank you very much, sir. Other questions of the
1589 applicants?
1590
1591 Mr. Mackey - Yes, Mr. Chairman. Mr. Reuther, have you maximized
1592 all of your storage space behind the building?
1593
1594 Mr. Reuther - Yes sir. As you can see in the following photos, the
1595 loading area behind the building is also full of future sales product as well.
1596
1597 Mr. Baka - Tell me about that product. Is this situation avoidable
1598 if deliveries are scheduled out over a matter of weeks in April, May and June,
1599 rather than over a matter of days in February and March?
1600
1601 Mr. Reuther - The concern with that is—two weekends ago is when
1602 we had what we call our Spring Black Friday sales. That's when everything goes
1603 on sale. That's when our customer demand for these products is the highest.
1604
1605 Mr. Baka - But you didn't sell out.
1606
1607 Mr. Reuther - We did not sell out of the product behind the building;
1608 however, we did sell out of two of the mulch items in the front, the brown color
1609 and the red color.
1610
1611 Mr. Mackey - It looks like to me that some of the stuff out in the
1612 parking lot is stacked higher than the stuff behind the building.
1613
1614 Mr. Reuther - Well, yes sir. The mulch pallets are stacked higher
1615 than, for example, a pallet of topsoil. It's just how they come from the
1616 manufacturer. Each one in the truck is one unit high. And then to maximize space
1617 in the back, some of the units are stacked one or two or three high.
1618
1619 Mr. Mackey - It doesn't look like you're maximizing the space in the
1620 back to me. It looks like you could store some more of that mulch behind the
1621 building. I mean I'm sure it's easier out here in the parking lot.
1622
1623 Mr. Reuther - Yes sir.
1624
1625 Mr. Mackey - But as they have spoken before, it really comes down
1626 to a safety aspect, I believe.
1627
1628 Mr. Reuther - I don't disagree with trying to be safe. The concern
1629 about storing more product behind the building is the amount of customer traffic
1630 or general public traffic behind the building just trying to avoid Broad Street. As
1631 you can see in the pictures, vehicles travel behind the building just to avoid traffic
1632 lights. I know that's not a concern or not a fight for me here today, but I'd love to
1633 get that changed.

1634

1635 Mr. Baka - That is a key concern.

1636

1637 Mr. Blankinship - That was part of the approval of the plan of
1638 development. That was a requirement placed on the shopping center that that
1639 drive aisle is retained and that traffic be allowed to flow there. There will not be
1640 anybody blocking—any of the businesses blocking that drive aisle. That was a
1641 requirement of the traffic study for the original approval.

1642

1643 Mr. Reuther - Okay. And it appears we're meeting that requirement
1644 to not block that aisle.

1645

1646 Mr. Baka - It is a concern how some people speed through the
1647 rear of the lots. Other questions of the applicants?

1648

1649 Ms. Harris - Yes, I have a question. Mr. Cates, you said that when
1650 the pictures that we had before us were taken, that was the condition then. But
1651 since then, you've sold some of the mulch. So how many less parking spaces—I
1652 should say how many parking spaces are you using now? Do you have any
1653 idea?

1654

1655 Mr. Cates - I don't have an idea off the top of my head right now
1656 exactly how many parking places we're using. Previously, the 14 parking places
1657 that have been spoken to, we had a tent area that was set up for our Christmas
1658 trees. So that would be the entire area that the tent would cover would be those
1659 14 parking places. For our seasonal demand for mulch, we cannot put a tent over
1660 top of this. So we expanded. For safety reasons, we cannot double-stack mulch
1661 whatsoever. But as far as the topsoil, because they are more dense and
1662 compact, we can actually double-stack those pallets. That way we can kind of
1663 bring in the space a little bit. But we can't go any further than—higher than three
1664 pallets high. So two pallets would be our limit.

1665

1666 As far as the area, there is a set of islands on the back side of the mulch here.
1667 It's kind of hard to see from one of the pictures because at the time we had so
1668 many. There's one set off to the left. And then further up on the right there's a
1669 set. We try not to go past that, holding into that front area. But at the time the
1670 pictures were taken, we were getting in all of our mulch to prep for our sales for
1671 that upcoming weekend, which the sale ran for 11 days straight for the mulch.

1672

1673 As to what John had said, we did sell through all of our brown mulch and our red
1674 mulch, which is normally one of our top sellers. I think we get in close to three or
1675 four thousand bags of mulch, which comes out to about 50 or 60 pallets of mulch
1676 that we actually end up selling through. Inside our garden courtyard, the outside
1677 garden area, our space is limited because we also have tropical plants and
1678 everything else that we have set up in there. Our holding capacity for that mulch,
1679 sales floor wise to be able to be sold, it is two pallet spaces deep for color. That's

1680 as much as we can go without blocking our aisles and creating a fire hazard or
1681 anything else. To have a forklift in there, to be able to bring down more mulch or
1682 to bring it in, would also require us to block the aisles. The additional wait time
1683 would cause more customers in the parking lot to actually have to wait in line to
1684 get mulch if we're bringing it in from back.

1685
1686 The drive-through area—the mulch pit is what we've called it—is an area where
1687 we can have our customers come in, purchase and then pull in. We have
1688 associates readily available to go out there and load. Several comments voiced
1689 by our customers indicated this was a great idea. "I was able to get in and out of
1690 the store, purchase my mulch and have somebody load me up. And I was able to
1691 be on my way back to my home or garden" or whatever they're going to.

1692
1693 As far as to answer your question on exactly how many spaces that we use, I do
1694 not have an answer this morning.

1695
1696 Ms. Harris - Do you have the same problem with the other Home
1697 Depot stores? When we approved the Christmas tree sale, I think three came
1698 before this Board. Are you having this problem with all of the Home Depot stores
1699 or do you know?

1700
1701 Mr. Reuther - I've been to five, six stores that are in the Richmond
1702 area. I was the assistant manager at the in-town store, which is off of like
1703 Glenside and Broad, closer in to the city of Richmond. We had issues with the
1704 environment, just because of the fact that we obtained the permit for the fenced
1705 area and for the tent. But when they would come out, they would ask us to cover
1706 our mulch every night before we left. But then again, that building was a
1707 standalone building to where there was no drive-through traffic behind the
1708 building. Our parking lot was our parking lot. And we didn't go over into the
1709 neighboring business. That was one of the problems that we had there.

1710
1711 I believe most of the other stores that I've been at have not been part of a
1712 shopping center to where they're in the exact center, to where we have
1713 businesses meeting on both sides of the building. This would be the first time that
1714 I've been at a store that has had that.

1715
1716 In years past, we have not had—I guess with this being one of the older—this is
1717 actually our oldest store in our area. I guess when they were building the area,
1718 we were going to have all the mulch staged on the inside. As time has
1719 changed—I mean it's been 17 years—the sales of the company have grown,
1720 both the store and of the entire company. And our store has been actually one of
1721 the top stores in the area for two years now. With that increase in customers
1722 coming in, we also have higher ticket volume. So we're actually selling more
1723 products than our other stores that are in our area.

1724

1725 I guess as far as from the safety standpoint and how our business is growing,
1726 this would be a necessity for us to continue our growth going forward. As far as
1727 the mulch pit is concerned, I believe the dates will run through the end of August.
1728 I think that's what I had requested it for. In years past in the other stores I've
1729 been at, usually the weekend after July 4th we were supposed to have all parking
1730 lots clear, all mulches out and stored inside the building at that point.

1731

1732 Hopefully that kind of helps answer some of the questions.

1733

1734 Ms. Harris - It seems to me that you just have an overstocking
1735 problem. It's not very complicated. You said that by July the 4th or after July
1736 4th—

1737

1738 Mr. Cates - After July 4th—

1739

1740 Ms. Harris - All of this will be gone.

1741

1742 Mr. Cates - Yes. We'll have—

1743

1744 Ms. Harris - Or just about.

1745

1746 Mr. Cates - We'll have that part of the building cleaned up. All the
1747 mulch will be off the front parking lot. Again, we will have storage on the back of
1748 the building. And as we sell through, we will actually bring all that stuff into the
1749 building to where we'll be back self-contained within the walls of the building.

1750

1751 Ms. Harris - Okay. Thank you.

1752

1753 Mr. Berman - But the way the request is submitted, it's through
1754 August 31st. It says nothing about July.

1755

1756 Mr. Reuther - That's correct, yes sir. I think it would be beneficial for
1757 us to extend that conditional use permit for any case where we wouldn't be able
1758 to clear that area. We fully intend to have it clear in the time frame Mr. Cates
1759 stated. However, the extra few weeks may not be a bad idea just to make sure
1760 we fall in line with that permit.

1761

1762 Mr. Berman - Did you get a chance to finish your question?

1763

1764 Ms. Harris - Yes.

1765

1766 Mr. Berman - What is the mulching season business? Personally, I
1767 only have a, like a 30- to 40-day span where I will mulch. Personally. This is like
1768 five, six months.

1769

1770 Mr. Reuther - Yes sir. I believe most people would intend to do their
1771 mulching in the beginning of the spring to enjoy it for their summer. However, I
1772 don't mean to sound in any way inappropriate. Mulching season is whenever our
1773 retailers have it on sale. If we have it on sale, people are going to come and
1774 purchase it.
1775
1776 Mr. Blankinship - And as you pointed out, Mr. Berman, they sell a lot of
1777 other material out there aside from mulch, too, so.
1778
1779 Mr. Berman - Again, all that material is available inside the garden
1780 enclosure. Would you consider staging all of this instead of in the parking lot in a
1781 parcel that you would rent during the season? As an example, less than a half a
1782 mile away there's that big parcel in front of All Tune & Lube, or whatever that is,
1783 where they have like boat storage and things like that. I'm just trying to come up
1784 with options in case we rule against the current situation.
1785
1786 Mr. Reuther - Yes sir. And thank you for that. Unfortunately, I don't
1787 make those types of decisions. That would be something that would be based
1788 probably out of our corporate offices in Atlanta. If I had to make a guess that
1789 would probably be a no. But of course we would do whatever we had to.
1790
1791 Mr. Berman - Understood.
1792
1793 Ms. Harris - Mr. Reuther, next season would you order less mulch
1794 and whatever else that goes with it?
1795
1796 Mr. Reuther - Many times it's a trial-and-error process. We try to do
1797 our best to mirror the quantities sold the previous year and try to calculate how
1798 much more we may sell the following year. So, looking at it this year, we seem to
1799 have had an overabundance of—for example, there's the topsoil. Perhaps we'll
1800 order less topsoil next year. We had extra black mulch this year. Perhaps we'd
1801 order less black mulch. With that being said, we did sell completely through our
1802 brown mulch and our red mulch, so we may order more to that case next year.
1803
1804 Ms. Harris - So the abundance that we're seeing in the photos,
1805 what type of mulch is that, the ones that are stacked up?
1806
1807 Mr. Reuther - When those photos were taken, it was taken before
1808 we had our sale.
1809
1810 Ms. Harris - Yes.
1811
1812 Mr. Reuther - So that was just overstock to prepare for that
1813 particular sale.
1814
1815 Ms. Harris - What type of mulch is that?

1816
1817 Mr. Reuther - It's made by Scotts. It's Earthgro. It could be either
1818 brown, black, or red. Looking at those pictures, I believe that's brown.
1819
1820 Ms. Harris - Is most of that gone now?
1821
1822 Mr. Reuther - Yes ma'am. Unfortunately, these pictures don't show
1823 those traffic islands very well. There are two traffic islands near that center lane
1824 where I assume would be the fire lane in front of the two buildings. There are two
1825 traffic islands there that you can see right there. And then we have all of our
1826 mulch contained between that and the next traffic island. On either side.
1827
1828 Ms. Harris - So that fencing is around how many parking spaces?
1829 Do you know?
1830
1831 Mr. Reuther - The fencing?
1832
1833 Ms. Harris - Yes.
1834
1835 Mr. Reuther - The fencing is only at the entrance and the exit.
1836
1837 Ms. Harris - Okay. So it does not enclose an area?
1838
1839 Mr. Reuther - No ma'am.
1840
1841 Ms. Harris - Okay.
1842
1843 Mr. Cates: And also if I may add, this is also part of the weather.
1844 If spring breaks early—technically, this year our spring broke late. So we would
1845 already start seeing some of these sales and actually seeing some of this mulch
1846 move. So it also depends upon the weather, how it goes. Just a few weeks ago,
1847 they were even calling for snow, and this is April. We try to go by season, but
1848 unfortunately, you can only predict so much as far as what the weather is going
1849 to end up doing.
1850
1851 Ms. Harris - I'm just trying to see if there's a solution. If you
1852 propose to the Board—and I cannot speak for every member of the Board. But
1853 I'm saying if you bring to us something other than August 31st. You said it's
1854 going to be gone by July-something. Would you be willing to change your date,
1855 your temporary date? It says beginning April 7th through August 31st. Would you
1856 consider changing that since you said you're going to sell most of it by just after
1857 July 4th.
1858
1859 Mr. Reuther - Would you accept the end of July?
1860

1861 Ms. Harris - I cannot speak for the Board. I'm asking would you
1862 consider—
1863
1864 Mr. Reuther - Yes, we would be willing to change our dates.
1865
1866 Ms. Harris - To what?
1867
1868 Mr. Reuther - July 31st or 30th. I'm not sure how many days July
1869 has. Sorry. Or whatever that near Sunday would be.
1870
1871 Mr. Blankinship - July 31st is a Sunday.
1872
1873 Mr. Reuther - Okay, that's perfect.
1874
1875 Ms. Harris - That was just my concern.
1876
1877 Mr. Baka - I have a couple questions. I can concur with what Ms.
1878 Harris was saying just a few minutes ago. It sounds like to me you have an
1879 overstocking issue and a logistics issue. I work in business operations too. Not
1880 for a home and garden center. I don't want the Board to necessarily create a
1881 precedent or create an unusual circumstance to solve what truly is an
1882 overstocking or logistics need. Because your business is very successful. You're
1883 in one of the strong economic ends of Richmond with Short Pump commercial
1884 sales and magnet stores. We all know the traffic is busy because a lot of
1885 customer sales are generated. We're pleased for your success and in support of
1886 that economic success, but we're not also trying to create situations that would
1887 cause impact to other neighboring commercial uses, commercial properties, and
1888 to customers driving through drive aisles and potential conflicts at intersections at
1889 the end of the rows of products.
1890
1891 I have three questions. What weekend is the Spring Black Friday for mulch that
1892 you mentioned? When was that this year? Was it March or April?
1893
1894 Mr. Reuther - This year it was the beginning of April, I believe.
1895
1896 Mr. Berman - Okay. So let's just say it's the beginning of April. I
1897 guess my question is earlier you mentioned about half of the 72 spaces are left.
1898 So let's just say—I don't know. But let's say there are about 36 spaces or so, or
1899 less, that have product in them today. That's still considerably more than the 14
1900 spaces that Mr. Gidley mentioned are allowed for one month a year on a non-
1901 peak season for Christmas tree sales. Thirty-some spaces are covered now
1902 compared to fourteen at Christmas time. With that in mind, if you have this much
1903 available—and I realize you sold out of the brown and the red, and next year in
1904 likelihood business models would say order a lot more of that and get staff to
1905 help you get that set up. Couldn't this extra product that's in these thirty-some

1906 spaces today be ordered after your black Friday mulch sales in 2017 so that you
1907 don't have thirty-some spaces covered?
1908

1909 In other words, if you're going to sell this same product for five months, why have
1910 it all front-end delivery, front-end at one point if you only sold through half of that
1911 total product by today, by April 28th? Could you have this product that's there
1912 now be delivered in May, for example, next year so that you don't have—in April
1913 or May so you don't have an overstocking issue?
1914

1915 Mr. Reuther - Sure, I definitely understand your point. Part of the
1916 reason for us having that much mulch as well is to create the enclosed area for
1917 that drive-through. But, however, in a logistical world where everything worked
1918 out the way we'd like it to, that would be something we could consider, yes sir.
1919

1920 Mr. Baka - We're not looking to create optimal—I'm not sure how
1921 to phrase this—optimal situations so that sales in the parking lots can increase
1922 beyond what we were originally expecting. The gentleman before mentioned it
1923 may be a necessity to have this type of sales. It may be a necessity to sell the
1924 outdoor product and outdoor mulch products in the different types, but it's not
1925 necessarily a necessity to have it take up this many of the spaces. That's our
1926 concern.
1927

1928 I guess as kind of a closing question I have is, as of today, how many products
1929 other than the mulch are being stored right now in those thirty-some spaces in
1930 the parking lot? The request was only for mulch, wasn't it?
1931

1932 Mr. Reuther - At this time, there's probably three different mulch
1933 items. There would be topsoil, there would be timbers, and there would be items
1934 of bagged rocks.
1935

1936 Mr. Baka - Bag rocks and timbers? What if this Board considered
1937 a condition to say that no products other than mulch? I'm specifically looking at
1938 things like wooden timbers and bag rocks. No products other than mulch shall be
1939 sold within the parking lot. Does the Board have any concerns about the types of
1940 products that are sold in there or is that not as much of an issue to you?
1941

1942 Mr. Berman - Just want less.
1943

1944 Mr. Mackey - Yes. I don't think it matters what it is.
1945

1946 Mr. Baka - Okay.
1947

1948 Mr. Berman - I think he also has sod out there, too, don't you?
1949

1950 Mr. Cates - We did, yes sir.
1951

1952 Mr. Berman - And the trucks.
1953
1954 Mr. Cates - The trucks are on the opposite of the building. If you
1955 could pull that photo up, I'd appreciate it. Actually you have it up; I'm sorry.
1956
1957 Mr. Berman - It's up there.
1958
1959 Mr. Cates - Where those are stored, it would be—not your
1960 average customer would park in that area. So if the conditional use permit that
1961 we're speaking of for parking spaces, if that tends to be the concern here, very
1962 little customer parking would be out in that area. However, these trucks do turn
1963 on a one-to-two-day basis. Generally the local Penske dealership at the airport
1964 brings them to us a day or two in advance. And within that time, the customer
1965 comes and rents them. However, we do have a pretty heavy rental business, so
1966 there are regularly trucks there.
1967
1968 Mr. Berman - I don't know if Sonic would agree with your idea that
1969 nobody parks there. That's part of their overflow area. The trucks, again, couldn't
1970 you find another spot for those trucks?
1971
1972 Mr. Cates - We could attempt to. We could try, sure. I won't
1973 comment on the previous statement.
1974
1975 Mr. Berman - The vision of this strip mall was that it would be—I
1976 don't want to say a classy joint, but it would be clean looking.
1977
1978 Mr. Cates - Sure.
1979
1980 Mr. Berman - And appealing from Broad Street. When you drive by
1981 there—yes, customers love it. I've bought mulch there. But at what cost? It kind
1982 of junks it up, and it impedes on the competition of the other stores to do the
1983 same thing out in the parking lot. Plain and simple.
1984
1985 Mr. Cates - I certainly understand your point. To my knowledge,
1986 we've not received any complaints from our surrounding businesses. We have an
1987 excellent relationship with Hobby Lobby. And fortunately for us we do, as this can
1988 probably impede mostly onto any of their customer traffic as we're situated.
1989
1990 Mr. Berman - If that was still Kroger, this would actually be an even
1991 bigger problem.
1992
1993 Mr. Blankinship - That's true.
1994
1995 Mr. Reuther - If I may. If it would help with the permit—if we could
1996 go back with the slide with the gates on the front of it. If this would help, we can
1997 also order a fence to enclose the area so that we have an idea—as we're

1998 loading, we don't go past that area. That way it kind of helps also with kind of
1999 keeping things segregated into one area. That way it's not going out into the
2000 parking lot, but also this is the only area where we would actually have mulch. If
2001 that would help.

2002
2003 Mr. Baka - That might be an issue for the POD. And I guess it's a
2004 question for staff. Can the BZA even make a recommendation that the applicant
2005 consider revisiting a discussion of the POD with either the Planning Commission
2006 staff—the Commission or the staff?

2007
2008 Mr. Blankinship - It's not even just the POD, it's the proffered
2009 conditions.

2010
2011 Mr. Baka - Number 27?

2012
2013 Mr. Mackey - I thought it was already supposed to be fenced in.

2014
2015 Mr. Blankinship - Yes, it is. Nobody in the shopping center is supposed
2016 to have any outside storage except behind a decorative wall or fence.

2017
2018 Mr. Berman - Of hard material.

2019
2020 Mr. Blankinship - And it's supposed to be some kind of a permanent
2021 improvement. Essentially the way their garden center is. The garden center is
2022 sort of outdoor storage, but it's behind a decorative wall, so it appears to be part
2023 of the building.

2024
2025 Mr. Baka - Part of that, I think, is the mass visibility of
2026 Brookhollow. It was a massive area of trees. When they first cleared those trees
2027 a few years ago to build, it was like wow, you can see it, high visibility from the
2028 road. Some of the other home improvement stores we spoke about this
2029 morning—whether it's the Home Depot in town or the Lowe's out off Pouncey
2030 Tract—are not necessarily totally obscured, but they're a little bit more obscured
2031 as you drive by on the two public roads. I think you're blessed with a high-
2032 visibility problem here. You have a great number of customers coming, and at the
2033 same time we see the impacts it may have.

2034
2035 Mr. Blankinship - And this is the only site in the West Broad Street
2036 Overlay District where the Board of Supervisors has put additional constraints on
2037 development for particular purposes in order to develop a certain character. It is
2038 the only one that is subject to those requirements.

2039
2040 Mr. Baka - It's difficult to apply the same logistics and stocking
2041 techniques to this particular site compared to the other stores that you've
2042 challenged us to look at. Those are some of the challenges here.

2043

2044 One question I have for Ben that I wrote down earlier. Does the BZA even have
2045 the authority to grant a permit that would appear to go against the POD condition
2046 #27? It says, "Outside storage shall not be permitted except in the approved
2047 garden center." Do we have that authority to issue this?
2048

2049 Mr. Blankinship - There is some gray there, I think. And again, this
2050 started with the Christmas tree sales where the decision was made to allow the
2051 temporary use permit as a way of essentially setting aside the POD condition
2052 under a very restrictive request: fourteen parking spaces for one month during a
2053 time when Home Depot is not at its busiest. When that was approved, I don't
2054 think we would have anticipated a request like this. When Home Depot was
2055 notified that all the outdoor storage they had done was contrary to their
2056 approvals, they said, "Well can we do the same thing that we did for the
2057 Christmas tree sales?" And because we had already kind of set that precedent,
2058 we weren't really sure whether that was the most appropriate way to handle this.
2059 But that decision was made to accept the application and see where it went.
2060

2061 But again, the staff's recommendation on this case is—the Planning
2062 Department's recommendation is denial, that this is not appropriate to the
2063 location, it's not appropriate to the proffered conditions, it's not appropriate to the
2064 plan of development. It's not a Christmas tree sales application. And in this case,
2065 we believe the Board of Zoning Appeals is not the appropriate body to approve
2066 this. But there was no way to even get them in front of the Planning Commission
2067 before July. So it lands in your lap.
2068

2069 Mr. Reuther - For a little bit of clarity, may I ask what the acronym
2070 "POD" stands for?
2071

2072 Mr. Blankinship - I'm sorry. That's plan of development. When the site
2073 was first developed, the plan of development process is how they determined
2074 how the parking lot would lay out, what materials the building would be built of,
2075 the shapes of things, where the fire lanes go. All those sorts of elements.
2076

2077 Mr. Reuther - Thank you.
2078

2079 Mr. Berman - While the applicants are here, is it appropriate to
2080 discuss if we do deny the application what the options are? Or is that something
2081 we discuss during the vote?
2082

2083 Mr. Blankinship - It's not really on the table for the Board of Zoning
2084 Appeals. I can tell you that—as you said in your opening remarks, Mr. Berman,
2085 Henrico County is pleased to have Home Depot as a corporate citizen. Nobody is
2086 interested in punishing Home Depot. Nobody's interested in being unreasonable
2087 with Home Depot. It's like any business in the County. It's not just because they
2088 are a good corporate citizen. We're not interested in punishing any businesses.
2089 What we want to do is see this brought into compliance, and then we would like it

2090 to remain in compliance. Next year we would like it to continue to be in
2091 compliance.

2092

2093 I think given a two-month time frame until July, probably what will actually occur
2094 is that we will just instruct them as gently and firmly as we can that we would like
2095 all this material sold and no more stock brought into this parking area. And then
2096 when all this material has been removed from the parking lot, no more material is
2097 to be stored in the parking lot. That's what I anticipate the decision would be, but
2098 of course it won't be my decision.

2099

2100 Mr. Berman - How long would it take to sell off the current stock?

2101

2102 Mr. Reuther - As Mr. Cates mentioned, I believe probably sometime
2103 after the July 4th weekend or middle of July would be correct.

2104

2105 Mr. Berman - Does that include additional shipments in that
2106 calculation?

2107

2108 Mr. Reuther - That would include additional shipments, yes sir.

2109

2110 Mr. Berman - If shipments ceased within 30 days, how long would it
2111 take to sell off?

2112

2113 Mr. Baka - Shipments of storage of outside equipment.

2114

2115 Mr. Berman - Yes.

2116

2117 Mr. Baka - We're not saying in the garden center. Sorry.

2118

2119 Mr. Berman - Yes, you're welcome to store anything you want in the
2120 garden center.

2121

2122 Mr. Reuther - Sure. Even with the storage in the garden center, as
2123 Mr. Cates mentioned, that's probably only six total pallets of mulch in there. So
2124 that wouldn't last very long. As far as what we have out in our parking lot, what
2125 we have there, as we're currently running another sale on all those items, I'd
2126 imagine probably within the next two weeks, three weeks, without any further
2127 shipments. That would be on the long end.

2128

2129 Mr. Berman - How many bags per pallet?

2130

2131 Mr. Reuther - Sixty.

2132

2133 Mr. Berman - Isn't sixty the limit that you're requesting per
2134 customer?

2135

2136 Mr. Reuther - It was. However, as you all have astutely noticed, we
2137 do have a lot. So we aren't limiting customers to sixty.
2138

2139 Mr. Berman - Okay.
2140

2141 Ms. Harris - Do you see the conditions in the packet of information
2142 that you received today?
2143

2144 Mr. Reuther - I did. I of course went to the one that was highlighted,
2145 number 17 or 27.
2146

2147 Ms. Harris - Okay. The condition for this conditional use permit is
2148 on page 3 of 3. You need to look at number 3 and number 7.
2149

2150 Mr. Berman - So not the 1997 items; the current items.
2151

2152 Mr. Reuther - Number is the parking lot shall be subject to the
2153 requirements that are—
2154

2155 Ms. Harris - No, no. This is the condition that we're setting forth for
2156 today.
2157

2158 Mr. Blankinship - Paul, can you point him to the conditions?
2159

2160 Mr. Reuther - Okay. The mulch shall be removed from the parking
2161 on or before September 1st?
2162

2163 Ms. Harris - If we change that to July 31, 2016—and I think
2164 someone said that—go down to condition number 7. Is it possible that you can
2165 use no more than 14 parking spaces?
2166

2167 Mr. Reuther - Would it be possible, yes. Would it be feasible, no
2168 ma'am.
2169

2170 Ms. Harris - If your saying "no", is what would cause us to reject
2171 this conditional use permit, do you think you could comply with that?
2172

2173 Mr. Reuther - Of course we would do our best, yes ma'am.
2174

2175 Ms. Harris - Okay.
2176

2177 Mr. Berman - In order to get it down to 14 spaces, do you have
2178 enough room out back and in the garden center to store enough and just
2179 continue to forklift it into the parking lot?
2180

2181 Mr. Reuther - Not exactly. For safety reasons, moving forklifts of
2182 loads that tall, we generally try to restrict to after customer hours. Just for the
2183 obvious safety reasons. Which is one of the reasons why we store so much
2184 outside out front where it's readily available. However, our storage area to keep
2185 all of it if we were to move it, we would probably encroach upon that back drive.

2186
2187 Mr. Cates - And then also with the off-loading of the trucks on the
2188 back alley of the building, with mulch being off-loaded on both sides of the trucks,
2189 we have to secure the area. And with traffic going through there, we'd take one
2190 pallet down, let three or four cars go. Take another pallet down, let three or four
2191 more cars go through. Literally, it would be an all day event for one truck parked
2192 there in order for us to off-load it to the side. And then with us not being on the
2193 end of a building, we actually have to drive through the garden center. In this
2194 picture here, there is a black wrought iron gate that we would have to drive
2195 through, past the checkout stands at the front of the building where the
2196 customers are waiting to check out. Get them to move out of the way so we can
2197 run at least one pallet out at time. We wouldn't be able to run more than that. And
2198 then after that, if somebody were to purchase sixty, which would be what's
2199 equivalent to one pallet, we would load that customer. And then we would have
2200 to go back through the entire building again to pull a second pallet for the
2201 customer who may only want 10 or 12 bags of it.

2202
2203 Ms. Harris - What you're saying is that having the sales run
2204 through July 4th will probably alleviate that problem. Would it not? You would not
2205 have to move all of these bags of mulch, or whatever we have here, because
2206 you're going to sell them by probably close to that deadline.

2207
2208 Mr. Reuther - Yes. If we're conditionally permitted to have that
2209 storage outside, by the end of July 4th or the middle of July, that wouldn't be an
2210 issue. That's correct.

2211
2212 Ms. Harris - Okay, thank you.

2213
2214 Mr. Baka - Any other questions from members of the Board?
2215 Thank you very much for your time and your presentation. Is there anyone else
2216 who wishes to speak to this case? Seeing none, we'll move on at this point to the
2217 next item, which would be votes on the cases.

2218
2219 **[After the conclusion of the public hearings, the Board discussed the case**
2220 **and made its decision. This portion of the transcript is included here for**
2221 **convenience of reference.]**

2222
2223 Mr. Baka - Is there a motion on this case?
2224

2225 Mr. Berman - I move that we deny the application on the basis that
2226 they are not currently meeting the proffers set forward or the conditions of POD
2227 approval.
2228

2229 Mr. Baka - Motion to deny the case as submitted. Is there a
2230 second.
2231

2232 Mr. Mackey - I'll second.
2233

2234 Mr. Baka - Second. Now that the motion has been made and
2235 seconded, is there any discussion on the motion?
2236

2237 Ms. Harris - Yes. I was thinking that we would give them some
2238 time to come into compliance with this, especially since they said the mulch
2239 would probably be removed by July 31st and because of sales storage could
2240 perhaps be limited to 14 parking spaces. I was hoping that we could give them
2241 an extension of time for this.
2242

2243 Mr. Blankinship - As I said, Ms. Harris, we're not going to go out there
2244 tomorrow morning and tell them to clear the parking lot. We'll work with them in
2245 bringing it into compliance.
2246

2247 Mr. Mackey - Mr. Chairman, if I may. I'm the least senior on this
2248 Board, and I would surely go with your experience. But it seems to me like we're
2249 working this one a little bit backwards. All of the other cases that I've been aware
2250 of, people are going forward. They're coming to get approval and it seems like
2251 the damage is done here. And we've done a lot to try to minimize it and fix it. But
2252 the way it's set up now, it is a direct violation of previous statutes that were set. I
2253 couldn't in good faith approve that.
2254

2255 Ms. Harris - Keep in mind that Home Depot has been a good
2256 neighbor. And I think we all agree that out of fairness to the other businesses,
2257 they do need to do something. And I think we heard that they would try to
2258 comply. That's why I'm for the extension.
2259

2260 Mr. Baka - Any other discussion on the motion? If there is no
2261 other discussion, we'll vote on the motion to deny the case as submitted. All
2262 those in favor of voting to deny the case, vote by saying aye. Opposed say nay.
2263 Three to one, the ayes have it.
2264

2265 After an advertised public hearing and on a motion by Mr. Berman seconded by
2266 Mr. Mackay, the Board **denied** application **CUP2016-00006, HOME DEPOT's**
2267 request for a conditional use permit pursuant to Section 24-116(d)(1) of the
2268 County Code to allow a temporary storage yard at 11260 W Broad Street (Parcel
2269 742-762-4307) zoned Light Industrial District (Conditional) (M-1C) and West
2270 Broad Street Overlay (WBSO) (Three Chopt).

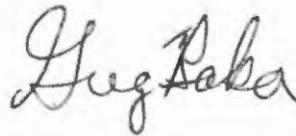
2271			
2272	Affirmative:	Baka, Berman, Harris, Mackey	3
2273	Negative:	Harris	1
2274	Absent:	Bell	1
2275			
2276			
2277	Mr. Baka -	Mr. Blankinship, you'll follow back up with the	
2278	applicant—		
2279			
2280	Mr. Blankinship -	Yes sir.	
2281			
2282	Mr. Baka -	—after this meeting? The next item on the agenda is	
2283		the approval of the minutes from the March 24, 2016 meeting. Are there any	
2284		changes or a motion on the minutes to approve the minutes?	
2285			
2286	Mr. Berman -	I move that we approve the minutes, waive the	
2287	reading, submitted as-is.		
2288			
2289	Mr. Baka -	Motion to approve. Is there a second?	
2290			
2291	Ms. Harris -	Second.	
2292			
2293	Mr. Baka -	All in favor say aye. Opposed? The minutes are	
2294	approved.		
2295			
2296		On a motion by Mr. Berman, seconded by Ms. Harris, the Board approved as	
2297		submitted the Minutes of the March 24, 2016 , Henrico County Board of Zoning	
2298		Appeals meeting.	
2299			
2300			
2301	Affirmative:	Baka, Berman, Harris, Mackey	4
2302	Negative:		0
2303	Absent:	Bell	1
2304			
2305			
2306	Mr. Baka -	At this time, this concludes our meeting. Is there a	
2307	motion to adjourn the meeting?		
2308			
2309	Ms. Harris -	So moved.	
2310			
2311	Mr. Baka -	So moved. Second?	
2312			
2313	Mr. Mackey -	Second.	
2314			
2315	Affirmative:	Baka, Berman, Harris, Mackey	4
2316	Negative:		0

2317 Absent:
2318
2319 Mr. Baka -
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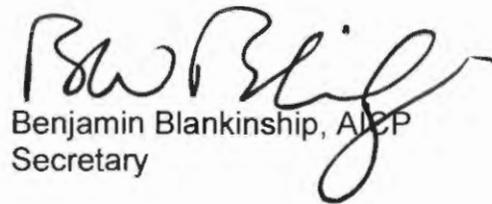
Bell

1

The meeting is adjourned.



Greg Baka
Acting Chairman



Benjamin Blankinship, AICP
Secretary