

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION**
3 **BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY**
4 **SPRING ROADS, ON THURSDAY, MARCH 24, 2011 AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH MARCH**
6 **3, 2011 AND MARCH 10, 2011.**

7
Members Present: Helen E. Harris, Chairman
Robert Witte, Vice Chairman
Lindsay U. Bruce
James W. Nunnally
R. A. Wright

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

8
9
10 Ms. Harris - Good morning and welcome to the March 24, 2011
11 session of the Board of Zoning Appeals for Henrico County. Would you please
12 stand and recite the **Pledge of Allegiance**.

13
14 Good morning, Mr. Blankinship. Would you please read the rules that govern this
15 meeting and let us know if there are any withdrawals or deferrals?

16
17 Mr. Blankinship - Madam Chairman, members of the Board, ladies and
18 gentlemen, the rules for this meeting are as follows. Acting as secretary, I will
19 call each case and as I'm speaking, the applicant should come up to the podium.
20 We will then ask anyone who intends to speak on that case to stand and be
21 sworn in. The applicant will present their testimony. Then if there is any
22 opposition or anyone else who wishes to speak, they will present their testimony.
23 After everyone has spoken, the applicant will have an opportunity for rebuttal.
24 After the Board has asked questions and heard all the testimony, they will take
25 the case under advisement and go on to the next case. They will render all of
26 their decisions at the end of the meeting. If you wish to know the decision on a
27 specific case, you can stay until the end of the meeting, or you can check the
28 Planning Department's website this afternoon (we update it almost immediately
29 after the meeting), or you can call the Planning Department this afternoon.

30
31 This meeting is being recorded, so we'll ask everyone who speaks to speak
32 directly into the microphone on the podium, state your name, and please spell
33 your last name so we get it correctly into the record.

34
35 Finally, out in the foyer there is binder containing the staff report for each case,
36 including the conditions that have been recommended by staff. It is very

37 important particularly the use permit applicants be familiar with the conditions
38 that staff has proposed.

39
40 And no, Madam Chairman, we do not have any requests for deferral or
41 withdrawal.

42
43 Ms. Harris - Please call the first case.

44
45 **CUP2011-00001** **LINDA NICHOLSON** requests a conditional use
46 permit pursuant to Section 24-12(e) of the County Code to operate a private
47 kennel at 2104 Boxwood Place (Lakewood Estates) (Parcel 778-753-9495),
48 zoned R-2, One-family Residence District (Fairfield). (**UP-001-11**)

49
50 Ms. Harris - All persons who wish to speak to this case, please
51 stand and raise your right hand to be sworn in.

52
53 Mr. Blankinship - Do you swear the testimony you're about to give is
54 the truth and nothing but the truth so help you God?

55
56 Mr. Freeman - I do.

57
58 Ms. Harris - Please state your name, spell your last name, and
59 present your case.

60
61 Mr. Freeman - My name is David Freeman. I'm the designated
62 representative. Freeman—F-r-e-e-m-a-n. My wife and I were recently married. I
63 moved here from Florida. We purchased a house in Lakewood Estates. I
64 previously owned and still own two dogs; she previously owned and still owns
65 two dogs. Consequently when we melded the families we melded the dogs and
66 we now have four, which I understand is one more than the County Code
67 authorizes.

68
69 Our request is simply to allow us to have the four dogs, strictly a residential
70 situation. We don't plan to board any other dogs; we don't plan to breed any
71 other dogs. All of our dogs are spade or neutered so we don't even plan to have
72 any puppies. That is what we're asking for.

73
74 Ms. Harris - Do you have pictures of your dogs with you today?

75
76 Mr. Freeman - I can tell you the breeds. We have two Boston
77 terriers, one Lab and Pointer mix, and then a Heinz 57 mutt of unknown origin.
78 Both of my dogs were adopted from the Human Society in West Palm Beach,
79 Florida.

80
81 Ms. Harris - Are they very tall, very large?

82

83 Mr. Freeman - The two Boston terriers are both under 20 pounds
84 and maybe 14, 15 inches.
85
86 Ms. Harris - Yes, I'm familiar with the Boston terrier, but the Heinz
87 57.
88
89 Mr. Freeman - She is about 40 pounds and maybe 20 inches at the
90 shoulder. The Lab-Pointer is probably 25 inches at the shoulder and probably 65
91 pounds or so.
92
93 Ms. Harris - How old are the dogs?
94
95 Mr. Freeman - One of the Boston terriers is about 12, one of them is
96 3, and the Lab-Pointer is a little over 3 years. The female mixed breed is just
97 over 4 years.
98
99 Ms. Harris - I notice that you have a fenced-in yard; we could see
100 that from the photos.
101
102 Mr. Freeman - Yes.
103
104 Ms. Harris - Have you explored an electric fence? I know that
105 some people who are neighbors might be threatened if they see the dogs in the
106 yard. With the electric fence, I know that they would feel somewhat safer.
107
108 Mr. Blankinship - By electric fence do you mean the invisible fence?
109
110 Ms. Harris - It's invisible, yes.
111
112 Mr. Freeman - No, we didn't explore an invisible. My experience with
113 them is that with some dogs they work great and with other dogs, they'll just
114 charge right through them.
115
116 Ms. Harris - Glad you told me because my daughter-in-law has a
117 Dachshund next door to her. I always thought I was safe when I saw the dog.
118
119 Mr. Freeman - Generally speaking you probably are.
120
121 Mr. Wright - Are the dogs are maintained and kept in the house all
122 the time, most all the time?
123
124 Mr. Freeman - Well, I can't say most all the time. We have a dog
125 door in our sliding glass door so they have access to the back yard virtually any
126 time the want.
127
128 Mr. Wright - The backyard is fenced in so they cannot leave it.

129
130 Mr. Freeman - Absolutely. And we installed that fence specifically
131 because of the dogs.
132
133 Mr. Nunnally - You say one of the dogs is 12 years of age?
134
135 Mr. Freeman - Yes.
136
137 Mr. Nunnally - You have read the conditions?
138
139 Mr. Freeman - Yes sir.
140
141 Mr. Blankinship - Sounds like we should amend Condition #3, if the
142 Board is amenable. We were under the impression when we drafted that the
143 animals would be kept primarily indoors. We should probably say indoors or in a
144 fenced yard.
145
146 Ms. Harris - Do you have a copy of the conditions?
147
148 Mr. Freeman - Yes.
149
150 Ms. Harris - Would you make that correction in your copy that Mr.
151 Blankinship mentioned?
152
153 Mr. Blankinship - We'll send him a corrected letter.
154
155 Ms. Harris - Okay.
156
157 Mr. Witte - How long have you lived there?
158
159 Mr. Freeman - I personally moved in at the end of January; my wife
160 moved in at the end of December.
161
162 Mr. Witte - The dogs have been there the whole time, right?
163
164 Mr. Freeman - Well, two of them were there when she moved in; two
165 of them came when I came up from Florida.
166
167 Mr. Witte - Any conflicts with any of the neighbors?
168
169 Mr. Freeman - No. Not that they've let me know anyway.
170
171 Mr. Witte - Sometimes when somebody moves in and they have
172 dogs, if there's a barking issue they'll come over.
173

174 Mr. Freeman - No. As a matter of fact, neighbors on both sides have
175 dogs, the neighbor behind us has dogs, the neighbor across the street has a
176 dog.

177
178 Mr. Witte - Thank you.

179
180 Ms. Harris - The 12-year-old is generally healthy?

181
182 Mr. Freeman - Yes. She's fine.

183
184 Ms. Harris - Are there any more questions from Board members?
185 Thank you, Mr. Freeman.

186
187 Mr. Freeman - Thank you.

188
189 Ms. Harris - Is there anyone else who wishes to speak to this
190 case? If not, that concludes the case.

191
192 **[After the conclusion of the public hearings, the Board discussed the case**
193 **and made its decision. This portion of the transcript is included here for**
194 **convenience of reference.]**

195
196 **DECISION**

197
198 Ms. Harris - What is the pleasure of the Board?

199
200 Mr. Witte - I would make a motion that we approve it. I don't see
201 where it affects the health, safety, or welfare of any of the citizens or neighbors.
202 It's an unusual situation where two newlyweds are merging families, including
203 dogs. So under those stipulations as suggested by the Planning staff, I make a
204 motion we approve it.

205
206 Mr. Wright - I'll second it.

207
208 Ms. Harris - Motion by Mr. Witte, second by Mr. Wright that this
209 case be approved. Are there any questions or is there any discussion on this
210 case? I do want to say that because you have a 12-year-old dog here we know
211 that he will not last forever. I hate to see that, but that's the reality of life. And
212 since they are only one dog over compliance, they might be in compliance
213 eventually.

214
215 All in favor say aye. All opposed say no. The ayes have it; the motion passes.

216
217 After an advertised public hearing and on a motion by Mr. Witte, seconded by
218 Mr. Wright,, the Board **approved** application **CUP2011-00001, LINDA**
219 **NICHOLSON'S** request for a conditional use permit pursuant to Section 24-12(e)

220 of the County Code to operate a private kennel at 2104 Boxwood Place
221 (Lakewood Estates) (Parcel 778-753-9495), zoned R-2, One-family Residence
222 District (Fairfield). The Board **approved the use permit** subject to the following
223 conditions:

224

225 1. This approval is only for the four dogs presently owned by the applicants. The
226 approval is not for the commercial boarding or breeding of dogs at any time.

227

228 2. No new or replacement animals may be added, so that the number of existing
229 animals will be reduced by natural means to three, as permitted by code, at
230 which time this conditional use permit shall expire.

231

232 3. All animals shall be kept indoors or in a fenced yard or on a leash when in
233 public. The applicant shall maintain the property so that noise and odors are
234 controlled.

235

236

237 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5

238 Negative: 0

239 Absent: 0

240

241

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

244

245 **CUP2011-00002 WEST END ASSEMBLY OF GOD** requests a
246 temporary conditional use permit pursuant to Section 24-116(c)(1) of the County
247 Code to allow a temporary tent at 401 N Parham Road (Parcel 753-736-0655),
248 zoned R-1, One-family Residence District (Tuckahoe). (UP-002-11)

249

250 Ms. Harris - All persons who wish to speak to this case please
251 stand and raise your right hand.

252

253 Mr. Blankinship - Do you swear the testimony you're about to give is
254 the truth and nothing but the truth so help you God?

255

256 Mr. Bragg - I do.

257

258 Ms. Harris - Please state your name and spell your last name.

259

260 Mr. Bragg - Pat Bragg—B-r-a-g-g.

261

262 Ms. Harris - Please present your case.

263

264 Mr. Bragg - Yes ma'am. Each Christmas, as many of you know,
265 our church does a large scale production. For extra storage for set pieces and

266 such, we construct a tent for which we apply for a conditional use permit. This
267 year we're also doing an Easter production. We are restaging a production we
268 used to do down in the theater at the Carpenter Center from 1985 through 1998
269 called The Master's Plan. We are looking for you to approve putting up a
270 temporary tent under the same conditions that we have for our Christmas
271 production. That tent would be constructed at the rear of our church.

272
273 Mr. Nunnally - Is that at the same location as the Christmas tent?

274
275 Mr. Bragg - Yes sir.

276
277 Ms. Harris - How many parking spaces will you be using or will
278 you be using parking spaces?

279
280 Mr. Bragg - As you can see from this picture, it would take those
281 four parking spaces that you see there.

282
283 Ms. Harris - And you have not needed those spaces in the past,
284 right?

285
286 Mr. Bragg - No ma'am.

287
288 Ms. Harris - This is your what, third year asking for this tent?

289
290 Mr. Bragg - No ma'am; it's been a number of years. I'm not sure
291 how many. But this is the first year for Easter. For the Christmas production it's
292 been a number of years.

293
294 Mr. Witte - A long time. I know at least eight years.

295
296 Ms. Harris - Are there any more questions from the Board?

297
298 Mr. Witte - Are you going to have an issue of removing the tent
299 by May 20, 2011?

300
301 Mr. Bragg - That will be no problem.

302
303 Ms. Harris - Have you ever had a complaint about the tent being
304 erected?

305
306 Mr. Bragg - No ma'am.

307
308 Mr. Nunnally - The County has never received any complaints either,
309 Mr. Blankinship?

310
311 Mr. Blankinship - No sir.

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Ms. Harris - Thank you for your presentation. Is there anyone else who wishes to speak to this case? If not, that concludes the case.

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

DECISION

Ms. Harris - What is your pleasure on this case?

Mr. Bruce - I make a motion we approve.

Ms. Harris - Is there a second?

Mr. Wright - Second.

Ms. Harris - Motion by Mr. Bruce, second by Mr. Wright that this case be approved. Is there any discussion on this case?

Mr. Witte - I would just like to comment that in the past eight years that I have been familiar with their programs; in my limited time on the Board I've never heard of a problem from any of their productions. They appear to be a good public service, their programs. I don't see a reason to deny the request.

Ms. Harris - Definitely the public's health and welfare is not adversely affected with this tent being on the property. Any more discussion on this motion?

All in favor say aye. All opposed say no. The ayes have it; the motion passes.

After an advertised public hearing and on a motion by Mr. Bruce, seconded by Mr. Wright, the Board **approved** application **CUP2011-00002, WEST END ASSEMBLY OF GOD'S** request for a temporary conditional use permit pursuant to Section 24-116(c)(1) of the County Code to allow a temporary tent at 401 N Parham Road (Parcel 753-736-0655), zoned R-1, One-family Residence District (Tuckahoe). The Board **approved the use permit** subject to the following conditions:

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

358
359 2. The tent shall be removed from the property on or before May 20, 2011, at
360 which time this permit shall expire.

361
362
363 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
364 Negative: 0
365 Absent: 0
366

367
368 **[At this point, the transcript continues with the public hearing on the next**
369 **case.]**

370
371 **CUP2011-00003 CHRIST CHURCH EPISCOPAL - CARITAS** requests
372 a temporary conditional use permit pursuant to Section 24-116(c)(1) of the
373 County Code to allow a temporary storage unit at 5000 Pouncey Tract Road
374 (Parcel 738-769-3891), zoned A-1, Agricultural District (Three Chopt). (**UP-003-**
375 **11**)

376
377 Ms. Harris - All persons who wish to speak to this case please
378 stand and raise your right hand to be sworn in.

379
380 Mr. Blankinship - Do you swear the testimony you're about to give is
381 the truth and nothing but the truth so help you God?

382
383 Ms. Harris - Please present your case, and give us your name,
384 and spell your name.

385
386 Ms. Schmiede - My name is Lori Schmiede—S-c-h-m-i-e-g-e. I'm a
387 representative of CARITAS, a non-profit organization. Christ Church has made
388 an offer to us that we couldn't refuse and that is we have no collection points for
389 our furniture bank in the West End. They have offered us space for us to put a
390 pod, which is donated to us by the PODS company. What it would do is sit there
391 for collecting items and we have a truck that comes by every Wednesday to the
392 West End that would check to see if it needed to be emptied, empty it at that
393 time, and bring it back to us in downtown Richmond.

394
395 Mr. Blankinship - Every Wednesday.

396
397 Ms. Schmiede - Every Wednesday we go out to the West End. I think
398 in the beginning there might be just one or two items, but hopefully over time,
399 especially coming up in the summer, that we will have a full pod for us.

400
401 Mr. Wright - How do the items get in this bin, this POD?

402
403 Ms. Schmiede - It will not be secure.

404
405 Mr. Wright - How do they get in there? Who puts the items in
406 there?
407
408 Ms. Schmiede - Oh. The donors themselves. Our philosophy is if you
409 go in and you need a bed and you take it—we're giving our things away anyway,
410 so we're not concerned about theft.
411
412 Mr. Wright - They can take things as well as put them in.
413
414 Ms. Schmiede - Yes, but we prefer they don't, but you can't control
415 that. We can't have a man there; we're non-profit.
416
417 Mr. Wright - What's the size of this POD?
418
419 Ms. Schmiede - The POD I believe is 16 feet long, 8 feet by 8 feet.
420
421 Mr. Wright - It will hold a fair amount of goods.
422
423 Ms. Schmiede - Hopefully.
424
425 Mr. Wright - You access that right now from Pouncey Tract Road.
426
427 Ms. Schmiede - Correct.
428
429 Mr. Wright - Do you come during the daytime?
430
431 Ms. Schmiede - Yes. With gas prices, we're trying very hard to keep
432 that as flowing as possible so that we're not backtracking. We leave about 10:00
433 a.m. and the guys get back about 4:00 p.m. We do our pickups in the West End
434 and that would be included in that.
435
436 Mr. Wright - Will it be visible from the residences that are to the
437 north of this property?
438
439 Ms. Schmiede - I don't know; I don't live there.
440
441 Mr. Wright - Those are the residences I'm talking about. The POD
442 will be to the rear of the church.
443
444 Ms. Schmiede - Yes. I see from your suggestions you wanted it next
445 to the dumpsters and that's no problem. Whatever your suggestions are we're
446 willing to abide by them.
447
448 Mr. Blankinship - That's where it was shown on the plan that was
449 submitted.

450
451 Ms. Schmiede - Okay. We thought that was probably the most
452 appropriate.
453
454 Ms. Harris - Is this the POD right here in this picture?
455
456 Ms. Schmiede - Yes.
457
458 Mr. Blankinship - That's the trailer.
459
460 Ms. Schmiede - Sorry.
461
462 Ms. Harris - It would be beside this?
463
464 Mr. Wright - Is that the dumpster?
465
466 Mr. Blankinship - Yes, that is the dumpster. The storage container is
467 shown on the plan as being where that trailer is now, so I presume they'd move
468 the trailer over a couple of parking spaces.
469
470 Ms. Harris - In addition to what we see on the screen, you will
471 have the 8 foot by 8 foot by 16 foot POD?
472
473 Ms. Schmiede - Okay, yes.
474
475 Ms. Harris - I have a couple of questions. Look at Conditions #6
476 and #9. Okay, Condition #6. It's, "The storage container shall be secured
477 between the hours of 7 p.m. and 7 a.m." Who will secure it at 7 p.m.?
478
479 Ms. Schmiede - Because the church is being really generous with us,
480 we were hoping that we wouldn't have to secure it. Our non-profit is at 1125
481 North Commerce. For us to go and come back, it's not feasible. The church, we
482 didn't want to put the extra burden on them. I see that's a suggestion. This is a
483 representative from the church. We were hoping that we wouldn't have to put a
484 lock on the pod.
485
486 Mr. Wright - What do you mean by secured? You mean locked up
487 or what?
488
489 Mr. Blankinship - In some way. Our concern is not so much that their
490 furniture will be stolen; that's their matter. But if there are people there stealing
491 things out of the POD, then there are people there on the property unsupervised
492 who don't belong there. It's sort of an attractive nuisance in other words. There
493 are people who know that there are possibly valuable items in a box that's not
494 secured. Then they show up in the middle of the night to riffle through the thing.
495 Who knows what else they're going to be doing on the property while they're

496 there. That was more our concern. I'm not sure this is the only way to resolve
497 that, but we did want to put that in there so we could have this conversation.

498

499 Ms. Harris - If we approve this, you are obligated to comply with
500 Condition #6, so it has to be secured. Unless you can come up with an
501 alternative as to how we can keep folks after hours from riffling through the
502 storage.

503

504 Ms. Schmiege - I don't know how to answer that.

505

506 Ms. Harris - Would a church representative know how to answer
507 that?

508

509 Ms. Schmiege - Can she speak?

510

511 Ms. Harris - Of course. She was sworn in and we need to get her
512 name, please.

513

514 Ms. Nunn - My name's Katherine Nunn—N-u-n-n. I'm the Director
515 of Parish Operations at Christ Church Episcopal. Which question would you like
516 me to address?

517

518 Ms. Harris - Do you have a copy of the conditions?

519

520 Ms. Nunn - I'm going to be honest with the Board. I'm sort of a
521 last-minute recruit to come this morning, so I just read it as I arrived this morning.

522

523 Ms. Harris - The question now is the condition states the storage
524 container must be secured between 7 p.m. and 7 a.m. We want to know who's
525 going to be responsible to this, if you agree to this. If you have an alternative
526 plan we need to know that.

527

528 Ms. Nunn - If the POD needs to be secured, then I think it
529 probably does need to be secured during the evening hours. What I'm thinking
530 through as I'm standing here is we also want to make it available for people to be
531 able to donate items, but we certainly have a sexton during the week that we can
532 unlock and lock the POD in the morning.

533

534 Mr. Wright - Seven o'clock is not a magic time.

535

536 Mr. Blankinship - Right, we can change that.

537

538 Mr. Wright - I don't see why we have to say a specific time.

539

540 Ms. Nunn - Obviously I'm speaking without verifying with our
541 vestry who are responsible for the property ultimately, but we could probably
542 arrange to have it secured during the evening hours.

543

544 Ms. Harris - Do you prefer we say during the evening hours rather
545 than a specific time?

546

547 Ms. Nunn - It would give me a little bit more flexibility.

548

549 Mr. Wright - It's kind of hard to say a specific time.

550

551 Mr. Witte - Especially in the summertime when it stays light until
552 9:30 p.m. People wait until after dinner.

553

554 Ms. Nunn - We plan to monitor. We have an interest in
555 maintaining our property as well and we certainly don't want this to become an
556 eyesore for our neighbors. Actually one of the things I wanted to bring to your
557 attention is that a neighbor sent an e-mail to the Board last evening that I don't
558 know if you all are aware of that I have a copy of.

559

560 Ms. Harris - We do not have a copy of that.

561

562 Ms. Nunn - It's not very long; I could read it to you. It says:

563

564 Regarding the case scheduled tomorrow morning at 9:00 a.m., as
565 managing agent for the Bentley Homeowners' Association, I
566 respectfully request the following considerations concerning this
567 application. The applicant will not place the storage container on
568 any portion of the north side wood line and should not be visible to
569 the adjacent Bentley homeowners.

570

571 Concerns regarding placement. Diminished curb appeal that will
572 directly affect marketability of \$500,000-plus homes.

573

574 And the second point is:

575

576 Potential for increased theft due to after-hour drop-off.

577

578 The Bentley Homeowner Association does not desire to prohibit the
579 container or its intended use. However, the location of the
580 container is of extreme concern as property values and resident
581 safety could be compromised due to its placement.

582

583 Respectfully, it is the Association's position that we request that
584 any approval come with the direction that the POD shall not be
585 visible to the Bentley residents.

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And it's signed Debra L. Fifer, Director of Association Services, Landmark Property Services, Inc., 4901 Dickens Road, Suite 119, Richmond, Virginia.

I actually spoke with Ms. Fifer yesterday on the phone. It has never been our intent to place it along the property line along the fence. We really want to be good neighbors to the Bentley Association.

Placing the POD next to—there are a couple of things going on. The south side of our property is going to be along the North Gayton Road extension, so the property is changing even as we stand here and speak. It was all wooded and undeveloped and now there is going to be a major four-lane road there. The location now, where it's being put may be in the way when we go to construct the second entrance to the church, which is under a separate plan of development that I believe comes before the Planning Commission. I'm not a hundred percent up to speed on exactly the status of that.

We certainly want to make this as acceptable to the homeowners as we possibly can. It would not be invisible to them at the back line of the property. There may be other places that we could place it on the property that may reduce the visibility to the homeowners.

Mr. Witte - When you move this to allow for that new entrance, I image you'll have to move the dumpster also.

Ms. Nunn - I think we may have to as well.

Mr. Witte - According to this diagram.

Ms. Nunn - I can't speak definitively, but we may need to move it at least temporarily while construction is going on.

Mr. Witte - Right. As long as you keep this next to the dumpster, if the residents don't have a problem with the dumpster being there, I wouldn't imagine they would have a problem with the POD, do you?

Mr. Wright - It couldn't look worst than the dumpster.

Mr. Witte - Right. That's what I'm thinking.

Mr. Wright - Can that condition be changed, Mr. Blankinship, with language to the effect that it will be placed so that it will not be visible from the Bentley Subdivision?

Ms. Nunn - But next to the trash container would be visible to some of the homes that abut our property.

632
633 Mr. Witte - I think any place on that parking lot, according to this
634 map would be visible to two of the homes over there.
635
636 Mr. Wright - I don't see how that could be.
637
638 Mr. Witte - I think as long as they're not opposed to the
639 dumpster, I can't imagine being opposed to the POD.
640
641 Mr. Wright - We could say it could be a condition that it's next to
642 the dumpster.
643
644 Mr. Witte - Right.
645
646 Ms. Nunn - I would certainly like to ask on behalf of the church
647 that we have some flexibility on the placement. Having not seen this before I
648 arrived here, I can assure you that there are members of the church planning
649 group that have not seen it either. That's our fault and so I'll take responsibility
650 for that. I think there had even been talk of moving it up closer to the church
651 house buildings where I think it would blend in better and allow us to monitor it
652 more closely. But those are discussions that are ongoing with the church right
653 now. And I don't know how we address that in this context.
654
655 Ms. Harris - Would you also move the dumpster?
656
657 Ms. Nunn - No, not at the present time. So if that's where the
658 Board directs us to put it, we can certainly accommodate that as well.
659
660 Ms. Harris - Look at Condition #3. We're saying that it should be
661 placed adjacent to the site's trash enclosure. So is that what we want to say?
662
663 Mr. Witte - I think if we leave the selection of the site to the
664 church, they will have to deal with the neighbors. Obviously they would do it in
665 the best interest of the neighbors and the church itself. If they move it closer to
666 the church, it's a win-win for everybody, plus it's much better monitored from
667 there than across the parking lot. So I think if we change the location to the
668 discretion of the church Board—
669
670 Ms. Nunn - And that it minimize the visibility to the neighborhood.
671
672 Mr. Witte - Yes.
673
674 Mr. Wright - Leave it to the church and that they minimize the
675 visibility to the neighbors.
676
677 Ms. Nunn - I think that would be acceptable; thank you.

678
679 Ms. Harris - We're going to minimize the effect on the
680 neighborhood and it's going to be the responsibility of the church to determine its
681 location?
682
683 Mr. Witte - Yes.
684
685 Mr. Wright - I think that would work, don't you?
686
687 Mr. Blankinship - You want administrative approval of that? Show us
688 something and keep it in the file.
689
690 Mr. Wright - I think that would be wise.
691
692 Mr. Witte - A letter from the church.
693
694 Ms. Nunn - Once we've selected the location?
695
696 Mr. Wright - Yes.
697
698 Ms. Nunn - That would be no problem.
699
700 Mr. Wright - If it presents any problem, we can always have it
701 come back in.
702
703 Mr. Blankinship - Right, right.
704
705 Ms. Harris - Look at Condition #9. There are two conditions I have
706 questions about. The first is the container shall be removed from the property on
707 or before March 24, 2013. So it'll give you two years at which time this shall
708 expire, this shall not be renewed. Do you understand that?
709
710 Ms. Schmiede - Yes, we understood it was only for two years.
711 [Unintelligible.] storage units. AAAA Storage donates a unit to us; they just don't
712 have any in the West End. So we're just trying to [inaudible] in two years to
713 something else.
714
715 Mr. Blankinship - We put those two conditions there, eight and nine,
716 because a surprising number of people come in after 23 months and say, "So
717 how do I extend that permanently?" We want to make sure everybody
718 understands from the beginning that the Board has no authority to approve
719 anything any longer.
720
721 Ms. Schmiede - Okay.
722

723 Ms. Harris - Would you look closely at the conditions and see if
724 they meet with your approval, both of you, please?
725
726 Ms. Schmiede - I wanted to see—where it says no sign advertising,
727 can we at least put a name so we can identify what POD it is?
728
729 Mr. Blankinship - We have actually required that you put on the unit
730 itself emergency contact information.
731
732 Ms. Schmiede - I believe the POD already has a label on it itself.
733
734 Mr. Wright - I think we're talking about a big advertisement.
735
736 Mr. Blankinship - We certainly don't want anything out on the road.
737
738 Mr. Wright - Oh no, nothing on the road.
739
740 Mr. Blankinship - The Board is okay with painting on the side of the
741 PODS unit? That really almost does constitute a very large white sign.
742
743 Mr. Wright - What is on the side?
744
745 Mr. Blankinship - It just says "PODS," and then has information on how
746 to contact the company.
747
748 Ms. Harris - Does that comply with Condition #5?
749
750 Mr. Blankinship - That's why we put the condition there.
751
752 Ms. Harris - The three square-foot sign? Is it that size?
753
754 Mr. Blankinship - We're requiring separately a sign with their contact
755 information in case there's an emergency or something.
756
757 Ms. Harris - The sign that's already there on the POD, does it say
758 CARITAS?
759
760 Ms. Schmiede - No. It's owned by PODS. They donate the actual
761 container.
762
763 Mr. Wright - If it's placed so that it's minimally visible to the
764 surrounding residents, they couldn't see it anyhow.
765
766 Mr. Witte - You're also going to be continuing the church
767 renovation and improvements, correct?
768

769 Ms. Nunn - Yes.
770
771 Mr. Witte - So actually there will be construction trailers in there
772 with signs on them, company logos and such while you're working right?
773
774 Ms. Nunn - When we put the driveway in, yes, I assume so.
775 We're finished with most of the other construction on the site.
776
777 Mr. Witte - How long do you think this will continue?
778
779 Ms. Nunn - Well, we are somewhat—we really can't start our
780 driveway construction until the road is there.
781
782 Mr. Witte - So this may go on for a year.
783
784 Ms. Nunn - The road's not scheduled to open until the fall of
785 2012.
786
787 Mr. Witte - So in essence, it's not really going to be an issue
788 because there are going to be other signs, construction equipment with signs on
789 them and such. So I don't think that's an issue.
790
791 Ms. Nunn - The other thing I was going to say is directional signs
792 on the property are not an issue? I'm thinking small directional signs. Okay.
793
794 Ms. Harris - Anything else you wish to discuss? Let me
795 congratulate both CARITAS and the church for your commitment.
796
797 Ms. Nunn - Thank you.
798
799 Ms. Harris - Is there anyone else who wishes to speak to this
800 case? That concludes the case.
801
802 **[After the conclusion of the public hearings, the Board discussed the case**
803 **and made its decision. This portion of the transcript is included here for**
804 **convenience of reference.]**
805
806 **DECISION**
807
808 Mr. Wright - I move we approve this application and we need to
809 ensure that the conditions are as we stated. Are you comfortable with those?
810
811 Mr. Blankinship - Let me make sure my notes are complete. Condition
812 #3, strike the specific reference to the location and instead say that it has to be
813 located so as to minimize the visibility from the Bentley Subdivision. Condition

814 #6, we're going to strike the specific hours. We are still going to require that it be
815 secured, but overnight.

816
817 Mr. Witte - On #3 we didn't get the entire thing. It will be so
818 located that it will be minimally visible from [blank section]. Also it shall be as
819 located by the church, but that's what we said.

820
821 Ms. Harris - You said minimize the effect? And the responsibility
822 of the church—

823
824 Mr. Wright - To locate it.

825
826 Ms. Harris - And also we said during the evening hours we want
827 that storage container secured.

828
829 Mr. Wright - Take the times out of it. With those amendments I
830 move that we approve this. It does not affect the health, safety, or welfare of
831 persons residing or working in the neighborhood, nor increase congestion in the
832 streets. And I think it is in substantial accordance with the general purpose of the
833 ordinance.

834
835 Is there a second to this motion?

836
837 Mr. Nunnally - Second.

838
839 Ms. Harris - Now for discussion.

840
841 Mr. Witte - I have one question, Mr. Blankinship. Since my
842 church is very involved in CARITAS, should I abstain from voting on this issue?

843
844 Mr. Blankinship - No, I don't think that's necessary.

845
846 Mr. Witte - Okay.

847
848 Mr. Blankinship - If you were a Board member of CARITAS that might
849 be best for appearances sake, but even though I—

850
851 Mr. Wright - Our church works with CARITAS, too.

852
853 Mr. Witte - I just wanted to be above board.

854
855 Mr. Blankinship - Thank you, sir.

856
857 Ms. Harris - And my brother is a coordinator for CARITAS for his
858 church. So I think we all have some type of contact maybe with CARITAS.

859

860 It has been moved by Mr. Wright, seconded by Mr. Nunnally that this case be
861 approved. All in favor say aye. All opposed say no. The ayes have it; the motion
862 passes.

863

864 After an advertised public hearing and on a motion by Mr. Wright, seconded by
865 Mr. Nunnally, the Board **approved** application **CUP2011-00003, CHRIST**
866 **CHURCH EPISCOPAL - CARITAS** request for a temporary conditional use
867 permit pursuant to Section 24-116(c)(1) of the County Code to allow a temporary
868 storage unit at 5000 Pouncey Tract Road (Parcel 738-769-3891), zoned A-1,
869 Agricultural District (Three Chopt). The Board **approved the use permit** subject
870 to the following conditions:

871

- 872 1. This use permit applies only to the temporary placement of an 8'X8'X16'
873 storage container to serve as a collection point for the CARITAS furniture
874 bank program.
- 875
- 876 2. This approval is subject to all conditions of approval imposed on the property
877 via any and all Plan of Developments approved by the Planning Commission.
878
- 879 3. The proposed storage container shall be located to minimize visibility from
880 Bentley subdivision, Pouncey Tract Road, and N Gayton Road. The location
881 shall be selected by Christ Church Episcopal and approved by the Director of
882 Planning. Any additional improvements shall comply with the applicable
883 regulations of the County Code. Any substantial changes to the container
884 type, size, or location will require a new use permit.
- 885
- 886 4. No signs advertising the furniture bank shall be permitted.
887
- 888 5. The applicant shall affix a three-square-foot sign onto the storage container
889 with the following information: identifying the CARITAS furniture bank
890 program and an emergency contact telephone number, a statement that all
891 donated items must be placed inside the container, and instructions on whom
892 to call if the storage container is full.
- 893
- 894 6. The storage container shall be secured overnight.
895
- 896 7. No exterior storage (overflow) of donated items is allowed.
897
- 898 8. On or before March 24, 2012, the applicant shall submit a report to the
899 Planning Department setting forth a permanent plan for the storage of
900 furniture.
901
- 902 9. The storage container shall be removed from the property on or before March
903 24, 2013, at which time this permit shall expire. This permit shall not be
904 renewed.
905

906
 907 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
 908 Negative: 0
 909 Absent: 0

910

911

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

914

915 **CUP2011-00004 MARTINEA CHARBENEAU** requests a conditional
 916 use permit pursuant to Section 24-12(e) of the County Code to operate a private
 917 kennel at 5502 Cottage Street (Schultz A F) (Parcel 778-745-4126 (part)), zoned
 918 R-4, One-Family Residence District (Brookland). **(UP-004-11)**

919

920 Ms. Harris - Would you stand and raise your right hand. Anyone
 921 who plans to speak to this case, we ask that they stand and raise their right
 922 hand.

923

924 Mr. Blankinship - Do you swear the testimony you're about to give is
 925 the truth and nothing but the truth so help you God?

926

927 Ms. Charbeneau - Yes.

928

929 Ms. Harris - Please state your name and present your case.

930

931 Ms. Charbeneau - Martinea Charbeneau—C-h-a-r-b-e-n-e-a-u. I own the
 932 house at 5502 Cottage Street; I've had it since 2004. My son, daughter-in-law,
 933 and my grandchild have been living there until last month. They have moved out
 934 and I am getting a divorce and moving from Williamsburg back to the house.
 935 With that, I am bringing my dogs. We've been living on agricultural land so we
 936 had lots of room and several dogs. When we split the dogs, I have six dogs.
 937 They will be coming with me or I'm asking for them to be able to come with me.

938

939 Ms. Harris - Give us the ages of the dogs, please.

940

941 Ms. Charbeneau - The oldest one is 11. I have two that are 6 and one
 942 that's 5. The other two, one is 3 and one is 2.

943

944 Ms. Harris - Is your yard completely enclosed?

945

946 Ms. Charbeneau - The yard?

947

948 Ms. Harris - The backyard, is it enclosed?

949

950 Ms. Charbeneau - Six-foot wood fence.

951

952 Ms. Harris - Is it completely enclosed?
953
954 Ms. Charbeneau - Oh yes.
955
956 Ms. Harris - Okay.
957
958 Mr. Wright - What are the breeds of the dogs?
959
960 Ms. Charbeneau - Three are Afghan hounds, two a miniature
961 dachshunds, and one is a Heinz 57 mixed dog; I have no idea what she is.
962
963 Mr. Witte - I noticed that you have two Afghan hounds that you
964 may intend to breed in the future.
965
966 Ms. Charbeneau - They have not been fixed because they're show dogs.
967 I had the hope maybe one day, but I would not breed them unless I had homes
968 for them. I've been a breeder and I've shown Afghan hounds for 30 years.
969
970 Mr. Witte - According to the conditions, if you bred those dogs
971 you would be in violation.
972
973 Ms. Charbeneau - I understand that.
974
975 Mr. Blankinship - You would have four months to place them.
976
977 Ms. Charbeneau - Okay. I was going to ask that because I know people
978 have puppies all the time. I was going to ask how they deal with that. Four
979 months, okay.
980
981 Mr. Blankinship - The definition of a kennel is any place where you
982 keep more than four dogs over four months old.
983
984 Ms. Charbeneau - Oh, okay, okay. So long enough to wean from the
985 mother. Okay.
986
987 Mr. Witte - Condition #1 says the approval is not for boarding or
988 breeding of dogs at any time.
989
990 Ms. Charbeneau - Okay. So I wouldn't be able to breed the dog.
991
992 Mr. Blankinship - Not as a commercial venture, but dogs have puppies.
993
994 Ms. Charbeneau - Right. Okay.
995
996 Mr. Wright - That's a matter of intent.
997

998 Mr. Blankinship - Right. If we saw an ad in the newspaper.
999
1000 Ms. Charbeneau - Oh, it would never happen.
1001
1002 Mr. Blankinship - That would be a problem.
1003
1004 Mr. Wright - If this was an ongoing breeding process.
1005
1006 Ms. Charbeneau - I haven't bred a litter in 15 years. I very seldom breed.
1007
1008 Mr. Wright - I think an incidental thing wouldn't violate this.
1009
1010 Mr. Blankinship - Right.
1011
1012 Ms. Harris - Ms. Charbeneau, do you have no friends who could
1013 take some of these dogs to keep you legal?
1014
1015 Ms. Charbeneau - Well, three of them are rescues that I took in and I
1016 hope to find homes for them, but I have not been able to find adequate homes
1017 for them.
1018
1019 Ms. Harris - How long have you had these rescue dogs?
1020
1021 Ms. Charbeneau - About three years.
1022
1023 Ms. Harris - They feel a part of the family now, right?
1024
1025 Ms. Charbeneau - They're all a part of the family. They all sleep on the
1026 bed. They're all full-time house dogs. They only go out long enough to go to the
1027 bathroom and they want immediately back in because they're so used to being
1028 house dogs. We have sectional furniture so they all live on the furniture. They're
1029 just part of the home. They're not outside dogs at all.
1030
1031 Mr. Nunnally - When did you move back from Williamsburg, or have
1032 you moved in yet?
1033
1034 Ms. Charbeneau - I have not moved yet; they're still working on the
1035 house painting and everything. The house is empty right now.
1036
1037 Mr. Nunnally - Do you have any idea when it will be?
1038
1039 Ms. Charbeneau - In the next month. I'm hoping to next month.
1040
1041 Mr. Blankinship - You've owned the house how long?
1042
1043 Ms. Charbeneau - Since 2004. I bought it in April 2004.

1044
1045 Mr. Blankinship - Your son and daughter-in-law have been living there?
1046
1047 Ms. Charbeneau - Yes, with my granddaughter. And they had two dogs
1048 there the whole time.
1049
1050 Ms. Harris - Are there any other questions from Board members?
1051 Thank you so very much for presenting your case. Is there anyone else who
1052 wishes to speak to the case? Excuse me, can you use the microphone? Would
1053 you step up please? Give us your name and spell your last name please.
1054
1055 Ms. Mason - My name is Barbara Clemmons Mantlo. I have
1056 remarried and my name is now Mason. I have no problem with house dogs.
1057 Apparently her dogs are not the ones that scared me to death the other day. I
1058 was kept in a car by a big pit bull. And I have a tiny Chihuahua that was with me.
1059 We sat in the car until this dog decided to amble on off, mosey down the street.
1060 That has really put my mind at ease. I was really afraid that that would be my
1061 neighbor.
1062
1063 Ms. Harris - Excuse me, Ms. Mason. Where do you live? What is
1064 your address?
1065
1066 Ms. Mason - I live at 5509 Cottage, which is directly across from
1067 5502.
1068
1069 Mr. Witte - Did you notify Animal Protection about the Pit Bull?
1070
1071 Ms. Mason - It was gone. I had to wait to get out of my car.
1072
1073 Mr. Witte - I understand that.
1074
1075 Ms. Mason - It was gone.
1076
1077 Mr. Witte - If you notify them, they will come to the neighborhood
1078 and look.
1079
1080 Ms. Mason - No, nothing. And I waited until it was gone from my
1081 sight.
1082
1083 Mr. Witte - It would be in everybody's best interest—yours, your
1084 neighbors', your dog's, everybody. If you see that dog or any dog wandering your
1085 neighborhood to call 9-1-1 and let Animal Protection know. A small dog or a big
1086 dog can be a hazard to anybody.
1087
1088 Ms. Mason - Well that one really frightened me.
1089

1090 Mr. Witte - I understand.
1091
1092 Ms. Mason - I mean it was non-threatening in its actions, but I
1093 didn't want to get out of my car until I couldn't see it anymore.
1094
1095 Mr. Witte - That was the smart thing to do. But if you would,
1096 please call Animal Protection if you see loose animals. It's a public safety issue.
1097
1098 Ms. Mason - That's about all I have to say.
1099
1100 Mr. Witte - Thank you.
1101
1102 Ms. Harris - Ms Mason, I have a question. Do you have a cell
1103 phone that you keep with you at all times while you're in the car?
1104
1105 Ms. Mason - Oh, I do.
1106
1107 Ms. Harris - You didn't call 9-1-1 when you saw the pit bull?
1108
1109 Ms. Mason - Well, it wasn't doing anything. And it actually blended
1110 in for a moment. Until it moved, I really didn't notice it because it blended in with
1111 my Crape Myrtle.
1112
1113 Ms. Harris - Thank you so much.
1114
1115 Ms. Mason - But I certainly will next time.
1116
1117 Mr. Witte - Thank you.
1118
1119 Ms. Harris - Do you care to come back to rebut anything that was
1120 said? Please come back; I have one question to ask. Do you have a pit bull?
1121
1122 Ms. Charbeneau - I have no pit bulls. And my dogs are never off leash. If
1123 they went out the front door they would be on leash. And they have a microchip if
1124 for some reason any of them ever did somehow get loose.
1125
1126 Ms. Harris - And the Heinz 57 dog does not resemble a pit bull?
1127
1128 Ms. Charbeneau - No, no. She resembles a German shepherd.
1129
1130 Mr. Blankinship - Afghans certainly don't look like a pit bull.
1131
1132 Ms. Charbeneau - No, definitely not. And the miniature dachshunds are
1133 the little pocket dogs. Thank you.
1134
1135 Ms. Harris - That concludes our cases for today.

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

DECISION

Ms. Harris - What is the pleasure of the Board?

Mr. Witte - I'm going to make a motion that we approve this because of the special circumstances of Ms. Charbeneau. I don't think it's going to affect the health, safety, and welfare or even the privacy of the neighbors. She has a six-foot privacy fence and one of the neighbors actually spoke as to not having any difficulty with the types of dogs and situation. So I make a motion we approve this.

Mr. Bruce - Second.

Ms. Harris - Motion by Mr. Witte, second by Mr. Bruce that this case should be approved. Is there any discussion on this case?

Mr. Witte - I would like to make a note that it's approved with the conditions as discussed by the Board.

Ms. Harris - Do you want to review those?

Mr. Blankinship - We didn't have any changes.

Mr. Witte - We discussed them, but we didn't change anything.

Ms. Harris - I think that the applicant understands that the neighbors can complain. If they complain and it gets to us, we have to act accordingly. But being the professional breeder that she is, I think she'll take very good care of her animals.

All in favor say aye. All opposed say no. The ayes have it; the motion passes.

After an advertised public hearing and on a motion by Mr. Witte, seconded by Mr. Bruce, the Board **approved** application **CUP2011-00004, MARTINEA CHARBENEAU'S** request for a conditional use permit pursuant to Section 24-12(e) of the County Code to operate a private kennel at 5502 Cottage Street (Schultz A F) (Parcel 778-745-4126 (part)), zoned R-4, One-Family Residence District (Brookland). The Board **approved the use permit** subject to the following conditions:

- 1182 1. This approval is only for the six dogs owned by the applicant. The
 1183 approval is not for the boarding or breeding of dogs at any time.
 1184
 1185 2. No new or replacement animals may be added, so that the number of
 1186 animals will be reduced by natural means to three, as permitted by Code,
 1187 at which time this conditional use permit shall expire.
 1188
 1189 3. All animals shall be kept primarily indoors or on a leash when in public.
 1190 The applicant shall maintain the property so that noise and odors are
 1191 controlled.
 1192

1193
 1194 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
 1195 Negative: 0
 1196 Absent: 0
 1197

1198
 1199 Ms. Harris - Let's look at the minutes from the last meeting.
 1200

1201 Mr. Wright - I move we approve the minutes as submitted.
 1202

1203 Mr. Witte - I second that.
 1204

1205 Ms. Harris - Moved by Mr. Wright, second by Mr. Witte that the
 1206 minutes be approved from the last meeting. Is there any discussion on this
 1207 motion? All in favor say aye. All opposed say no. The ayes have it; the motion
 1208 passes.
 1209

1210 On a motion by Mr. Wright, second by Mr. Witte, the Board **approved as**
 1211 **submitted the Minutes of the February 24, 2011** Henrico County Board of
 1212 Zoning Appeals meeting.
 1213

1214
 1215 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
 1216 Negative: 0
 1217 Absent: 0
 1218

1219
 1220 Ms. Harris - Is there any more business to come before the Board
 1221 today? Do I need a motion to adjourn the meeting or can I just say the meeting is
 1222 adjourned.
 1223

1224 Mr. Witte - I'll make a motion to adjourn.
 1225

1226 Mr. Wright - I'll second that.
 1227

1228 Ms. Harris - Okay. Moved by Mr. Witte, second by Mr. Wright that
1229 we adjourn. All in favor say aye. All opposed say no. The ayes have it; the
1230 motion passes.

1231

1232

1233 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5

1234 Negative: 0

1235 Absent: 0

1236

1237

1238 The meeting is adjourned.

1239

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1253



Helen E. Harris
Chairman



Benjamin Blankinship, AICP
Secretary