

1 Minutes of the regular monthly meeting of the Planning Commission of the
2 County of Henrico held in the County Administration Building in the Government
3 Center at Parham and Hungary Spring Roads, beginning at 7:00 p.m. December
4 8, 2011. Display Notice having been published in the Richmond Times-Dispatch
5 on November 21, 2011 and November 28, 2011.
6

Members Present: Mr. C. W. Archer, Chairman, C.P.C. (Fairfield)
Mr. Tommy Branin, Vice Chairman (Three Chopt)
Mr. E. Ray Jernigan, C.P.C. (Varina)
Mrs. Bonnie-Leigh Jones, C.P.C. (Tuckahoe)
Mr. Ernest B. Vanarsdall, C.P.C. (Brookland)
Mr. R. Joseph Emerson, Jr., AICP,
Director of Planning, Secretary
Mrs. Patricia O'Bannon,
Board of Supervisors' Representative

Also Present: Ms. Jean Moore, Assistant Director of Planning
Mr. Tom Tokarz, Deputy County Attorney
Mr. Jason Hart, Assistant County Attorney
Mr. James P. Strauss, CLA, Principal Planner
Mr. Benjamin Blankinship, AICP, Principal Planner
Ms. Rosemary Deemer, AICP, County Planner
Mr. Benjamin Sehl, County Planner
Mrs. Lisa T. Blankinship, County Planner
Ms. Aimee Berndt, AICP, County Planner
Ms. Kim Vann, Henrico Police
Ms. Sylvia Ray, Recording Secretary

7
8 **Mrs. Patricia O'Bannon, the Board of Supervisors' representative, abstains**
9 **on all cases unless otherwise noted.**

10
11 Mr. Archer - Will the Planning Commission come to order.
12 Welcome to the December 8, 2011, Rezoning meeting. I'd like to remind
13 everyone if you haven't already, please mute or turn off your cell phones. Now let
14 us stand and pledge allegiance to the flag.

15
16 Okay. I'm going to take a little Chairman's privilege, Mr. Secretary, if I may, and
17 vary from the agenda for just a little bit. This is our last Rezoning meeting of
18 2011. Usually at our very last meeting, which is always a POD meeting, we pay
19 homage to the staff and other support people who help us so much. You folks
20 from the Zoning side never get to hear it. So tonight I would like to make sure
21 that you know that we are all so very appreciative of all the support and the work
22 that you give us to make us look good. That goes for all of the staff members,
23 some whom we see and some whom we do not see, and certainly to Mr.
24 Secretary and his fine staff of assistants who work so hard to make all the pieces

25 of the puzzle fit together. So with that, Merry Christmas, Happy New Year, and
26 we thank you so much for all the things you do.

27
28 Last but not least, I'm going to give you all a piece of history in case you didn't
29 know it. Mr. Ernest Vanarsdall has been here for twenty-four years of service.
30 That's a long time. He was here when they paved Parham Road.

31
32 Mr. Vanarsdall - Came out of high school and feel like I've been here
33 all my life.

34
35 Mr. Jemigan - Mr. Chairman, can I say something, too?

36
37 Mr. Archer - Certainly you may.

38
39 Mr. Jemigan - I'd like to say this will be my last Zoning meeting. And,
40 of course, we don't have much of the Zoning staff here tonight, but I want you to
41 know it's been a pleasure working with you all. We have a great Commission and
42 we have a great staff, Zoning and POD. It's been a pleasure and I'll try to get
43 around to see you all before I check out of here. Thank you.

44
45 Mr. Archer - The pleasure was ours as well. And if anybody
46 missed my speech, come to the POD meeting and I'll give it again.

47
48 Mr. Vanarsdall - I agree with what the Chairman said, I really do.
49 Always have. Well, not always, but most of the time.

50
51 Mr. Archer - All right, Mr. Secretary, we'll turn it over to you to
52 bring some sanity back to the meeting.

53
54 Mr. Emerson - Thank you, Mr. Chairman, and thank you for your kind
55 remarks; we certainly appreciate that.

56
57 The first item on your agenda tonight is request for withdrawals and deferrals.
58 You have none of those this evening. The next are requests for expedited items,
59 and you have none of those.

60
61 That takes us to the next item on your agenda, which is a public hearing on
62 zoning ordinance amendments. You've had several work sessions on this item
63 and one public hearing previously. And, of course, you're holding a second public
64 hearing tonight. The staff report will be presented by Mr. Ben Blankinship.

65
66 **PUBLIC HEARING ON ZONING ORDINANCE AMENDMENTS:**
67 To Amend and Reordain Section 24-3 Titled "Enumerated," Section 24-10 Titled
68 "Distance requirements," Sections 24-11, 24-15, 24-32, 24-50.2, 24-50.6, 24-
69 50.10, 24-54.1, 24-77, 24-88, and 24-91 Titled "Principal uses permitted," Section
70 24-13 Titled "Accessory uses permitted," Sections 24-52, 24-67, and 24-69 Titled

71 "Conditional uses permitted by special exception," Sections 24-57, 24-61, and
72 24-65 Titled "Development standards and conditions for permitted uses," Section
73 24-94 Titled "Table of regulations," Section 24-95 Titled "Additional requirements,
74 exceptions and modifications," Section 24-96 Titled "Off-street parking
75 requirements," Section 24-98 Titled "Parking lot regulations," Section 24-99 Titled
76 "Service stations and public garages," and Section 24-104 Titled "Signs" of the
77 Code of the County of Henrico, all to Revise the County's Zoning Ordinance to
78 Permit Places of Worship as a Matter of Right in Additional Zoning Districts.

79
80 Mr. Archer - Good evening, Mr. Blankinship. How are you, sir?

81
82 Mr. Blankinship - Good evening, Mr. Chairman, members of the
83 Commission.

84
85 That is a long introduction, but this presentation will seem familiar to you since,
86 as Mr. Emerson mentioned, we have had a couple of work sessions already.

87
88 To remind us of how we got here, the purpose of this amendment is to make sure
89 that the County is in compliance with the Religious Land Use and Institutionalized
90 Persons Act of 2000, which I will call RLUIPA. It's to ensure that we treat all
91 religious assemblies and institutions on equal terms with non-religious
92 institutions, and also that we do not substantially burden the religious exercise of
93 any religious assembly or institution. And finally, if we are going to regulate them,
94 we want to do so by applying the least restrictive means that will accomplish our
95 objective of further compelling governmental interests.

96
97 So we have proposed a number of changes throughout the Zoning Ordinance.
98 First of all, everywhere the term "church," is used, we've changed that term to
99 "place of worship," just to make the language itself more inclusive. The most
100 significant change, I think, is that we are now going to allow places of worship as
101 a matter of right in all of the zoning districts in the County. It's being added to the
102 Manufactured Home Park, all three of the Office Districts, both of the Office
103 Service Districts, the Conservation District, and the Institutional District. In those
104 districts right now places of worship are not permitted uses. With this amendment
105 they would be permitted by right.

106
107 We're also changing language in a few other places. For example, in the
108 exception from height limitations there is an exception for church spires. Just
109 looking at the language as it stands today it would only apply to church spires, so
110 we have broadened that to spires, minarets, or similar architectural features of
111 places of worship. And there are a couple of other minor changes like that just to
112 make sure the language is inclusive.

113
114 Another major area of change has to do with lot area and widths in the
115 Residential and Agricultural Districts. As I mentioned, one of the requirements of
116 RLUIPA is that we not treat a place of worship on a less favorable basis than a

117 non-religious use that is similar to it in land-use impacts. So there are other
118 assembly uses that, in the Agricultural District in particular, require only a two-
119 acre minimum lot area. We are changing all of the lot standards for places of
120 worship in the Residential and A-1 Districts to make sure that they are no more
121 strenuous than requirements on non-religious uses. So for the R Districts the
122 minimum lot area for a place of worship will be one acre; the minimum lot width
123 will be 150 feet. In the A-1 District it will be two acres and 200 feet. The A-1
124 District will be the same as other assembly uses. In the R Districts where other
125 assembly uses are not as common or as prevalent, it will be similar to those
126 uses.

127
128 We have also recommended changes to the parking requirements. As you all
129 know, this is where we spent most of the time in the last two work sessions. The
130 conclusion we reached after those work sessions is that we will have the same
131 requirement for all assembly uses. I'm sorry; that should say "for all places of
132 worship." As it is now, there are different requirements if they have fixed seats
133 versus not having fixed seats. We are doing away with that distinction. And
134 instead, all places of worship will have the same parking requirement. That
135 requirement will be one parking space for every fifty square feet of floor area in
136 their worship or assembly area, primary worship or assembly area. We've done
137 extensive research, which we have shared with you previously. Following our
138 research, we have concluded that this would be less burdensome than the
139 requirement for other accessory uses, which is one space per 100 for accessory
140 areas, but then adding in additional requirements for other uses in the same
141 building.

142
143 And finally, we're adding a provision that the Director of Planning may modify any
144 requirement of the Zoning Ordinance upon a showing that the requirement would
145 impose a substantial burden on religious exercise. That sounds like it's wide
146 open and would allow almost any change. In fact, we do have several
147 memoranda from the County Attorney's Office written to the Planning Director
148 that will give him guidance on when to make that finding and how to shape any
149 modification that might be requested.

150
151 So that is the end of my presentation and I would be happy to answer your
152 questions. We are hoping that this evening's meeting will result in a
153 recommendation of approval so that we can schedule a work session with the
154 Board.

155
156 Mr. Archer - Thank you, Mr. Blankinship. Are there questions from
157 the Commission?

158
159 Mr. Vanarsdall - I don't have a question, but I'd just like to comment
160 that I think we're going to have to go slow in the beginning and take each one on
161 its own merit. Isn't that right?
162

163 Mr. Blankinship - Yes sir.
164
165 Mr. Archer - All right. Anything further? I'm not hearing anything.
166 Mr. Blankinship. You must have finally got it right.
167
168 Mr. Blankinship - It is a public hearing. I don't see too many members
169 of the public here, but someone may have a comment.
170
171 Mr. Archer - Are there members from the public who would like to
172 speak on this issue?
173
174 Mrs. Jones - I don't have a question, simply a comment. I think I
175 used up all my questions during our work session, as I recall from reading the
176 minutes. But I did want to thank you because we have looked at this closely, had
177 a lot questions. There has been extensive work done to really micromanage the
178 numbers. I think this is absolutely the best solution that we can come up with at
179 the moment, and I hope it serves us well for being as fair and as welcoming as
180 we can be to places of worship and still make sure that it's a good fit.
181
182 Mr. Branin - I probably owe Mr. Tokarz and Mr. Blankinship an
183 apology. During the holidays I was discussing with the Prince William County
184 Planning Commissioner the training that we've been going through. I actually
185 brought up the information that I had. In Prince William they have not had any
186 opportunity to address this, but they are now becoming more proactive and going
187 through a whole review. The apology is this: I gave them your names. So if
188 Prince William County calls you...sorry. In discussing it and the issues that we've
189 been faced with and the challenges that we've had, Prince William recognized
190 that they may indeed end up with the same issues down the road, and the same
191 challenges. So they're being proactive because of what Henrico County has
192 done and moving forward with that.
193
194 I'd also like to thank Mr. Blankinship for all of the training that you gave us on the
195 regulations for dams that came out. Yesterday I was probably the only one on the
196 Soil and Water Board for the State that when they were going through the
197 regulations I was making comments. Being a new member on the Board,
198 everybody kept asking how did I know this. I kept saying that in Henrico County,
199 we are actually trained. So hats off to Henrico County, and thank you for training
200 me in the new regulations for dams because it proved to be a positive.
201
202 Mr. Vanarsdall - Mr. Tokarz is sitting here with us. We should thank
203 him for his input.
204
205 Mr. Archer - All right, Mr. Secretary. Do we need to move on this?
206
207 Mr. Emerson - Yes sir. We would like a motion of recommendation
208 for either approval or denial, whatever your thoughts are.

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210 Mr. Vanarsdall - I move that we recommend this to the Board of
211 Supervisors.

212
213 Mr. Branin - Second.

214
215 Mr. Archer - Motion by Mr. Vanarsdall, seconded by Mr. Branin. All
216 in favor say aye. All opposed say no. The ayes have it, the motion passes.

217
218 Thank you, Mr. Blankinship.

219
220 Mr. Emerson - Mr. Chairman, that takes us to the next item on your
221 agenda, which is C-20-11.

222
223 **C-20-11 Ed Hofmann, Jr. for Stable Hill Development Co.,**
224 **Inc.:** Request to rezone from R-3C One-Family Residence District (Conditional)
225 to C-1 Conservation District part of Parcels 748-776-3108 and 747-776-8848
226 containing 5.7 acres beginning approximately 680 feet northeast of the northern
227 terminus of Holman Ridge Road continuing west along the west bank of the
228 Chickahominy River to approximately 300 feet northeast of the northern terminus
229 of Lemoore Drive. The applicant proposes a Conservation District within the 100-
230 year floodplain. The use will be controlled by zoning ordinance regulations. The
231 2026 Comprehensive Plan recommends Environmental Protection Area. The
232 staff report will be presented by Mr. Ben Sehl.

233
234 Mr. Archer - Is there anyone present who is opposed to C-20-11,
235 Ed Hofmann, Jr., for Stable Hill Development Company Incorporated?

236
237 Mr. Sehl - Thank you Mr. Chairman.

238
239 The subject property was part of larger 46.7-acre site that was rezoned via
240 rezoning case C-28C-08 to allow residential development of up to ninety-one
241 lots. Proffer 14 accepted with that case requires an application to be filed to
242 rezone areas within a 100-year floodplain to C-1 prior to final subdivision
243 approval.

244
245 The request would fulfill the proffered condition and be consistent with the site's
246 EPA designation on the 2026 Plan. For these reasons staff supports this
247 request.

248
249 Mr. Archer - Thank you, sir. Are there questions for Mr. Sehl from
250 the Commission? All right. Do you need to hear from the applicant, Mr. Branin?

251
252 Mr. Branin - No, I don't feel that's necessary.

253
254 Mr. Archer - All right.

255

256 Mr. Branin - Mr. Chairman, I'd like to move that C-20-11, Ed
257 Hofmann, Jr., for Stable Hill Development Company Incorporated, move forward
258 to the Board of Supervisors with a recommendation for approval.

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260 Mr. Jernigan - Second.

261

262 Mr. Archer - Motion by Mr. Branin, seconded by Mr. Jernigan. All
263 in favor say aye. All opposed say no. The ayes have it; the motion passes.

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265 **REASON:** Acting on a motion by Mr. Branin, seconded by Mr.
266 Jernigan, the Planning Commission voted 5-0 (one abstention) to recommend
267 the Board of Supervisors grant the request because it is reasonable and
268 conforms to the Environmental Protection Area recommendation of the
269 Comprehensive Plan.

270

271 **C-21C-11 Michael J. Rothemel for AJB Properties, LLC:**
272 Request to amend proffered conditions accepted with Rezoning Cases C-36C-92
273 and C-8C-10 on Parcel 755-758-3580 located at the southeast intersection of
274 Springfield Road (State Route 157) and Huron Avenue. The applicant proposes
275 to amend proffers related to landscape buffers, lighting, prohibited uses, trash
276 receptacles, and HVAC screening. The existing zoning is B-2C Business District
277 (Conditional). The 2028 Comprehensive Plan recommends Commercial Arterial.
278 The staff report will be presented by Lisa Blankinship.

279

280 Mr. Archer - Is there anyone present who is opposed to this case,
281 C-21C-11, Michael J. Rothemel for AJB Properties, LLC?

282

283 Mrs. Blankinship - Thank you, Mr. Chairman.

284

285 This is a request to amend proffers accepted with rezoning cases C-36C-92 and
286 C-8C-10. The applicant is requesting to delete previously accepted proffers and
287 substitute new proffers related to

288

- 289 • Buffers;
- 290 • Lighting;
- 291 • Prohibited uses;
- 292 • Screening of trash receptacles and HVAC equipment; and
- 293 • Limited access to Springfield Road.

294

295 The property was rezoned via case C-36C-92 to allow for the operation of a
296 bridal shop and office uses.

297

298 In 2010, proffers were amended to allow for a massage and spa facility; however,
299 this use never came to fruition. With this request, the applicant hopes to expand

300 the number of allowable uses to increase the marketability of the site although no
301 prospective clients have been identified at this time.

302
303 Staff believes the amended proffers would provide continued assurances of
304 quality and would not negatively impact surrounding property owners. Therefore,
305 staff supports this request.

306
307 Since the staff report, the applicant has submitted revised proffers that address a
308 few housekeeping items. Additionally, the applicant has proffered out the use of
309 changeable message signs. Time limits would need to be waived in order to
310 accept proffers this evening.

311
312 This concludes my presentation. I will be happy to answer any questions.

313
314 Mr. Archer - Thank you so much, Ms. Blankinship. Are there
315 questions from the Commission?

316
317 Mrs. Jones - Lisa, has there been discussion with the applicant
318 about including title loan businesses along with the payday loan restrictions?

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320 Mrs. Blankinship - Yes ma'am, they've proffered that out as well.

321
322 Mrs. Jones - Okay.

323
324 Mr. Vanarsdall - That was my question, too.

325
326 Mrs. Jones - I'm sorry, I'm not seeing that.

327
328 Mr. Vanarsdall - That's why we changed that to add title loans.

329
330 Mrs. Blankinship - It's cash checking and payday loans. Is that what
331 you're referring to?

332
333 Mrs. Jones - So title loans are included in that?

334
335 Mrs. Blankinship - To be proffered out? Yes.

336
337 Mrs. Jones - Title loan businesses are included? I just didn't see
338 that. I thought it would have to be spelled out.

339
340 Mr. Emerson - I'm not sure that that would be the case. Payday
341 loans and title loans are two different things.

342
343 Mrs. Blankinship - Okay. I'm sorry.

344

345 Mr. Emerson - My interpretation would be that title loans are not
346 included in that.
347
348 Mrs. Jones - Because they're considered financial institutions. So
349 they would be allowed?
350
351 Mr. Vanarsdall - And they're popping up everywhere, just like the
352 payday loans.
353
354 Mrs. Jones - Is it the intent that they be allowed on this property?
355
356 Mrs. Blankinship - They're not specifically proffered out then. Yes.
357
358 Mr. Vanarsdall - It was my understanding when I talked to you that
359 "title loans" would be in there.
360
361 Mrs. Blankinship - Okay. We could talk to the applicant to see if they
362 would.
363
364 Mr. Emerson - It's possible you could interpret "or other similar
365 financial institutions." If you're concerned about that and the applicant is willing,
366 it would be better to have that included, I think.
367
368 Mr. Vanarsdall - The applicant is here this evening.
369
370 Mr. Rothermel - Mr. Chairman, members of the Commission, Mike
371 Rothermel. I'm with the law firm of Spotts Fain.
372
373 Mr. Archer - Good evening, Mr. Rothermel.
374
375 Mr. Rothermel - The principal of AJB Properties is here, owner of this
376 parcel. We have no issue with title loans; that can easily be added between now
377 and the Board. There was no intent to omit that. One of the dangers when you
378 take proffers from other cases and transfer them. We just inadvertently omitted
379 that.
380
381 Mr. Vanarsdall - Can hardly hear what you're saying.
382
383 Mr. Rothermel - We inadvertently omitted that. There was no intent to
384 keep those out, any sort of check cashing and payday loans, that's fine. If we
385 need to reference another section of Virginia Code, we can easily do that.
386
387 Mr. Vanarsdall - I just thought it would be better to have check cashing
388 and title loans.
389
390 Mr. Rothermel - That's fine. We can easily make those revisions.

391
392 Mr. Vanarsdall - Can we do it tonight?
393
394 Mr. Rothermel - That's fine. My guess is that that is a separate section
395 of the Virginia Code, which you will want to reference. I didn't bring my codebook
396 with me tonight.
397
398 Mr. Vanarsdall - Mr. Secretary, we can go ahead and do that at Board
399 time.
400
401 Mr. Emerson - Yes sir, we can. There's time between this body's
402 recommendation and the Board to add that to the proffers.
403
404 Mrs. Jones - Excuse me. Let me just make sure we're talking about
405 the same thing. This has come to be somewhat of an issue recently with a few
406 cases and this is why I'm trying to zero in on this. I'm sorry, tell me your name
407 again?
408
409 Mr. Rothermel - It's Mike Rothermel.
410
411 Mrs. Jones - Mr. Rothermel, the reason I mention this is that the
412 wording of this particular proffer is such that it is my intent to ask that title loan
413 businesses be proffered out so that they cannot be used on this site, that that
414 cannot be an allowed use. Is that what you are talking about doing?
415
416 Mr. Rothermel - Yes, correct. My representation is that we will include
417 those in the proffers to be proffered out.
418
419 Mrs. Jones - Okay. As a prohibited use?
420
421 Mr. Rothermel - Correct.
422
423 Mrs. Jones - Thank you. All right.
424
425 Mr. Vanarsdall - It may be covered in there, but it would be better just
426 to add those two words, so thank you.
427
428 Mr. Rothermel - Absolutely not a problem.
429
430 Mr. Vanarsdall - Thank you. The other proffer was the changeable
431 message signs.
432
433 Mr. Rothermel - We did include that.
434

435 Mr. Vanarsdall - It seems like that of all intersections we have, that
436 intersection would not be a good one for anything else. You almost have to have
437 six eyes to get through it now. So thank you for adding that.

438
439 Mr. Rothermel - Absolutely.

440
441 Mr. Archer - Okay. Any other questions or observations? All right,
442 Mr. Vanarsdall.

443
444 Mr. Vanarsdall - I don't need to hear anything else. I would like to say
445 that the owner has made a nice looking place, and he's going to make it even
446 nicer. We're glad to see that building turned into something good. I know you've
447 worked hard to make it like that.

448
449 With that, I would like to waive the time limits on C-21C-11, Michael J. Rothermel
450 for AJB Properties, LLC.

451
452 Mr. Jernigan - Second.

453
454 Mr. Archer - Motion by Mr. Vanarsdall, seconded by Mr. Jernigan
455 to waive the time limits. All in favor say aye. All opposed say no. The ayes have
456 it; the motion passes.

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458 Mr. Vanarsdall - I recommend to the Board of Supervisors that C-21C-
459 11, Michael J. Rothermel for AJB Properties, LLC, be approved.

460
461 Mr. Jernigan - Second.

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463 Mr. Archer - Motion by Mr. Vanarsdall, seconded by Mr. Jernigan.
464 All in favor say aye. All opposed say no. The ayes have it; the motion passes.

465
466 **REASON:** Acting on a motion by Mr. Vanarsdall, seconded by Mr.
467 Jernigan, the Planning Commission voted 5-0 (one abstention) to recommend the Board
468 of Supervisors grant the request because the amendment to allow expansion of
469 business uses is consistent with the 2026 Comprehensive Plan and it is not expected to
470 adversely impact surrounding land uses in the area.

471
472 Mr. Emerson - Mr. Chairman, that takes us to the final item on your
473 agenda, which would be the consideration of the approval of your minutes from
474 your November 10, 2011, meeting. I do understand that several of you have
475 provided corrections, which we will include within the minutes.

476
477 Mrs. O'Bannon - I will say I appreciated getting the phone call from
478 staff asking about changes. I did not have any, but that was an excellent way to
479 handle it. Thank you.

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481 Mr. Archer - Is there a motion for approval?

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Mr. Branin - So moved.

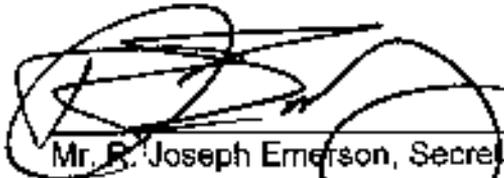
Mr. Jernigan - Second.

Mr. Archer - Motion by Mr. Branin, seconded by Mr. Jernigan. All in favor say aye. All opposed say no. The ayes have it; the motion passes. The minutes are approved.

Mr. Emerson - Mr. Chairman. I have nothing further for the Commission this evening.

Mr. Archer - All right. Anybody else have anything?

The meeting adjourned at 7:27 p.m.



Mr. R. Joseph Emerson, Secretary



Mr. C. W. Archer, Chairperson