

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 DECEMBER 21, 2017 AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**
6 **DECEMBER 4, 2017 AND DECEMBER 11, 2017.**

7
Members Present: William M. Mackey, Jr., Chair
Helen E. Harris, Vice Chair
Gentry Bell
Terone B. Green
James W. Reid

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

8
9 Mr. Mackey - Good morning, and welcome to the December 21st,
10 2017 meeting of the Board of Zoning Appeals. All who are able, will you please
11 stand and join us in the Pledge of Allegiance.

12
13 Thank you. Now I'll ask Mr. Ben Blankinship, our Board secretary, if he will read
14 the rules of our meeting.

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

25
26 This meeting is being recorded, so we'll ask everyone who speaks to speak directly
27 into the microphone on the podium, state your name, and please spell your last
28 name so that we get it correctly in the record.

29
30 I should have said a second ago that after the public hearing on the first case is
31 complete, the Board will open the public hearing on the next case. They will
32 proceed through all the public hearings, and then they will go back through the
33 agenda and discuss each case and make their decisions. If you wish to hear their
34 decision on a specific case, you can either stay until the end of the meeting, or you
35 can check the Planning Department website—we usually get it updated within

36 about an hour of the end of the meeting—or you can call the Planning Department
37 this afternoon.

38
39 With that, Mr. Chair, I believe we have two requests for withdrawal. One was
40 submitted in writing last week, and that is CUP2017-00037, Community Housing
41 Partners Corporation.

42
43 **CUP2017-00037 COMMUNITY HOUSING PARTNERS CORP.**
44 requests a conditional use permit pursuant to Section 24-116(d)(1) of the County
45 Code to allow a temporary office trailer at 491 Kingsridge Parkway (Parcel 809-
46 725-1891) zoned General Residence District (R-5) (Varina).

47
48 Mr. Blankinship - This case has been withdrawn, so if anybody was here
49 for that, I'm sorry for your time.

50
51 At the request of the applicant, case **CUP2017-00037, COMMUNITY HOUSING**
52 **PARTNERS CORP**, has been **withdrawn**.

53
54 The other case is a request concerning APL2017-00012, MK Hospitality.

55
56 **APL2017-00012 MK HOSPITALITY** appeals a decision of the director
57 of planning pursuant to Section 24-116(a) of the County Code regarding the
58 property at 5203 Williamsburg Road (Parcel 818-713-5098) zoned Business
59 District (B-2), Business District (B-3) and One-Family Residence District (R-3)
60 (Varina).

61
62 Mr. Blankinship - Would everyone who intends to speak to this case
63 please stand and be sworn in. Raise your right hand, please. Do you swear the
64 testimony you're about to give is the truth, the whole truth, and nothing but the truth
65 so help you God?

66
67 Thank you. Come on down to the podium if you will.

68
69 Mr. Burgess - Sir, my name is Donald Burgess. I'm an attorney. I
70 represent the owner in this matter of the property at issue. I've spoken with the
71 County attorney on behalf of 5203 Williamsburg Road. The owner of the property
72 will be withdrawing the appeal. Working with the County attorney right now to agree
73 to language detailing how the owner can use the property. Confusion has arisen
74 in this matter due to the way the parcel is partitioned between business and
75 residential. But we've come to an agreement or an understanding as to the details
76 of the property. And like I said, subject to agreeable language between myself and
77 the owner and the County attorney, this matter will be fully resolved. That is where
78 we stand, lady and gentlemen.

79
80 Mr. Blankinship - Any questions from any Board members?

81

82 Ms. Harris - I'm curious to know how you resolved it.
83
84 Mr. Burgess - We've been working with Mr. Newby for the last couple
85 of weeks, ma'am. We've had an agreement in principle. Really, the confusion has
86 arisen about, again like I said before, the way that the property is partitioned. But
87 also the owner was keeping tractors on the property. When the owner became
88 aware that there was an issue with keeping the tractors there, he found two storage
89 facilities. So really the offending trucks have been moved off site, ma'am, to other
90 locations.
91
92 Ms. Harris - Have they already been moved?
93
94 Mr. Burgess - They have, ma'am. They are gone.
95
96 Ms. Harris - When were they moved?
97
98 Mr. Burgess - They've been in the process of being moved for the last
99 week. But the last one was moved yesterday. There is no misunderstanding.
100 Trucks will not be stored at the property at issue. So that is not the case.
101
102 Ms. Harris - Right. I went out there yesterday, so that's why I
103 wanted to know when they were moved. Thank you.
104
105 Mr. Burgess - Understood, ma'am. You're welcome, ma'am.
106
107 Mr. Blankinship - All right, thank you very much.
108
109 Mr. Burgess - Thank you very much, ladies and gentlemen.
110
111 At the request of the applicant, case **APL2017-00012, MK HOSPITALITY**, has
112 been **withdrawn**.
113
114 Mr. Blankinship - With that Mr. Chair, shall we proceed with the deferred
115 cases?
116
117 Mr. Mackey - Yes, please.
118
119 Mr. Blankinship - We have two variances that were deferred from last
120 month. Normally we would hear use permits first and then variances. But these
121 two variance cases were both deferred from last month. The first is VAR2017-
122 00021, Emerald Land Development, LLC.
123
124 **VAR2017-00021 EMERALD LAND DEVELOPMENT, LLC** requests a
125 variance from Section 24-95(b)(8) of the County Code to build a one-family
126 dwelling at 701 Beverstone Road (SILVER SPRING FARMS) (Parcel 832-725-
127 1389) zoned Agricultural District (A-1) (Varina). The lot width requirement is not

128 met. The applicant proposes 129 feet lot width, where the Code requires 150 feet
129 lot width. The applicant requests a variance of 21 feet lot width.

130
131 Mr. Blankinship - Would everyone who intends to speak to this case
132 please stand and be sworn in. Raise your right hands, please. Do you swear the
133 testimony you're about to give is the truth, the whole truth, and nothing but the truth
134 so help you God?

135
136 Mr. Gidley - I do.

137
138 Mr. Blankinship - Thank you. Mr. Gidley?

139
140 Mr. Gidley - Thank you, Mr. Secretary. Good morning, members of
141 the Board.

142
143 The applicant's property is located in the Silver Spring Farms subdivision, which is
144 near the intersection of Interstate 295 and Airport Drive. It's been owned by a
145 member of the Smith family since 1962, and the applicant's have owned it since
146 2003.

147
148 The property consists of a 1.63-acre lot that fronts on a bend of Beverstone Road
149 for 81.57 feet. As one goes back, the lot becomes wider, eventually reaching 400
150 feet in width. The property's A-1 zoning requires a lot width of 150 feet. By
151 definition, lot width is measured at the minimum front yard, i.e. setback, which in
152 this case is 50 feet back from the public street. The lot width at this point is
153 approximately 129 feet. As a result of the 150-foot-required lot width, the applicant
154 is requesting a 21-foot-lot-width variance. This would allow the construction of a
155 dwelling on the property. I will also note it will need both a well and a septic system.

156
157 When reviewing variance requests, one of the first things staff considers is whether
158 or not there's a reasonable beneficial use for the property similar to the Cochran
159 standard. In this case, the property is currently wooded and has 1.63 acres of lot
160 area. It abuts a public street and slopes upward slightly from the street to the rear
161 lot line. Staff is unaware of any reason the lot could not be built on other than the
162 fact that the required lot width is measured at the front setback line. This would
163 appear to meet the requirement for a variance because it prevents any reasonable
164 beneficial use for the property.

165
166 Because one of the two main tests for a variance is met, we can consider the five
167 subtests as well. Staff believes that these five are met.

168
169 The applicant acquired the property in good faith.

170
171 As far as substantial detriment to nearby properties, these homes are across the
172 street. As you can see, the surrounding development is residential. Nearby homes
173 range in size from roughly 1,000 to 1,700 square feet. These include both brick

174 homes and vinyl homes with a lot of homes having cinderblock foundations. What
175 the applicant is proposing in this case is a two-story, 1,440-square-foot home with
176 vinyl siding. Its front foundation would be constructed of brick. The side and rear
177 foundations would utilize cinderblock. The second floor is a little unique to the
178 neighborhood, but other than this, the home would certainly be consistent with the
179 surrounding development and therefore should not pose a substantial detrimental
180 impact to nearby property.

181

182 As far as a general recurring situation that could be addressed by amending the
183 ordinance, the lot width regulation was adopted to prevent the creation of
184 substandard lots such as flag lots or stem lots where you have a long stem leading
185 to a parcel of land off the road where the width would actually be met. This is not
186 really the case here. This is a unique condition caused by the bulb of Beverstone
187 Road. And as a result, this is unique and not really something addressed by an
188 ordinance amendment.

189

190 The use here of a one-family residential unit is a permitted use in the A-1 District,
191 so it would not be an illegal use variance. And a special exception is not available
192 in this case.

193

194 In conclusion, the property consists of 1.63-acre lot that has enough room to
195 construct a home. However, because the required lot width is not met within 50
196 feet of the road, the owners are unable to construct a home on the property. As a
197 result, absent a variance there's no reasonable beneficial use of the property. The
198 five required subtests are also met including the lack of a detrimental impact on
199 nearby property. As a result, staff recommends approval of this case subject to the
200 attached conditions.

201

202 This concludes my presentation. I'll be happy to answer any questions you may
203 have.

204

205 Mr. Mackey - All right. Thank you, Paul. Does anyone have any
206 questions for Mr. Gidley? Thank you, sir.

207

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

209

210 Mr. Mackey - Can we have the applicant approach?

211

212 Mr. Rempe - Good morning, Mr. Chairman, Board members, staff.
213 We appreciate staff's time on this case. We're working with the applicant. We
214 support staff's findings for recommending approval for the case.

215

216 Mr. Blankinship - Would you give us your name for the record, please?

217

218 Mr. Rempe - It's Mark Rempe, and I'm with Emerald Land
219 Development.

220
221 Mr. Mackey - Would you spell your last name for the record, please?
222
223 Mr. Rempe - It's R-e-m-p-e. We hope the Board approves the
224 variance. The house is going to be a beautiful house for a homebuyer who's going
225 to live in Henrico County in an affordable house for probably a first-time
226 homebuyer.
227
228 The Health Department has approved the permit application for the septic and well.
229 The Department of Public Works has approved all the conditions as well on the
230 permit.
231
232 I'm happy to answer any questions.
233
234 Mr. Mackey - All right. Thank you, Mr. Rempe. Does anyone have
235 any questions?
236
237 Ms. Harris - Yes, I do. Where exactly are you going to build the
238 house on this lot?
239
240 Mr. Rempe - The house is going to be built in the back area of the
241 lot.
242
243 Ms. Harris - How many feet from the street will it be built?
244
245 Mr. Rempe - Let's see here. That looks about maybe 200 feet. It kind
246 of widens in the very back. It'll be in the back where the lot is pretty wide.
247
248 Ms. Harris - Okay. The width of the house was 30 feet?
249
250 Mr. Rempe - I think it's around 30 feet.
251
252 Ms. Harris - I was wondering why do you build them so narrow
253 when you have all of that land.
254
255 Mr. Rempe - The lot is an affordable lot. This is a very popular house
256 plan and a beautiful house plan. We think it's going to fit right within the context of
257 that neighborhood.
258
259 Ms. Harris - I know it's a very popular plan, but my question is why.
260 Don't you have other plans that are not so narrow?
261
262 Mr. Rempe - Liberty Homes does definitely have plans that are not
263 so narrow. We appreciate your response, but we think when you look at the
264 neighborhood this is going to fit right in to the neighborhood. It's going to be right
265 around \$200,000. It's a beautiful plan.

266

267 Mr. Mackey - Thank you, Ms. Harris. Does anyone else have any
268 questions for Mr. Rempe? Thank you, sir.

269

270 Mr. Rempe - Thank you.

271

272 Mr. Mackey - Is there anyone here who would like to speak in
273 opposition to the application?

274

275 Mr. Lawrence - [Off microphone] We're not speaking in opposition.

276

277 Mr. Mackey - Okay.

278

279 Mr. Lawrence - My name is Steven Lawrence. L-a-w-r-e-n-c-e. I am at
280 the adjoining property. I'm on Sharron Road, and then part of it's on Beverstone.
281 I'm right here, yes.

282

283 My concern is there are three springs that come out of the back of the hill that start
284 our little stream that goes down into the swamp. Living in the Tuckahoe Village
285 area in the West End and having drainage problems out there of things that were
286 supposed to be in the ground that weren't, I don't want to end up with a swamp
287 backed up onto my property. That is my concern. As long as there's accurate flow
288 and enough drainage, I don't think we should have a problem. I just don't want to
289 block natural groundwater.

290

291 Mr. Mackey - I understand. This question is for staff, that would fall
292 under the building permit?

293

294 Mr. Blankinship - Yes, that's correct. The Department of Public Works
295 will look at those issues at the time of building permit approval. Just looking at the
296 contours of the property, it doesn't appear to me like it's going to be an issue. It
297 looks like the property will drain well.

298

299 Mr. Lawrence - I did see in the driveway area that they do have some
300 culverts designed into the driveway I guess to help with flow so there won't be any
301 backup or anything like that.

302

303 Mr. Blankinship - The Board might ask the applicant to respond to that
304 as well.

305

306 Mr. Mackey - All right. Thank you, Mr. Lawrence.

307

308 Mr. Lawrence - All right, thank you.

309

310 Ms. Harris - Mr. Lawrence.

311

312 Mr. Mackey - I'm sorry.
313
314 Ms. Harris - Have you been on the property to notice if there are
315 any wetlands there?
316
317 Mr. Lawrence - It is a little marshy back that way. But that's going to be
318 in the area where the driveway is since the house is going to be located more up
319 on top of the hill, because it does slope up.
320
321 Ms. Harris - Thank you.
322
323 Mr. Mackey - Any other questions for Mr. Lawrence? All right, thank
324 you. Before we go to anyone who might want to speak in approval, can we have
325 Mr. Rempe come back and address this issue?
326
327 Mr. Rempe - We had Balzer, who is the engineer and survey crew—
328 actually, this is not Balzer. This is AES. They're engineers and surveyors, and they
329 work out of Innsbrook. They put together the survey work. They put together the
330 grading plan, which shows how the drainage is going to flow on the property. They
331 submitted it to staff, and staff has already concluded that there are not going to be
332 any drainage issues. They've already approved the grading plan on the site.
333
334 Mr. Blankinship - The Health Department approval is probably a good
335 sign of that too. If there was going to be standing water, they wouldn't approve the
336 septic.
337
338 Mr. Rempe - Correct, correct.
339
340 Mr. Blankinship - Is it a traditional septic or is it an alternative?
341
342 Mr. Rempe - I think this is a traditional conventional septic system.
343
344 Mr. Blankinship - Okay.
345
346 Mr. Rempe - The engineer has already worked on it. They submitted
347 it to the staff. I'm sure staff probably gave them some comments saying, "Hey, look
348 over there, look over this." They addressed those comments with some more
349 revisions on the grading plan, and it's been approved.
350
351 Mr. Mackey - Okay. Thank you, Mr. Rempe. Anyone else have
352 anything for Mr. Rempe?
353
354 Mr. Rempe - Thank you.
355
356 Mr. Mackey - All right. Is there anyone here who would like to speak
357 in favor of the application? All right, thank you. We can move on.

358

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

362

363 Mr. Mackey - What is the pleasure of the Board? Being the Varina
364 magistrate, I make a motion that we approve the variance and allow them to build
365 the home. All five of the subtests were met, and there was no detriment to the
366 surrounding community. So I would be in favor of approving that. Do we have a
367 second?

368

369 Mr. Green - Second.

370

371 Mr. Mackey - It's been moved and seconded. Do we have any
372 discussion.

373

374 Ms. Harris - Right. I am going to vote in favor of this motion. But I
375 wish that land development would give people more of a choice about what size
376 house they actually put on a lot this size. I know that this one is in keeping with the
377 neighborhood—I think that was the explanation we received. But I'm seeing a lot
378 of narrow homes. I can understand a narrow home being on a 50-foot-wide lot, but
379 on a 120-foot-wide or a 200-foot-wide lot?

380

381 Mr. Mackey - I didn't think to ask him. I'm not sure if we know the
382 person they're building it for picked that one. Mr. Rempe is gone, I believe.

383

384 Ms. Harris - He said it was one of the popular plans. And I know
385 that, because I see them all over the County. But they're on narrow lots for the
386 most part. They're nice homes, but they're just so narrow.

387

388 Mr. Mackey - Any other discussion? All right. There has been a
389 motion and it's been seconded. All in favor say aye. Those opposed say no. There
390 is no opposition; that motion passes 5 to 0.

391

392 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
393 Mr. Green, the Board **approved** application **VAR2017-00021, EMERALD LAND**
394 **DEVELOPMENT, LLC's** request for a variance from Section 24-95(b)(8) of the
395 County Code to build a one-family dwelling at 701 Beverstone Road (SILVER
396 SPRING FARMS) (Parcel 832-725-1389) zoned Agricultural District (A-1) (Varina).
397 The Board approved the variance subject to the following conditions:

398

399 1. This variance applies only to the lot width requirement for one dwelling only. All
400 other applicable regulations of the County Code shall remain in force.

401

402 2. Only the improvements shown on the plot plan and building design filed with
403 the application may be constructed pursuant to this approval. Any additional

404 improvements shall comply with the applicable regulations of the County Code.
405 Any substantial changes or additions to the design or location of the improvements
406 will require a new variance.

407
408 3. Approval of this request does not imply that a building permit will be issued.
409 Building permit approval is contingent on Health Department requirements,
410 including, but not limited to, soil evaluation for a septic drainfield and reserve area,
411 and approval of a well location.

412
413 4. Before beginning any clearing, grading, or other land disturbing activity, the
414 applicant shall submit an environmental compliance plan to the Department of
415 Public Works.

416
417
418 Affirmative: Bell, Green, Harris, Mackey, Reid 5
419 Negative: 0
420 Absent: 0

421
422
423 **[At this point, the transcript continues with the public hearing on the next**
424 **case.]**

425
426 Mr. Blankinship - The next case is VAR2017-00023, Chris Rogers.

427
428 **VAR2017-00023** **CHRIS ROGERS** requests a variance from Sections
429 24-95(i)(2)c. and 24-95(k) of the County Code to build an accessory structure at
430 509 Walsing Drive (MOORELAND LANDING) (Parcel 743-732-5147) zoned One-
431 Family Residence District (R-1) (Tuckahoe). The accessory structure setback
432 requirement and side yard setback for an accessory structure are not met. The
433 applicant proposes 32 feet street side yard setback and 1 foot accessory structure
434 setback, where the Code requires 65 feet street side yard setback and 10 feet
435 accessory structure setback. The applicant requests a variance of 33 feet street
436 side yard setback and 9 feet accessory structure setback.

437
438 Mr. Blankinship - Would everyone who intends to speak to this case
439 please stand and be sworn in. Raise your right hands, please. Do you swear the
440 testimony you're about to give is the truth, the whole truth, and nothing but the truth
441 so help you God?

442
443 Mr. Madrigal - I do.

444
445 Mr. Blankinship - Thank you. Mr. Madrigal?

446
447 Mr. Madrigal - Thank you, Mr. Secretary, Mr. Chair, members of the
448 Board. Good morning.

449

450 Before you is a request to build an accessory structure in the rear yard of a one-
451 family dwelling. The subject property is at the northeast corner of Walsing Drive
452 and Spring Brook Court. The lot is a reverse corner lot just under one acre in size
453 with a significant slope along its eastern and southern edges. It is improved with a
454 two-story, 6,300-square-foot residence with an attached, three-car garage, both
455 built in 1992. Other improvements include a large terrace brick patio at the rear of
456 the home centered off an open-air courtyard.

457
458 The applicant acquired the property in October 2015, and in 2016 he constructed
459 the terraced patio.

460
461 In September of 2017, he requested a building permit to construct a 500-square-
462 foot patio cover and masonry chimney atop the brick patio. You can see that here
463 on the site plan. His request was failed by County staff because of the proposed
464 structure's proximity to the residence being less than two feet where Code required
465 a minimum of ten feet separation. Here you can see this right-side elevation. This
466 is the home here, and here's the proposed structure.

467
468 He subsequently filed for a variance to waive the distance requirement and move
469 forward with his improvements. This case was originally scheduled to be heard by
470 the Board at its November meeting. Upon further review, staff determined the lot
471 to be a reverse corner lot requiring a larger street-side setback to the patio cover
472 and chimney than what was originally proposed. Because this additional variance
473 item was identified after the advertisement deadline, the case was deferred to this
474 month's meeting so it could be properly advertised.

475
476 With respect to the threshold question, the property is improved with a large two-
477 story residence and three-car garage. Additionally, it has an elaborate terraced
478 patio behind the existing home. It is difficult to argue that the Zoning Ordinance
479 unreasonably restricts the utilization of the property as it currently stands. This is
480 a good comparison to the previous case, the initial case by Mr. Gidley, that
481 absence a variance they would have no reasonable beneficial use. In this case,
482 we already have an existing beneficial use on the property.

483
484 Although the topography is a unique feature, it has not restricted or negatively
485 impacted the property's use. The applicant constructed a large terraced patio
486 behind the home, centered on an open courtyard. It required retraining walls to
487 overcome the existing slope issue in the rear yard. Nonetheless, he was able to
488 accomplish the patio.

489
490 He wishes to further improve the existing patio by constructing a solid roof over it
491 and installing a masonry chimney. The proposed cover would be less than two feet
492 from the home where Code requires a minimum of ten feet separation. In addition,
493 the patio cover would be 32 feet distant from the street-side property line instead
494 of 65 feet as required by Code. The applicant is making these requests even

495 though there is ample room elsewhere on the lot for the proposed improvements
496 without the need for variances.

497
498 With respect to the subtests, the applicant does not meet two of the requirements
499 as outlined in the staff report. These are items 1 and 2 where staff finds the
500 situation to be self-imposed hardship and the proposed improvements pose
501 detrimental impacts to adjacent and nearby property.

502
503 In conclusion, the subject lot is improved with a large two-story residence and
504 attached garage. It also has an elaborate brick patio at its rear. Although it is a
505 reverse corner lot with topography issues, the Code has not unreasonably
506 restricted the use, as evidenced by the current improvements. It is difficult to justify
507 the granting of a variance when the proposed improvements can be
508 accommodated elsewhere on the lot without a variance. It is staff's position that
509 the alleged hardship is self-imposed and does not warrant consideration for a
510 variance. Additionally, the proposed improvements would have a detrimental
511 impact on the adjoining lot to the east once it is developed. Based on these facts
512 and consistent with case law, staff recommends denial.

513
514 Mr. Mackey - Miguel, I have a question. Back in the background
515 portion of it in the second paragraph where it says, "In 2016 he constructed a
516 terraced patio at the rear of the home without the benefit of a building permit," are
517 we sure the patio meets the building permit requirements now?

518
519 Mr. Madrigal - Essentially, that was for the retaining walls. Once you
520 get to a certain height, I believe it's more than 24 inches of retaining wall, then you
521 need an engineered plan and that is reviewed by staff. I couldn't find any record of
522 a building permit for that.

523
524 Mr. Mackey - Okay. All right. Does anyone from the Board or from
525 staff have any questions for Mr. Madrigal?

526
527 Ms. Harris - Yes. You mentioned that it could be constructed
528 somewhere else on the property. Where else did you see?

529
530 Mr. Madrigal - Yes ma'am. That could be accommodated back here.

531
532 Mr. Blankinship - Or even where the word "covered" is on the plat, as
533 long as it was ten feet from the dwelling.

534
535 Mr. Madrigal - Right. This area. In the rear plane of the house,
536 essentially.

537
538 Ms. Harris - Would it then be over the patio?

539
540 Mr. Madrigal - I'm sorry?

541

542 Ms. Harris - Would it then be over the patio if you move the covered
543 area? You're saying all of that should be moved? I'm looking at the brick wall.

544

545 Mr. Madrigal - If you wanted to have a covered patio, then he would
546 have to relocate it, yes. The open brick patio is fine where it's at. It's basically
547 groundwork, and it doesn't pose a violation.

548

549 Ms. Harris - Okay. We know that there are no neighbors except on
550 the east side. Would the proposal put them closer to that neighbor? There's a street
551 on the other side.

552

553 Mr. Madrigal - Right. This is the closest neighbor here. This lot has
554 been sold and will be developed shortly. The property owner called and did inquire
555 about this case. So proximity-wise, the existing brick patio is already very close to
556 the front area of this lot.

557

558 Ms. Harris - Okay.

559

560 Mr. Blankinship - Not only close to it, but actually it will appear to be in
561 the front yard from that house's point of view.

562

563 Mr. Madrigal - This is the view from the cul-de-sac.

564

565 Ms. Harris - Okay.

566

567 Mr. Bell - Did the lot purchaser express any opposition to what
568 they plan to do?

569

570 Mr. Madrigal - Not during the phone call. He was just more concerned
571 with what was being proposed. He was trying to find out what exactly is happening.

572

573 Mr. Green - If this individual ever sold his house, how would it
574 impact the person that would buy it, given the fact that there was not a building
575 permit?

576

577 Mr. Madrigal - The County doesn't go looking for these types of
578 issues. If someone were to complain, then we would conduct an investigation and
579 look into it. My understanding in talking to the building officials, this happens quite
580 frequently. People aren't aware that once you install a retaining wall and it reaches
581 a certain height that it needs to be an engineered system and it needs to be
582 reviewed. Looking at what was submitted and the plans that were prepared, I'm
583 pretty confident that did occur, although it didn't get reviewed.

584

585 Mr. Green - Would that be disclosed in the event this person sold
586 their property?

587
588 Mr. Madrigal - It should be.
589
590 Ms. Harris - Question. Mr. Madrigal, what would be the difference
591 between where the patio is located now, as far as the neighbors are concerned,
592 and the proposal to cover the patio? It would be directly over the patio, right?
593
594 Mr. Madrigal - That is correct.
595
596 Ms. Harris - And if it would be too close to the neighbors then,
597 wouldn't it be too close to the neighbors now? I can't see it being a problem then
598 when it's not a problem now.
599
600 Mr. Madrigal - Right now if you look at the existing patio, it's just a
601 brick patio. There is a basically a flower garden here. Essentially, it's just leisure
602 open space. Once you put that cover on it, once you put that chimney on top, then
603 it's an intensification of that patio. I'm not sure what the applicant's plans are, but
604 I'm assuming he's probably going to put electrical there. So I'm sure there are
605 going to be fans, lighting, maybe a TV. So it does intensify that use. The chimney
606 will have tangible impacts to the neighbor by way of—just the overall improvement
607 of it—noise, light, glare, smoke. So those are impacts that would be increased
608 because of the patio and chimney.
609
610 Ms. Harris - Thank you. I can see the noise factor not being an
611 issue, but I can see the chimney right here could be quite an issue. Noise would
612 be whether you had a cover or not if you're going to use your patio.
613
614 Mr. Green - So they now would have to get a building permit.
615
616 Mr. Madrigal - For what's existing?
617
618 Mr. Green - For what they want to do.
619
620 Mr. Madrigal - Yes. What they're requesting would require a building
621 permit, yes. They have to submit the plans. They have to verify the structural
622 calculations for the proposed cover, wind loads, snow load, as well as foundation
623 requirements.
624
625 Mr. Green - You all are recommending not to approve this. Would
626 the building permit individuals—
627
628 Mr. Madrigal - We're recommending denial of his request.
629
630 Mr. Green - But would the building permit . . .
631

632 Mr. Blankinship - They won't issue a building permit if the variance is
633 denied.
634
635 Mr. Green - Okay.
636
637 Mr. Mackey - I'm sorry, Paul. Could you say that again?
638
639 Mr. Madrigal - They couldn't hear you.
640
641 Mr. Gidley - [Off microphone] There's reasonable beneficial use;
642 therefore, the subtests are moot, including detrimental impact. This is because the
643 two main tests for a variance are not met.
644
645 Mr. Madrigal - Right. Essentially, it didn't pass the threshold question.
646 So the five subtests are essentially moot.
647
648 Mr. Mackey - Okay. Are there any other questions from
649 Mr. Madrigal?
650
651 Mr. Green - How did someone do something so extensive without
652 a building permit? You would think they would know that—even if they didn't know,
653 that the persons who were doing this would know that they needed a building
654 permit.
655
656 Mr. Madrigal - Essentially, whenever you do any kind of groundwork
657 like that, you're doing some movement of soil, you're putting asphalt, you're putting
658 concrete, you're putting brick down, that generally doesn't require a building
659 permit. The only exception would be if you're going over a wetland area or
660 something to that effect. But generally, something like this wouldn't require a
661 building permit. Again, the exception here is that it is a sloped lot. And there are
662 retaining walls, and after a certain height they do have to be engineered to make
663 sure that they're not going to fail, they're going to retain that dirt that they're holding
664 up.
665
666 Mr. Mackey - All right. Thank you, Mr. Madrigal. Can we hear from
667 the applicant now, please?
668
669 Mr. Rogers - Good morning. My name's Chris Rogers. It's R-o-g-e-
670 r-s. Thank you to the Board for the opportunity to present to you all this morning.
671
672 I am here to respectfully request the two variances. The reason I'm here today first
673 is we have a very odd-shaped lot. Second, we have some unusually steep
674 topography in the back of the lot. Because of these two factors, a strict application
675 of the ordinances would unreasonable restrict our family from being able to cover
676 the existing patio in the rear of the yard. Every other family in our neighborhood
677 and surrounding neighborhoods is able to have a structure in their backyard and

678 benefit both from being outdoors on the property as well as having a reasonable
679 level of privacy in their backyard. We can't do this again today because of the odd-
680 shaped lot and the steep topography.

681
682 To address the five specific points that were covered in the staff report, first that
683 the property interest for which the variance was required was done in good faith.
684 Two, the hardship was not created by the applicant for the variance.

685
686 So first, in the good faith, a brief background. I served six years in the Marine
687 Corps. Our family moved five times. We have three daughters. We moved to
688 Boston, we moved to Richmond. We moved twice in Richmond. And then we
689 moved into this home in 2015. We love the home. We love Henrico County. We
690 don't ever want to move again. Every investment we've made into this home has
691 been done as this is the house that I'd like to be in for the rest of my life.

692
693 In terms of the self-imposed hardship, for the existing patio, everything I did by the
694 book. We had an engineer's report done. The contractor we've used for other
695 things. I did not know a building permit was required. I'm not sure if it is required.
696 Just as we've done with this covered patio, we've tried to do everything absolutely
697 above board in terms of crossing every *t* and dotting every *i*. The Architectural
698 Review Committee for our homeowners association did approve that patio, and
699 they tend to be pretty demanding when it comes to requiring concessions. In
700 addition, when we built that patio, we added additional landscaping on the side
701 yard to shield it from the cul-de-sac.

702
703 At the time we built the patio, the lot behind us was owned by the previous owner
704 of our home. We had hoped at some point to potentially buy that lot behind us just
705 because it did provide a high level of privacy. The exiting patio design was actually
706 developed by the original homeowner. Those plans were in the house when we
707 bought the house.

708
709 So we did look hard when we bought the house at alternative designs for the patio
710 just given the scope of it. Given the topography, after consultation with several
711 different folks, that was really the only place we decided that we could build a patio.
712 If we could have pushed the patio further, we would have definitely done so. We
713 ran into an issue with the easement in the backyard and a very steep kind of drop-
714 off. So the design of the patio and the location of the patio were just largely dictated
715 by the topography of the lot.

716
717 On the second topic, which was that the variance will not be of substantial
718 detriment to the adjacent and nearby properties. First, the location of the covered
719 pavilion and the patio would be fully screened from the main road. Our neighbors
720 on the right, the Sweeneys, would not be able to see it. We're close with them, and
721 it's largely screened from their view. The neighbors on the left, it's largely screened
722 by the existing landscaping, and we would be looking to add potentially some
723 additional landscaping.

724

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768

I think the staff report does correctly state that the granting of the variance would most impact the undeveloped lot behind our house. However, it's important to note I think for us it would actually be a big positive for both our house and their house. The reason for this is we'll have no kind of privacy on that patio once a home is built there. In all likelihood, just the siting of that lot, the way it drops and rises back up, that home is likely going to be situated on the rear of the lot.

So the intent, really, with that being a covered patio and a fireplace was largely to provide a level of privacy on the patio both for us and our new neighbors, when they're looking into our backyard, they're not necessarily looking right into our patio and all the activity that's going on there. And the fact that we can't put the patio—or the covered pavilion on the patio, anywhere else is really just largely dictated by the existing site of that patio.

In terms of the hardship to construct the patio, what we're really asking here—and this is a minor correction which I think may have been just a typo in the staff report—for an additional six feet offset from the house. I did bring the plans which just show that. So we have four feet already offset from the house, and then it's actually a little bit more on the other side. Which is just kind of more in the category of a minor correction.

Lastly, I would say we did go through the process with our homeowners association for this structure. This was approved by them in September. I brought the documentation, if that's helpful for the committee to review as well. They had a number of the same questions that I imagine you may have. The benefit for us and for our neighbors, also just trying to make sure it was architecturally consistent with the existing house and the neighborhood.

One point I would note is there's a comment in the staff report around this being an unusual situation. To the comment around the odd design of the lot, we are a reverse corner lot. Completely understand the need to have an additional offset of the 65 feet given the design of that. If the side street, which is really that side street in the cul-de-sac, did not have that cul-de-sac kind of impinge into the lot, it would be a 90-foot offset. So really the reason we're talking about 32 feet right now is just much more a function of the way the cul-de-sac goes into the lot.

In conclusion, I'm certainly happy to answer any questions you may have. A strict application of the ordinance we think really does unreasonably restrict us from the use of the backyard and being outdoors and having privacy outdoors, something that we would like to do the same way our neighbors are able to do. Granting of the variance, again, would alleviate that hardship of just not being to enjoy the backyard we would like to and do it in a way that does not impede upon our neighbors.

769 So thank you for your time. I'm happy to answer any questions you may have.
770 Again, I respectfully request that you would approve the variances.

771
772 Mr. Mackey - Thank you, Mr. Rogers. Does anyone from the Board
773 or staff have questions for Mr. Rogers?

774
775 Mr. Blankinship - Miguel, could you bring up the right side elevation? I
776 just want to address Mr. Rogers's point about how we measured that setback. If
777 you can point on the right side elevation there. The space between the wall and
778 the column is approximately four feet, as he said. But the nearest point of the house
779 to the nearest point of the roof of the patio is just less than two feet. That's why we
780 have two different measurements there.

781
782 Mr. Mackey - Mr. Rogers, you do understand that the County is not
783 saying that you cannot have a covered patio. They're just saying that you would
784 be in violation having a covered patio at that location.

785
786 Mr. Blankinship - And built to that exact design.

787
788 Mr. Rogers - Yes. If it's helpful to reference the plat. The alternative
789 location that was pointed out earlier in I guess what would be in the northeast
790 location of the lot would require us taking down trees. That's likely going to be in
791 the immediate side yard of our new neighbor. And it is in the immediate kind of
792 side yard of our existing neighbor. So this existing patio we also chose not just for
793 convenience for us but it's probably the best screened amongst all of our neighbors
794 as well.

795
796 Mr. Mackey - Any other questions for Mr. Rogers?

797
798 Ms. Harris - I just want to tell Mr. Rogers to tell your homeowners
799 association that they need to tell the homeowners to get a building permit.

800
801 Mr. Rogers - Yes ma'am.

802
803 Mr. Mackey - All right. Thank you, sir. Is there anyone here would like
804 to speak in opposition of the application? Is there anyone to speak in favor of the
805 application? All right. May we have the next case?

806
807 **[After the conclusion of the public hearings, the Board discussed the case**
808 **and made its decision. This portion of the transcript is included here for**
809 **convenience of reference.]**

810
811 Mr. Mackey - What is the pleasure of the Board?

812
813 Mr. Reid - I make a motion that we approve VAR2017-00023 for
814 Mr. Rogers to build the accessory structure at 509 Walsing Drive in Moreland

815 Landing. I think some credence is given to the fact that his homeowners
816 association approved it. I make a motion that we approve it.

817

818 Mr. Mackey - All right. There's been a motion made by Mr. Reid. Is
819 there a second?

820

821 Mr. Green - I'll second it.

822

823 Mr. Mackey - It's been seconded by Mr. Green. Discussion?

824

825 Ms. Harris - I know that the homeowners association did approve
826 this, but if he can make some changes to his plan, then he would not be in violation
827 as much as he is with the accessory structure requirement. According to the report
828 that we received, it could be placed somewhere else. The problem has been
829 multiplied by the fact that they built the patio without consulting the Building Permit
830 Office. So that problem was created. But certainly this does not meet the five tests
831 that we set up. And I'd like to say it's a beautiful home. I love the brick work. I just
832 wish that it had been put in the right place on the property.

833

834 Mr. Mackey - I agree it did not meet two of the five subtests. And
835 while they would not be able to have the covered patio where they want it, it's not
836 saying that they couldn't have it somewhere else in the yard. So I wouldn't say that
837 they are restricted from having a covered patio.

838

839 Mr. Blankinship - You mentioned two of the five subtests, but in my view
840 it doesn't even come close to meeting the main test. If that's an unreasonable
841 restriction of the Zoning Ordinance, then I don't know what's a reasonable
842 restriction.

843

844 Mr. Mackey - I understand. Any other discussion? The application
845 has been moved and seconded recommending approval. All in favor say aye.
846 Those opposed say no. So we have four no's. The motion is denied 4 to 1.

847

848

849 Affirmative:	Reid	1
850 Negative:	Bell, Green, Harris, Mackey	4
851 Absent:		0

852

853

854 Mr. Blankinship - That motion has been defeated. Is there another
855 motion?

856

857 Mr. Green - For what?

858

859 Mr. Blankinship - To deny the variance.

860

861 Mr. Mackey - I make a motion that we deny the variance for
862 VAR2017-00023. It does meet the requirements for a variance.

863
864 Mr. Green - Second.

865
866 Mr. Mackey - It's been moved by Mr. Mackey and seconded by
867 Mr. Green to deny the variance. All in favor say aye. Those opposed say no. The
868 motion to deny has carried 4 to 1.

869
870 After an advertised public hearing and on a motion by Mr. Mackey seconded by
871 Mr. Green, the Board **denied** application **VAR2017-00023, CHRIS ROGERS**
872 request for a variance from Sections 24-95(i)(2)c. and 24-95(k) of the County Code
873 to build an accessory structure at 509 Walsing Drive (MOORELAND LANDING)
874 (Parcel 743-732-5147) zoned One-Family Residence District (R-1) (Tuckahoe).

875
876
877 Affirmative: Bell, Green, Harris, Mackey 4
878 Negative: Reid 1
879 Absent: 0

880
881

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

884
885 Mr. Blankinship - The last case this morning is CUP2017-00038, Turner
886 Solar, LLC.

887
888 **CUP2017-00038 TURNER SOLAR, LLC** requests a conditional use
889 permit pursuant to Sections 24-12(c) and 24-52(a) of the County Code to allow a
890 renewable energy facility at 8558 Strath Road (Parcel 814-680-9784) zoned
891 Agricultural District (A-1) (Varina).

892
893 Mr. Blankinship - Would everyone who intends to speak to this case
894 please stand and be sworn in. Raise your right hand, please. Do you swear the
895 testimony you're about to give is the truth, the whole truth, and nothing but the truth
896 so help you God? Thank you. Mr. Gidley?

897
898 Mr. Gidley - Thank you, Mr. Secretary, Mr. Chairman, members of
899 the Board.

900
901 This is a request to construct a solar farm on approximately 250 acres of a 463-
902 acre tract. The subject property is bounded, as you can see, by Varina Road to the
903 west and Strath Road to the east. The site was previously used for a sand-and-
904 gravel extraction operation between 1963 and 2004.

905

906 The proposed solar farm would consist of solar panel arrays mounted on steel
907 posts that would track the sun's movement across the sky. The maximum height
908 would be 14 feet. The electrical current is delivered to inverters and then to a point
909 of interconnection before being fed into the power transmission lines. There would
910 also be a 6-foot-tall security fence along the outside of the project area.

911

912 In evaluating the request, its consistency with the Comprehensive Plan and the
913 Zoning Ordinance, the property is zoned A-1 Agricultural District and is designated
914 as Rural Residential and Environmental Protection on the 2026 Comprehensive
915 Plan. Both the Planning Commission and the Board of Supervisors have
916 addressed this and determined the project is in substantial accord with the
917 Comprehensive Plan.

918

919 As far as substantial detrimental impact, the period of greatest impact on the
920 neighboring properties would be during the construction of the facility. The
921 construction process would run from, say, four to eight months. Due to the noise
922 with the process, including driving steel posts into the ground, there could be some
923 impact on nearby property. Staff is able to address this by recommending a
924 condition that construction on the site be limited to 7 a.m. to 6 p.m., Monday
925 through Saturday. There would be no construction on Sundays. This would help to
926 address any impact on adjacent property from the construction process.

927

928 Once construction is complete, there will be very little in terms of traffic, noise, or
929 glare, or other impacts as the facility is passive and unmanned. That said,
930 maintenance crews will occasionally visit the site. They will keep the grass cut
931 underneath the solar arrays, for instance.

932

933 The applicant is proposing a 100-foot setback around the perimeter of the project,
934 and the actual arrays themselves would be a minimum of 150 feet from nearby
935 residences. Within the 100-foot buffer where there is not at least 30 feet of native
936 timber, supplemental evergreen landscaping would also be provided to provide
937 protection to adjacent properties.

938

939 The anticipated lifespan of the project is 35 years, after which time the equipment
940 will be removed and the property returned to a permitted use such as farming.

941

942 In conclusion, the Planning Commission has determined the proposed facility is in
943 accord with the Comprehensive Plan. The impact of the facility on neighboring
944 property is arguably less than other permitted uses, certainly less than the previous
945 mining activity. When the project is completed, the equipment will be removed and
946 the land returned to farmland. As a result, staff is able to recommend approval of
947 this request subject to the conditions attached to your staff report.

948

949 This concludes my presentation. I'll be happy to answer any questions you may
950 have. Thank you.

951

952 Mr. Mackey - Mr. Gidley, we've been given some updated conditions
953 of approval if it's approved. Condition #2, the date has been changed from
954 8/29/2017 to 12/18/2017. And in condition #6, the maximum height of any
955 structures other than the point of interconnection has been changed from 20 feet
956 to 15 feet. Has the applicant been made aware of these changes?
957

958 Mr. Blankinship - He has, Mr. Chair. I have had some conversations with
959 the applicant over the last few days about which plan should have been referenced
960 in condition #2. I had referred to the plan that's on the screen now. And Paul, if you
961 can switch to the maximum extent. They asked that they be bound by that plan
962 instead. It has slightly more area, particularly in the northeastern quadrant of the
963 property. Slightly more area is allowed by this. Their explanation was they wanted
964 to have a little flexibility built in in case they find that for whatever reason they can't
965 put panels in some of the areas where they thought they would be able to. They
966 didn't want to have to come back and amend the condition. They did submit a new
967 plan, which is why the date was changed. And then we changed from the
968 conceptual plan to the maximum extent.
969

970 And on the height, in their booklet and in their presentation to the Board of
971 Supervisors they confirmed that there's not going to be anything taller than 15 feet.
972 The previous case similar to this one out on Meadow Road we had used 20 feet,
973 and we just copied that condition. But because it was specifically mentioned at the
974 Board meeting, I was asked to change that condition from 20 to 15.
975

976 Mr. Mackey - All right. Thank you, Mr. Blankinship. Does anyone
977 from the Board or staff have any questions for Mr. Gidley?
978

979 Ms. Harris - Yes. If this is approved, are there just two sites in
980 Henrico County for Turner Solar?
981

982 Mr. Gidley - I'm only aware of the two.
983

984 Mr. Blankinship - I'll answer that one too. There is also a third site under
985 negotiation right now, but we have not seen an application come in yet.
986

987 Ms. Harris - Where is it?
988

989 Mr. Blankinship - That one is off of Osborne Turnpike between Osborne
990 Turnpike and the river. It's another old mining site, interestingly.
991

992 Ms. Harris - This old mining site that we're using here, what was the
993 condition of this? Had it been reclaimed?
994

995 Mr. Blankinship - Yes ma'am. It's largely reforested, but there is a lot of
996 water on the property as well where they dug out the sand and gravel and got
997 below the watertable.

998

999 Ms. Harris - Okay. And we see that a six-foot security fence will be
1000 placed around the property. What kind of fencing is this? I'm just wondering how
1001 the neighbors are going to respond to it.

1002

1003 Mr. Gidley - I'll let the applicant discuss the fence.

1004

1005 Ms. Harris - Do we know anything about the history of the
1006 company? I know we have various energy sources throughout the history of our
1007 country, but then we're finding out that there is some fallout, that people are getting
1008 sick from things we didn't know about up front. So I'm just wondering about the
1009 history of what all they're doing for the safety and health issues that might result
1010 from what they are doing.

1011

1012 Mr. Gidley - I'm just aware that it's a subsidiary of Virginia Solar.
1013 That's all I really know about them. As you indicated, this is a pretty new process
1014 to Henrico County as far as solar arrays.

1015

1016 Mr. Mackey - Any other questions for Mr. Gidley? All right, thank you,
1017 Paul.

1018

1019 Mr. Gidley - Thank you, Mr. Chairman.

1020

1021 Mr. Mackey - Can we hear from the applicant?

1022

1023 Mr. Meares - Matt Meares. M-e-a-r-e-s. Thank you very much for
1024 hearing me this morning. I am one of the principles of Virginia Solar. First questions
1025 asked, who are we? That's a very good question, and I'm going to address that.

1026

1027 Virginia Solar's a utility scale developer of solar projects here in the
1028 Commonwealth of Virginia. We are currently focused only on the Commonwealth
1029 of Virginia for the simple reason—I actually live in the Tuckahoe District, while my
1030 partner lives in the Three Chopt District. Our office is in the Tuckahoe District. We
1031 are a local company. We've all lived here for many, many years, and we've done
1032 renewal energy projects all over the country. Before this company was founded, I
1033 spent the previous three years mainly working in California, even though I was a
1034 resident here in Henrico. And my partner has spent 25 years developing wind and
1035 solar projects all over the United States. It was only last year he got his first solar
1036 project ever built in Powhatan County. So while we are a new company focused
1037 on Virginia, our experience has been all over the entire United States developing
1038 different types of renewable projects.

1039

1040 In the past two years, we have developed more solar projects than any other
1041 company in the Commonwealth of Virginia. We currently have 97 megawatts in
1042 operation. Seventeen megawatts of that is in Powhatan. That went operational just
1043 over a year ago. And then as of the first of this month, four additional projects went

1044 operational. In that case, the power is being sold to Amazon Web Services, and
1045 then we sold the actual physical projects to Dominion Energy on the unregulated
1046 side of the company. Those four projects are located in Buckingham, Sussex, New
1047 Kent, and another one in Powhatan. So we have those projects. Those are now in
1048 operation.

1049
1050 And then we have a project that is currently under construction in King William
1051 County. That project, we sold it to Dominion on the regulated side, and then they
1052 subsequently sold the power to the University of Virginia. That project will go into
1053 operation at some point next year.

1054
1055 So that is our experience in Virginia developing solar projects. In addition, we have
1056 since then received five additional conditional use permits in various counties—
1057 Middlesex, another one in Buckingham, another one in King William . . . I don't
1058 remember what the one I'm missing is. So we've now received 11 conditional use
1059 permits. And we have received—Louisa County. We've received 5 of only 12 state
1060 permits ever issued for solar projects in the Commonwealth.

1061
1062 That's basically our experience here in Virginia.

1063
1064 Why are we doing solar? That's also a pertinent question. It really comes down to
1065 solar is becoming economically competitive. Dominion has announced they plan
1066 on building 240 megawatts of solar a year for the next 14 years. And very
1067 importantly in this County, when the Facebook deal was announced, they
1068 announced they wanted to power it with solar. Basically, there was a request for
1069 proposal sent out by Dominion, and that request for proposal was due back on
1070 December 1st asking for solar projects in the Commonwealth. Obviously, we're in
1071 the same County, and we hope this project would be very favorably received.

1072
1073 Why Varina? It was really quite simple. The important item is the available
1074 electrical infrastructure. This site was highly disturbed. I'm kind of amazed we were
1075 able to find this particular site. I'm familiar with the other site that was just referred
1076 to because we went through all the mines in this area just because those are the
1077 only ways we were comfortable that we thought we could get developed, the only
1078 kinds of parcels that have been disturbed. And we understood the permitting
1079 process because we were obviously not first; we were the second people to come
1080 through.

1081
1082 And this is just the maximum extent drawing that was shown earlier, the revised
1083 one. That is what was discussed and we're fine with that. As to the questions about
1084 conditions, we are fine with the conditions as they were proposed.

1085
1086 The fence, very important comment here. We are putting the fence not around the
1087 parcel line, but where the solar panels are. All the neighbors would be screaming
1088 bloody murder if it was on the property line. It's going to be close to the solar
1089 panels, then there will be the treed buffer. So they should be able to see the fence.

1090 I'll tell you right now, I get more complaints about the fence than I do the solar
1091 panels. I was actually dealing with that yesterday in King William County. I agree.
1092 The fence always goes on the inside of the trees and as close to the panels as
1093 possible to minimize the view.

1094

1095 And then it was loosely alluded to, concerns about effects on the environment from
1096 solar panels. These solar panels, the basic technology has been used since the
1097 1970s in the space program. Basically, solar panels are made out of glass,
1098 aluminum, silicon, and there is some thin film technologies which use just some
1099 different chemistries. But none of these are toxic. None of the compounds used
1100 are toxic. I always give the analogy they built a whole bunch of these over in
1101 Germany and they're a lot more stricter than we are. And also in California, I've
1102 built tons of projects there. And, no offense, but those areas are known for being
1103 sticklers on environmental things.

1104

1105 We follow all the best practices, which is why I think staff has recommended it. I
1106 think we offered 20-some-odd conditions that we propose for every single solar
1107 project. We have all the decommissioning. We support that because we do need
1108 to remove and clean up the site afterward. It shouldn't create any environmental
1109 problems.

1110

1111 With that, I'll take any of your questions.

1112

1113 Mr. Blankinship - I'd like to hear a little more about the decommissioning
1114 plan, if you wouldn't mind.

1115

1116 Mr. Meares - I had a sample one. I believe it was in the packet.
1117 Basically what we do is we remove—removing the panels is easy because
1118 basically you have the principal components. You have an inverter. It basically
1119 changes the—actually, don't mind me. I'm just going through to a slide where I
1120 have the decommissioning.

1121

1122 Mr. Mackey - Mr. Meares, could you also address the lifespan
1123 expectancy?

1124

1125 Mr. Meares - Okay. This is just a picture of a project that's in the
1126 middle of decommissioning and you're just yanking off the panels. Basically, it's
1127 the same as construction, except we do it in reverse. If you look all the way to the
1128 right, here's what it looks like when the panels are installed. The pictures on either
1129 side are from our project in Powhatan, so these are local pictures.

1130

1131 We removed the panels first. This cross arm here, we then just pick it up and
1132 remove it. Then we have to use a device, basically a forklift, anything with a good
1133 strong uplift on these piles, because they're driven into the ground. They actually
1134 meet wind code. They have to be able to stay in the ground to keep them from
1135 being lifted up. We then basically attach to them and just pull them out. It's actually

1136 very easy to do. So we'll remove all the piles. Obviously all these components
1137 hooked up to the piles will be removed. We're just going to basically remove all
1138 that.

1139
1140 I believe with how the condition was written in this county, or was proposed, we
1141 are going to have to end up removing the wires that are buried. We normally bury
1142 36 wires 36 inches deep. It's only the AC wires that we actually end up burying.
1143 The smaller DC wires are actually hung. These metal wires, we actually hang them
1144 up right there. The rodents, they love to gnaw on wires if you bury them. It makes
1145 it easier if hang them up. So it'll just be the AC wires we'll have to dig up after the
1146 fact.

1147
1148 Hopefully that answers all your questions about decommissioning.

1149
1150 Mr. Blankinship - How long is the lifespan?

1151
1152 Mr. Meares - To be purely honest, it's an economic question. We
1153 estimate the economic life, knowing what we do today, to be 35 years. All the
1154 projects to date, when we went to go get the financing, that's what everyone agreed
1155 to being the useful life. I have seen arguments both for it being lower and being
1156 higher, but the real answer is you can't predict energy prices. By logic, if energy
1157 prices go really high, you have a fixed asset, you're going to leave it in the ground
1158 longer. If energy prices collapse or great new technology comes out, we'll have to
1159 take it down sooner. That's just how it is. But we assume 35 years.

1160
1161 Mr. Mackey - All right. Are there any other questions?

1162
1163 Mr. Bell - The lot at points is a wet lot. How does that water that's
1164 accumulating affect these wires underground and above it?

1165
1166 Mr. Meares - We have to stay away from the water for a variety of
1167 reasons. First, all down in here is part of the Chesapeake Bay Preservation Act,
1168 so we have to stay 100 feet per County and state law. And then all these other
1169 wetlands we can really go near. So we're not going in any of these areas where
1170 you see water. We're just not allowed to.

1171
1172 That begs the one question you do have is we have to cross right here through this
1173 easement area. They'll probably end up doing a directly bore underneath it. And
1174 they'll basically run the wires that way. They're wires; you can put them under
1175 water. They get wet when it rains, so it's not a big deal. That's the only place where
1176 I think water will be any issue, that one directional bore under those wetlands in
1177 order to connect the two areas.

1178
1179 Mr. Mackey - Are there any other questions?

1180

1181 Ms. Harris - Yes. Could you go back to the site that had why Varina
1182 was chosen? You had a slide that said why Varina.

1183
1184 Mr. Meares - Yes ma'am.

1185
1186 Ms. Harris - There is a wet problem in a lot of Varina. Are you
1187 familiar with this? I remember when we had the storm. My son lives in Varina, and
1188 they couldn't get home because of the water. So I just want to know do you know
1189 about Varina wetland situations.

1190
1191 Mr. Meares - Yes ma'am. These projects, the panel itself is almost
1192 four feet off the ground. And this site has very sharp topography. It's an old quarry.
1193 The areas where you see water in general are substantially lower than the areas
1194 where you don't see water. There are very large topography differences. That's
1195 going to make the water flow off very, very quickly.

1196
1197 While I've never done this in Virginia, in California we built a number of these in
1198 floodplains. Interestingly, most of the desert out there is actually a floodplain. So
1199 these panels are actually four feet off the ground. At the lowest point, the panel is
1200 still 12 inches off the ground. So you can have 12 inches of water, and it will not
1201 affect the system. If we were in California what we'd have to do is you put sensors
1202 on them that tell you what the water depth is. And if there is water down there, they
1203 basically will not rotate. And that keeps them from going into the water.

1204
1205 I'm very comfortable, especially with the topography of this site, that any water will
1206 flow off very quickly and will have no effect on the system.

1207
1208 Ms. Harris - Okay. Are you aware that there are other sites
1209 throughout Varina that you probably could have selected? For example, on that
1210 same road there's another site. I think it's about two blocks from where you are,
1211 maybe two miles on the opposite side of the street. They have a gate that's closed,
1212 but trucks used to come out of that site.

1213
1214 Mr. Blankinship - That site is still active. The Kingsland Road burrow pit
1215 is still active.

1216
1217 Ms. Harris - Okay. Each time I come by there, I don't see any trucks
1218 coming out.

1219
1220 Mr. Meares - This was the one that was, as I would say—it took us a
1221 year and a half to get control of the land. I'd say most of these people who develop
1222 mining rights, they do not like to give them up. Even though this mine had been
1223 closed for quite a while, it did not transfer hands until a little over a year ago.

1224
1225 I would just say the other part is we have to look at the electrical system. This
1226 project has an electrical line of the type we need running right into the parcel. That

1227 keeps us from having to upgrade the line. If we have to go much further, it just
1228 creates more expense. So we're trying to minimize the expense from our
1229 standpoint.

1230

1231 Ms. Harris - Right. I think there's one at the end of Strath Road right
1232 at Kingsland?

1233

1234 Mr. Blankinship - Yes ma'am.

1235

1236 Ms. Harris - Yes, there's another one. But I know that's considered
1237 active. I know you had to purchase this one, so I wondered why you didn't purchase
1238 something else or do these neighbors have to look forward to another solar energy
1239 project coming in their neighborhood.

1240

1241 Mr. Meares - Whenever that mine closes, I would expect somebody
1242 will approach them about it, to be perfectly honest with you.

1243

1244 Mr. Blankinship - That's a smallish site, though.

1245

1246 Mr. Meares - Our minimum size that we need is—we will not look at
1247 a parcel or combination of parcels owned by the same owner less than 200 acres.
1248 So we're looking for large parcels.

1249

1250 Ms. Harris - Okay, the other question. You showed us on the slide
1251 that showed like wire was coming—I guess the panels had been removed. Can
1252 you go back to that slide?

1253

1254 Mr. Meares - Sure.

1255

1256 Mr. Blankinship - The Kingsland Road site is 30 acres.

1257

1258 Mr. Meares - Oh yes, I would not be interested. Are you referring to
1259 this one?

1260

1261 Ms. Harris - No. You had what seemed like some type of structure
1262 was coming—

1263

1264 Mr. Meares - Oh, the decommissioning one. This one?

1265

1266 Ms. Harris - Right there. What is that?

1267

1268 Mr. Meares - This is a fixed-tilt system. It's not what we're going to
1269 propose to do here, but that's what I could find a picture of showing where they
1270 were talking them down. Not many of these have been taken down yet. In a fixed-
1271 tilt system, the panels don't move; they're always pointed basically due south and

1272 they're at some angle. What we've proposed would actually rotate through the day
1273 and follow the sun.

1274
1275 Ms. Harris - So this is not the system that will be installed.

1276
1277 Mr. Meares - No, no. That's the picture I could find.

1278
1279 Ms. Harris - Okay, thank you.

1280
1281 Mr. Mackey - All right. Anyone else have any questions for
1282 Mr. Meares? Thank you, sir.

1283
1284 Mr. Meares - Thank you.

1285
1286 Mr. Mackey - Is there anyone here would like to speak in support of
1287 the application? Anyone in opposition?

1288
1289 Ms. Harris - Mr. Blankinship, were the neighbors notified of this?

1290
1291 Mr. Blankinship - We actually went well outside of the normal notification
1292 area because the applicant had invited a lot of people to a community meeting,
1293 and then the Planning Commission and Board, when they held their hearings, they
1294 also used a much larger mailing list than we usually would. So we used the same
1295 mailing list. It went to quite a few more people than the law requires.

1296
1297 Ms. Harris - Okay. The community meeting on this particular case
1298 did happen.

1299
1300 Mr. Blankinship - Yes ma'am. There was a community meeting. There
1301 was Planning Commission public hearing, and there was a Board of Supervisors'
1302 meeting on the question of whether this project is in accord with the
1303 Comprehensive Plan.

1304
1305 Ms. Harris - Was the community meeting well attended, do you
1306 know?

1307
1308 Mr. Blankinship - I was not actually able to attend. Paul, did you go to
1309 that one?

1310
1311 Mr. Gidley - No I didn't.

1312
1313 Mr. Blankinship - No, that was the other one I was thinking of.
1314 Mr. Meares, could you respond that that? Ben Sehl from our staff actually attended
1315 the meeting.

1316

1317 Mr. Meares - That's right; Ben Sehl was there. We actually held two
1318 community meetings because, just to be quite honest, we had seen what
1319 happened to the Varina proposed substation, and we were very concerned that if
1320 there was a large opposition we were not going to come before you. So we actually
1321 held two. The first one was held in August, I believe. That one we had probably 30
1322 people at. To that one we had only invited basically all the neighbors. There was
1323 a lot of discussion, a lot of questions. The biggest concern we've gotten
1324 consistently is the Civil War cemetery that is adjacent. We've addressed that.
1325 That's by far been the biggest concern. The second one's been for wildlife, making
1326 sure we don't—they didn't want a fence going all the way around; it would hurt the
1327 wildlife. That's been the second biggest concern. But we're not going to do that,
1328 and we had to explain that. That was the first community meeting.

1329
1330 The second one, which Ben Sehl attended, was in I believe September or maybe
1331 October. That one we actually sent to all the same landowners, and then we sent
1332 it to a lot of the what I would call "interested organizations" in that area. We actually
1333 didn't have a single adjacent landowner show up, but we had a large number of
1334 what I would call "Varina interested parties" that showed up. It was probably about
1335 15 to 20 people that showed up to that. I'd say between the two of them we had
1336 over 60 people show up at various points.

1337
1338 Ms. Harris - Right. And the adjacent landowners were notified.

1339
1340 Mr. Meares - Oh yes ma'am.

1341
1342 Ms. Harris - Thank you.

1343
1344 Mr. Mackey - Having heard our final request for the day, we'll move
1345 on to our motion portion of the meeting.

1346
1347 **[After the conclusion of the public hearings, the Board discussed the case**
1348 **and made its decision. This portion of the transcript is included here for**
1349 **convenience of reference.]**

1350
1351 Mr. Mackey - What is the pleasure of the Board?

1352
1353 Mr. Bell - I move that we approve the request. I don't see any
1354 welfare problems or safety problems. I see that it is a construction project that
1355 elevates where we are in terms of promoting new technologies in the County for
1356 electricity. There are no safety problems, as I said earlier.

1357
1358 Mr. Mackey - It's been moved by Mr. Bell.

1359
1360 Mr. Blankinship - Mr. Bell, does your motion include the conditions that
1361 were distributed this morning?

1362

1363 Mr. Bell - Yes.
1364
1365 Mr. Mackey - So noted for the record. Is there a second?
1366
1367 Mr. Bell - With the change on #2 and #6.
1368
1369 Mr. Blankinship - Yes, thank you.
1370
1371 Mr. Mackey - Is there a second? I'll second the motion. Discussion?
1372
1373 Ms. Harris - Yes. This conditional use permit will be revisited when,
1374 Mr. Blankinship?
1375
1376 Mr. Blankinship - There shouldn't be any need unless there's a violation
1377 of the conditions.
1378
1379 Ms. Harris - Okay. I'm a little guarded, but I want to be progressive.
1380 This is the wave of the future. Who am I to hold back the tide? I just had questions
1381 about the fallout from all of this when it's all said and done. Will we say we wish
1382 we could've, we should've? This type of thing. But based on the information, it's
1383 okay.
1384
1385 Mr. Mackey - Thank you, Ms. Harris. Any other discussion?
1386
1387 Mr. Green - I'm curious. What are your concerns again?
1388
1389 Ms. Harris - Contamination of the land and the environment. I visit
1390 another state quite frequently, and there's an area there where everything is dead.
1391 People have passed with all types of diseases, emphysema and—it was near a
1392 chemical plant so they got the runoff. That state doesn't monitor as well as we do
1393 what is going on there. I just want to be sure that when all is said and done we
1394 don't have any little kids who come up with all kinds of diseases because of a
1395 power plant being near their residence. So that's my only reservation. But based
1396 on the information that we have, we can't say that would happen.
1397
1398 Mr. Green - Solar power is relative safe.
1399
1400 Mr. Blankinship - Photovoltaic technology hasn't changed dramatically in
1401 30 or 40 years, but we're just now seeing these large projects roll out here.
1402
1403 Mr. Green - Is it possible for radiation—
1404
1405 Mr. Blankinship - Their whole job is to absorb radiation. Every place that
1406 they've been installed that we know of they've been safe over the long haul.
1407

1408 Mr. Green - I could appreciate what she's saying in reference to
1409 power lines and other things.

1410
1411 Ms. Harris - We had a case to come before us, the solar house. Do
1412 you remember that case?

1413
1414 Mr. Blankinship - Yes.

1415
1416 Ms. Harris - I was really impressed. I know you've seen it because
1417 it's on the corner of—is that Staples Mill?

1418
1419 Mr. Blankinship - Yes ma'am. Staples Mill.

1420
1421 Mr. Bell - Staples Mill and Hungary Road.

1422
1423 Ms. Harris - Right. It has a panel out there. In fact, the neighbors
1424 can actually draw on that power. But the entire house is solar controlled. It's a
1425 really interesting little house. I'm not opposed to progress. I'm just wondering do
1426 we see in part rather than seeing the whole picture.

1427
1428 Mr. Green - Good point.

1429
1430 Mr. Mackey - All right. Any other discussion? All right. It's been
1431 moved and seconded that we approve this CUP2017-00038. All in favor say aye.
1432 Those opposed say no.

1433
1434 Ms. Harris - I abstain.

1435
1436 Mr. Mackey - Okay. The ayes have it with 4 and the 1 abstention.

1437
1438 After an advertised public hearing and on a motion by Mr. Bell, seconded by
1439 Mr. Mackey, the Board **approved** application **CUP2017-00038, TURNER SOLAR,**
1440 **LLC** requests a conditional use permit pursuant to Sections 24-12(c) and 24-52(a)
1441 of the County Code to allow a renewable energy facility at 8558 Strath Road
1442 (Parcel 814-680-9784) zoned Agricultural District (A-1) (Varina). The Board
1443 approved the conditional use permit subject to the following conditions:

1444
1445 1. Only the improvements shown on the conceptual plan filed with the application
1446 shall be constructed pursuant to this approval. Any additional improvements shall
1447 comply with the applicable regulations of the County Code. Any substantial
1448 changes or additions to the design or location of the improvements shall require a
1449 new conditional use permit.

1450
1451 2. No improvements other than supplemental landscaping and one entrance road
1452 shall be located outside the area shown on the "Max Extents" exhibit by Timmons
1453 Group dated 12/18/2017 and included in the application.

1454

1455 3. Before beginning any clearing, grading, or other land disturbing activity, the
1456 applicant shall obtain approval of construction plans, including erosion and
1457 sedimentation plans as required by the Department of Public Works . This approval
1458 is subject to all conditions that may be placed on the construction plans by the
1459 Department of Public Works and the Department of Public Utilities.

1460

1461 4. Before beginning any clearing, grading, or other land disturbing activity, the
1462 applicant shall obtain approval of a detailed landscaping and lighting plan from the
1463 Planning Department. The plan shall provide screening at least equivalent to
1464 double staggered rows of Meyers Spruce or Eastern Cedar planted on 15-foot
1465 centers along Varina Road near Fort Harrison National Cemetery, and in any other
1466 location where the 100-foot setback does not include an undisturbed wooded
1467 buffer at least 30 feet in width. Approved landscaping shall be installed prior to
1468 activation of the facility. All landscaping shall be maintained in a healthy condition
1469 at all times. Dead plant materials shall be removed within a reasonable time and
1470 replaced during the normal planting season.

1471

1472 5. Hours of construction activities shall be limited to Monday through Saturday,
1473 8:00 am to 6:00 pm. No construction activities shall take place on Sundays or
1474 national holidays.

1475

1476 6. The maximum height of any structures other than the point of interconnection
1477 shall be 15 feet.

1478

1479 7. All exterior lighting shall be shielded to direct light away from adjacent property
1480 and streets.

1481

1482 8. All electrical wiring shall be underground except for the interconnection point to
1483 the local utility power grid.

1484

1485 9. Prior to the issuance of permits for installation of equipment, the applicant shall
1486 obtain approval of a plan for decommissioning the facility. The solar energy system
1487 shall be decommissioned and removed within 12 months after the facility ceases
1488 electricity generation for a continuous 12-month period. Decommissioning shall
1489 include removal of solar collectors, cabling, electrical components, any bases or
1490 footers, and all other associated items. The plan shall include a financial guaranty
1491 to insure the decommissioning will be completed at the applicant's cost.

1492

1493 10. During the construction and operation of the facility, the applicant shall
1494 cooperate with the Virginia Department of Historic Resources and the Henrico
1495 County Department of Recreation and Parks to identify, preserve, and interpret
1496 historical and cultural resources on the site. This shall include, at a minimum, the
1497 completion of a Phase I Cultural Resource Review before the issuance of permits
1498 for installation of equipment.

1499

1500 11. Before the facility is energized, it shall be secured with a fence at least 6 feet
1501 in height.

1502

1503

1504 Affirmative: Bell, Green, Mackey, Reid 4

1505 Negative: 0

1506 Absent: 0

1507 Abstain: Harris 1

1508

1509

1510 Mr. Mackey - That's the last case. Is there a motion to accept the
1511 minutes from the November 16, 2017 meeting?

1512

1513 Ms. Harris - I move that the minutes be accepted based on what
1514 was submitted.

1515

1516 Mr. Mackey - Second?

1517

1518 Mr. Bell - Second.

1519

1520 Mr. Mackey - All right. It's been moved by Ms. Harris and seconded
1521 by Mr. Bell that we accept the minutes as presented from the meeting on
1522 November 16, 2017. All in favor say aye. Those opposed say no. There is no
1523 opposition; that motion passes.

1524

1525 On a motion by Ms. Harris, seconded by Mr. Bell, the Board **approved as**
1526 **submitted the Minutes of the November 16, 2017**, Henrico County Board of
1527 Zoning Appeals meeting.

1528

1529

1530 Affirmative: Bell, Green, Harris, Mackey, Reid 5

1531 Negative: 0

1532 Absent: 0

1533

1534

1535 Mr. Mackey - I'd like to say thank you to everybody for coming out
1536 and I hope everybody has a very safe and joyful holiday season and a happy New
1537 Year. Meeting is adjourned.

1538

1539

1540

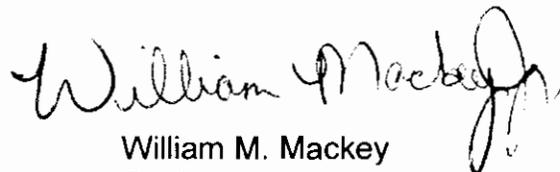
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William M. Mackey
Chairman



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Benjamin Blankinship, AICP
Secretary

