

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.



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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   
1541  
1542 William M. Mackey  
1543 Chairman  
1544

1545



1546  
1547  
1548  
1549  
1550  
1551  
1552



Benjamin Blankinship, AICP  
Secretary

