

1 MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF
2 HENRICO COUNTY, HELD AT THE NEWBRIDGE LEARNING CENTER AT 5915 NINE
3 MILE ROAD, ON THURSDAY DECEMBER 16, 2021 AT 9:00 A.M., NOTICE HAVING
4 BEEN PUBLISHED IN THE *RICHMOND TIMES-DISPATCH* NOVEMBER 29, 2021
5 AND DECEMBER 6, 2021.
6
7

8 Members Present: Terone B. Green, Chair
9 Walter L. Johnson, Jr., Vice-Chair
10 Gentry Bell
11 Terrell A. Pollard
12 James W. Reid, Jr.
13

14 Also Present: Benjamin Blankinship, Secretary
15 Paul M. Gidley, County Planner
16 R. Miguel Madrigal, County Planner
17 Rosemary Deemer, County Planner
18 Michael Morris, County Planner
19 Kuronda Powell, Account Clerk
20
21

22 Mr. Green - Good morning. I would like to welcome everybody to today's
23 December 16th Board of Zoning Appeals meeting. And for those who are in attendance,
24 would you please join us in our Pledge of Allegiance?
25

26 [Recitation of the Pledge of Allegiance]
27

28 Mr. Green - Before we begin our meeting, I'd like to acknowledge Mr. Jim
29 Holland from Chesterfield County. While all of you all are important, I think that to have
30 an elected representative of Chesterfield County to come to Henrico shows a good spirit
31 of cooperation. So thank you, Mr. Holland.
32

33 The other thing I would like to share with you, is once we discuss a case, we will vote on
34 a case -- and this is a procedure we've changed, so you don't have to sit through an entire
35 meeting -- we vote and you're then free to leave after the vote.
36

37 Mr. Blankinship, will you then give us the instructions?
38

39 Mr. Blankinship - Good morning, Mr. Chair, members of the Board. Good
40 morning, ladies and gentlemen to those of you who are in the room. I'd also like to
41 welcome those of you who are joining us remotely on Webex.
42

43 If you wish to observe the meeting, but you do not intend to speak, welcome and thank
44 you for joining us. For those of you on Webex who wish to speak, we need to know that
45 in advance so that we can connect you at the appropriate time. So if you're an applicant
46 or if you have questions or comments on one of the cases, please press the chat button

47 now. It's located in the bottom-right corner of the screen. And when the chat window
48 opens, please select Mike Morris from the list of participants and let him know your name
49 and which case you're interested in.

50
51 The chat feature is only being used to identify speakers, so please do not type questions
52 or comments into a chat, but please send a chat to Mike Morris now.

53
54 So acting as secretary I will call each case and then we will ask everyone who is in the
55 room who intends to speak to that case to stand and be sworn in. For the conditional use
56 permits on this morning's agenda, a member of the Planning Department staff will give a
57 brief presentation and then the applicant will speak and then anyone else who wishes to
58 speak will be given the opportunity. We'll hear from citizens in the room first and then
59 from those on Webex. After everyone has had a chance to speak, the applicant and only
60 the applicant will have an opportunity for rebuttal.

61
62 There is also one appeal on the agenda this morning and for that case an Assistant
63 County Attorney will speak on behalf of the Planning Director and then the appellant will
64 present their case, each side having a limit of 10 minutes. Then anyone else who wishes
65 to speak will be given the opportunity with a time limit of 3 minutes. We'll hear from
66 citizens in the room first, and then from those on Webex.

67
68 This meeting is being recorded so for those of you in the room, there is a microphone in
69 the aisle over there. If you would speak directly into the microphone, state your name,
70 and please spell your last name so that we get it correctly in the record. And, as the chair
71 mentioned, once your case is over you are free to leave the room. There's no need to
72 stay for the rest of the meeting.

73
74 Finally, Mr. Chair, we do have one withdrawal this morning. Conditional Use Permit 2021,
75 number 33, Towanda Tompkins.

76
77 **CUP2021-00033 TOWANDA TOMPKINS** requests a conditional use permit pursuant to
78 Section 24-4402 of the County Code to operate a family day home with employees at
79 5024 Cedar Acres Court (CEDAR RUN) (Parcel 813-730-2346) zoned One-Family
80 Residence District (R-3C) (Fairfield).

81
82 That case has been withdrawn. That case will not be heard this morning.

83
84 So, with that, would you like to proceed?

85
86 Mr. Green - Yes, sir.

87
88 Mr. Blankinship - All right. The first case is Conditional Use Permit 2021,
89 number 12 Greater Richmond Aquatics Partnership.

90
91 **CUP2021-00012 GREATER RICHMOND AQUATICS PARTNERSHIP** requests a
92 conditional use permit pursuant to Section 24-12(b) of the County Code to expand a

93 noncommercial recreation facility at 317 N Wilkinson Road (Parcels 792-753-6169 and
94 792-753-8870) zoned One-Family Residence District (R-2A) (Fairfield).

95
96 Mr. Blankinship - Would everyone who intends to speak to this case, please
97 stand and be sworn in? Raise your right hands, please. Anyone who intends to speak
98 to case number 12. Do you swear the testimony you're about to give is the truth, the
99 whole truth, and nothing but the truth, so help you God? Thank you. You can all be
100 seated. Mr. Madrigal, you can begin.

101
102 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, gentlemen, good
103 morning.

104
105 Before you is a request to expand a noncommercial recreation facility located in a one-
106 family neighborhood. This request has been deferred three times in order to allow the
107 applicant opportunities to meet with the neighbors and address their concerns. At their
108 last meeting on November 9th, the applicant presented additional information to the
109 Northern Henrico Civic Association. At the conclusion of the meeting, those folks in
110 attendance expressed support for this request.

111
112 The subject property fronts on North Wilkinson Road near its intersection with Wilkinson
113 Road. The Board originally approved a CUP for this facility in 1958. Since then, several
114 other use permits have been approved, expanding the use of the property. The existing
115 facility has served the neighborhood for 60 years and, like many other community pools,
116 the demographics, use patterns, and economics no longer support the model of
117 neighborhood families. Exclusively a self-supporting facility that operates a few months
118 out of the year.

119
120 Despite the volunteer board's best efforts, membership has diminished and their
121 financials have fallen short year over year to the point that the facility has fallen into
122 disrepair. As a way to rejuvenate and maintain the facility, the property owner has leased
123 the property to SwimRVA, a nonprofit organization that promotes health and fitness, water
124 safety, sports tourism, and competitive swimming.

125
126 Their plan includes replacing the existing 1,100-square-foot pool building with a new
127 structure twice as large. The existing swimming pool or swimming pools will be enclosed
128 with temporary tents and heaters will be installed to support year-round use. The parking-
129 lot will be redesigned to improve traffic flow without reducing on-site parking.

130
131 In addition to the physical improvements, SwimRVA intends to offer year-round
132 programming to include senior aerobics, swim lessons, and lifeguard training.

133
134 The hours of operation will be expanded to 5:00 a.m. to 9:00 p.m. for outdoor activities,
135 and 5:00 a.m. to 11:00 p.m. for indoor activities. Swim team activities would continue,
136 and up to 6 times a year the hours of operation would be extended to midnight to
137 accommodate swim meets.

139 In March the applicant held a virtual community meeting to inform the neighbors of their
140 proposal. In response to the concerns raised by the neighbors, the applicant decided to
141 operate the facility in its traditional format from Memorial Day to Labor Day and resume
142 their project after the end of this years' season.

143
144 Having completed their summer season, the applicant returned to the Board on
145 September 23rd. Several neighbors expressed their support for the proposal after seeing
146 SwimRVA's operation of the pool for one season. However, several other neighbors
147 continue their opposition and, as a result, the applicant requested a deferral in September
148 to hold another community meeting in October.

149
150 As previously mentioned, the applicant also presented their request at the Northern
151 Henrico Civic Association meeting on November 9th. The members in attendance at that
152 meeting expressed appreciation for the applicant's ongoing efforts to understand and
153 accommodate their neighbors' concerns.

154
155 The property is designated Open Space and Recreation on the 2026 Future Land Use
156 Map. That designation supports the expanded use of the property as a non-commercial
157 recreation facility. The property also complies with all dimensional standards required in
158 the R-2A District including the lot-width requirement as measured at the time the property
159 was developed.

160
161 The parcel has been an approved noncommercial recreation facility since 1958.
162 Conversion from a community-based model to a nonprofit corporation doesn't change the
163 nature of the use and it will continue to comply with code requirements.

164
165 The existing on-site improvements were constructed over the course of 60 years, so most
166 of the new standards found in the code do not apply. If the Board approves the request,
167 the applicant would also make improvements to the parking lot, which would bring the
168 property more nearly into compliance with current standards.

169
170 Expansion of the facilities' programming to year-round use would be a substantial
171 departure from past practice and does represent a significant change. The applicant
172 believes the additional recreational opportunities will benefit the community, offsetting any
173 additional traffic, noise, or other impacts.

174
175 The early-morning hours would be another considerable impact on the neighborhood.
176 Working with the community, SwimRVA has modified their proposed hours of operation
177 to limit traffic and noise during the early-morning hours while still maintaining certain
178 recreational opportunities.

179
180 The community also expressed concern regarding increased traffic on North Wilkinson
181 Road. As a result, the applicant has proposed a second site entrance on Wilkinson Road.
182 A preliminary plan was submitted and received by the County agencies. No objections
183 were raised to this second entrance, but there were comments with respect to its design.

184 Subsequently staff revised the suggested conditions of approval to allow a second
185 entrance subject to the review and approval of county agencies.

186
187 With respect to the project's overall impact, it is intended to benefit the health, safety, and
188 welfare of the greater community, but neighborhood residents are concerned about the
189 immediate affects. The applicant has worked hard to understand and address these
190 concerns, and staff has encouraged their efforts to reach a solution for everyone's benefit.

191
192 In conclusion, this recreation facility has served the community for 60 years, but changing
193 demographics and economics threatens its continued existence. Swim RVA proposes to
194 substantially improve the facility and significantly expand their operations. This concept
195 will keep the community pool viable but would also intensify the use by adding year-round
196 activities, early-morning hours, and have traffic implications. The applicant has met
197 several times with the neighbors to address their concerns.

198
199 Based on the changes made by the applicant and the reception at the North Henrico Civic
200 Association meeting, staff recommends approval of this request subject to conditions.
201 Additionally, staff has received somewhere in the neighborhood of about 30 letters or
202 emails in support of this request.

203
204 That concludes my presentation. I'll be happy to try to answer any questions.

205
206 Mr. Green - Thank you. Are there any questions from members of the
207 Board?

208
209 Mr. Pollard - Have we received any additional messages in opposition to
210 the request?

211
212 Mr. Madrigal - No. They've all been in support.

213
214 Mr. Green - Okay. We will now hear from the applicant.

215
216 Mr. Geiger - Miguel, do you have a -- or should I ask you to move?

217
218 Mr. Madrigal - Just let me know when you want me to switch slides.

219
220 Mr. Geiger - Will do, thank you. Mr. Chairman, members of the Board, my
221 name is Jeff Geiger here on behalf for the Greater Richmond Aquatics Partnership. Also
222 known as SwimRVA.

223
224 I appreciate staff's review of the request that's before you. So I'd like to focus on a couple
225 aspects, a couple points, that I'd like to raise to the Board's attention. My presentation
226 will focus on the steps we have taken since the initial filing of the request in terms of
227 engagement with the community and then talk about the investment that we have made
228 and would like to make into the property.

229

230 If we could go to the next slide. First, I'd like to bring to the Board's attention that this use
231 is an existing use. This conditional use permit allows a variety of recreational facility uses
232 already. These uses are in the same intensity and design and use type as the request
233 that's before you.

234
235 Understanding what this conditional use permit allowed. The Greater Richmond Aquatics
236 Partnership began planning for how to reinvest into this property to continue it as an
237 integral part of the fabric of this community and an integral part of how this community
238 exercises as a part of their daily lives.

239
240 We put those plans together. We filed the request for the conditional use permit. From
241 my perspective, this -- the purpose for this conditional use permit is to allow the addition,
242 or really the replacement, of the existing bath house with a new much more substantial
243 bath house that will provide community space and is in keeping with the architecture in
244 the area.

245
246 We also wanted to add conditions to the conditional use permit that were more in line with
247 the conditions the Board sees with these types of facilities in its current practice as
248 opposed to 50, 60 years ago.

249
250 With that, we began our engagement. We began talking with our neighbors. Miguel, if
251 we could go to the next slide. Next slide.

252
253 We knew that the facility had membership from across the greater northern Henrico area.
254 This slide here gives you a representation of where we draw our membership from. It not
255 only serves the neighborhood immediately around us, but also the greater Northern
256 Henrico area.

257
258 We began hearing from neighbors, folks who are farther away. They appreciated the
259 support, rejuvenation, into the existing facility. But we also heard from those that were
260 closer to us about concerns of how the use would be changing. From our perspective,
261 this use fits within the existing parameters, but we were willing to engage in that dialogue
262 to better understand their concerns and understand how we can operate the property
263 more in harmony with our neighbors around us. Greater Richmond Aquatics Partnership
264 goal is to be a partner with the neighborhood and the greater community as it achieves
265 its goals.

266
267 Can we go to the next slide? One of the most salient concerns that we heard was traffic.
268 Currently, the property only has one entrance off of North Wilkinson Road. The existing
269 conditional use permit allows for a second entrance, and so we began planning for that
270 second entrance. This slide here shows how we would like to add that second entrance
271 so that we have direct access to Wilkinson Road. This will alleviate traffic using all of the
272 visitors to SwimRVA's new facility from using Wilkinson Road -- North Wilkinson Road
273 and will actually provide that entrance on the major road, which is designed to serve a
274 facility like this.

275

276 Miguel, if you can go to the next slide. Another concern that we heard, was parking during
277 times of high usage. What do I mean by high usage? We've all experienced it. Swim
278 meets. And so Greater Richmond Aquatics partnership set out to find a solution. How
279 can we better improve the experience of our neighbors during swim meets? During the
280 times of greater usage.

281
282 And we are grateful for our continuing partnership with Henrico County and their
283 willingness to continue that partnership with an additional step. And that is allowing us to
284 use their parking field at Kiehr Field. They are allowing us, and working with us, to provide
285 a pedestrian connection from that parking lot to our facility. You can see that general
286 location of that trail in red on this slide.

287
288 For those of you who don't know, on the right-hand side is Kiehr Field. It's immediately
289 adjacent to this neighborhood aquatics facility. It is a County owned park. It operates
290 two baseball diamonds and a field for soccer and football. A variety of youth leagues use
291 this field for their playing surfaces year-round. Residents are able to enjoy this Henrico
292 park from sunrise to sunset, per the hours set by the Parks Department.

293
294 Greater Richmond Aquatic Partnership got to put this extra parking to the test this
295 summer. It worked well. We were able to park our extra cars on that field without having
296 them parking on the streets in front of our neighbors.

297
298 Miguel, if you could go to the next slide. In addition, the CUP that was approved in the
299 1960s doesn't have any hours of operation restrictions except for a restriction related to
300 a playground that no longer exists on the property. As we approached our planning, as
301 we approached our engagement with the neighbors, we learned that they were concerned
302 about what would our hours be. And so we put together this table to explain to them what
303 the hours of our operation would be.

304
305 We heard from them in our dialogue during the summer and the fall that this was generally
306 okay, but there was still a concern about the early-morning hours. I don't know if any of
307 you on the Board are swimmers or have swimmers in your family, but you know that
308 getting those laps in is an important part of our exercise program. Our high-school
309 students, our college students, look for the opportunity to swim in the morning before they
310 go to school. Our swimmers who work during the day appreciate the opportunity to get
311 those laps in in the morning as well. So that's why the 5:00 a.m. start was important to
312 us, to provide that service to the community.

313
314 And we have specifically written in a restriction that says that early-morning time period
315 may only be used for that lap swimming. Our other programming can't occur during that
316 time. We explained this to the community. We explained our hours of operation. We
317 explained what we were doing to mitigate that traffic that they currently experience and
318 the parking they currently experience. And we were appreciative of the vote of support
319 that we received in November and the letters of support that have come in prior to today's
320 meeting.

321

322 Miguel, can you go to the next slide? Our work since filing the application has not only
323 been with community engagement it has also been with reinvesting into a facility that, if
324 you drove by it last year, you would say it had become an eyesore. I hope you took the
325 time or had the opportunity to drive by it recently. It is significantly better and we would
326 like to make it even better.

327
328 Miguel, next slide. When we came to the property there was a significant amount of trash
329 -- unfortunately it had just become a bit of a dumping ground -- that we had to remove.

330
331 Next slide. We removed an extensive amount of this trash, cleaned up the property,
332 giving it the aesthetics that we expect in Henrico from our property owners and our
333 facilities that serve our citizens.

334
335 Next slide. And we also began to reinvest making cosmetic changes. Fresh coats of
336 paint, repairing the equipment, getting it up and running in preparation for the successful
337 summer program that we ran this past summer.

338
339 Next slide. Next slide. These two slides that you just reviewed detailed the amount of
340 initial investment that we have put into the facility. Next slide. Next slide. That led to the
341 summer of fun shown here.

342
343 Next slide. And we would also like to -- with the approval of this conditional use permit,
344 we'd like to extend that fun to include health and wellness programming that will be
345 specifically targeted to seniors. We didn't just pick this facility at random. You may know
346 that the census tract around this facility has the largest concentration of seniors in Henrico
347 County and we want to bring programming targeted at seniors to this community, so that
348 they may be able to enjoy the swimming exercise that so many of us find valuable in
349 retaining our youthful feeling throughout our lives.

350
351 Next slide. In addition to this health and wellness programming that focuses on health,
352 we also have programming focused on running and then a summer camp that kids get to
353 enjoy during the summer.

354
355 As staff mentioned, we also have programming that's focused on safety. It's important to
356 teach our children how to swim. It's important to teach our adults who don't know how to
357 swim, how to swim. In addition, we probably all have family members who got their first
358 job as a lifeguard. We want to bring that experience, that job training opportunity, to the
359 Northern Henrico area. We have heard from Henrico County and the Frank Thornton
360 Aquatics Center. We have heard from Kings Dominion. It is hard to get the lifeguards
361 they need in order to operate. We'd like to train our youth and give them an opportunity
362 to fill that need.

363
364 Next slide. As I mentioned, we would like to update the conditional use permit to allow
365 for a larger bath house. This new bath house, as shown on this slide, is architecturally
366 compatible with the surrounding area and provides the higher quality bath house spaces

367 that the community will be able to enjoy. It will also have space for our programming and
368 will also have space for the community to use.

369
370 We can go to the next slide. Behind this building you can see we will put up tents six
371 months out of the year so that the pools can operate in an indoor fashion, allowing that
372 year-round opportunity for use.

373
374 Next slide. With that, I'd like to conclude my presentation by pointing out that the request
375 before you is appropriate for this location and is compatible with the general character of
376 the surrounding lands and the types, scale, and intensity of uses allowed in the zoning
377 district.

378
379 SwimRVA's use is compatible with the County's adjacent Kiehr Field and complies with
380 the property's zoning. The enhanced programming, particularly senior programming, to
381 be offered will improve health, safety, and general welfare in the area.

382
383 On behalf of SwimRVA, I ask that you approve the requested conditional use permit
384 change so that Swim RVA may continue to reinvest in the community. With that, I'll be
385 glad to answer any questions that the Board may have.

386
387 Mr. Green - Are there any questions from members of the Board to the
388 applicant?

389
390 Mr. Pollard - Yes. I just wanted to say that I love that it sounds like there'd
391 be some job opportunities, training opportunities, for youth or young adults. Is the
392 admission for members only?

393
394 Mr. Geiger - Is the mission for members only? No.

395
396 Mr. Pollard - Admission. Entry. The use of the pool.

397
398 Mr. Geiger - No. It is for -- Adam, need some help. But I think you can --
399 you don't have to be a member of the pool. You can also come in and use it on a per-fee
400 basis. If a senior in the area wanted to sign up for the health and wellness programming,
401 they could pay just for that programming, they don't have to be a member of the pool to
402 enjoy that programming. And Adam can correct me or give you any addition -- Mr.
403 Kennedy is our Executive Director and he can correct me if I've misstated anything.

404
405 Mr. Pollard - Okay. And, I guess, I guess, give me an idea, or remind me
406 of kind of, like, the cost to use it. I know there's memberships, and I know there's a fee
407 for service. What are the ballparks for those?

408
409 Mr. Geiger - If we could -- when the public is invited to attend, Mr. Kennedy
410 is welcome to come up and speak, unless you would like him to answer that question
411 now. I don't have the exact details that you're looking for.

12

413 Mr. Green - Come up and answer now.
414
415 Mr. Kennedy - Members of the Board, Mr. Chairman, thanks for having me.
416 I'm Adam Kennedy, Executive Director of SwimRVA. And we're really excited. We are
417 incredibly passionate people about aquatics. We're a nonprofit that is designed to serve
418 the community to drive health and wellness throughout the region. And this opportunity
419 is something that we took all of our passions and we dove in headfirst. And we forgot to
420 do one very important thing, and that was open our ears and listen.
421
422 And I want to thank, before I answer the question, Mr. Pollard, is not only this Board but
423 staff. You gave us the opportunity to do just that. We intend to exercise our passions
424 throughout the region more and more.
425
426 And what we learned through this process is that as we develop neighborhood-based
427 aquatics, as we try and drive health and wellness throughout the region, from the Tri-
428 Cities to Hanover east and west, we've got to do so me listening and we've got to make
429 sure that we're listening to the neighbors, we're listening to the people that we intend to
430 serve. We wouldn't have done that as efficiently and as well as we did without you. And
431 what I also want to do is thank the neighbors themselves.
432
433 Mr. Pollard - Excuse me.
434
435 Mr. Kennedy - Yes.
436
437 Mr. Pollard - Just so that we don't prolong it.
438
439 Mr. Kennedy - Yep.
440
441 Mr. Pollard - The question was what are your fees?
442
443 Mr. Kennedy - The fees. Thank you. Thank you for bringing me back. I'm a
444 nonprofit executive. I talk too much.
445
446 Mr. Pollard - Yes. We've heard a very good presentation.
447
448 Mr. Kennedy - Yes.
449
450 Mr. Pollard - But we've got a specific question. What are your fees.
451
452 Mr. Kennedy - The fees. So what we think is that there's an opportunity for
453 year-round aquatics. We think that drives financial sustainability for pools. We think that
454 the summer model can be very challenging as neighborhoods transition, as
455 neighborhoods change in their demographics. We think year-round aquatics is the
456 answer.
457

458 We think that there's a hybrid model. We think that there is an opportunity for the three
459 months a year where it traditionally has served the neighborhood to serve in the same
460 way it has from a fee structure, from a summer membership structure. We also think that
461 the nine months a year outside of that, a fee structure that's similar to our other facilities
462 that is more month membership or month pass based, day-pass based, that would be in
463 the neighborhood of \$40 to \$60 a month and our day passes are in the neighborhood of
464 \$8 to \$12 a day.

465
466 Mr. Pollard - Thank you.

467
468 Mr. Green - Are there any other questions from the Board to the applicant?
469 Hearing none, we will now hear from anyone who is in opposition to this request. Oh,
470 yes.

471
472 Mr. Geiger - Mr. Chairman, if I could say one more thing. Those that are
473 here in the room in support of our application, if I could ask them to please stand and be
474 recognized. Thank you.

475
476 Mr. Green - Is there anyone in the audience or on Webex that is in
477 opposition to this request?

478
479 Ms. Deemer - Mr. Chairman, we have one speaker on Webex, but we don't
480 have --

481
482 Mr. Green - Okay. But we have someone that's coming to the mic, so we'll
483 hear the young lady at the mic first. Then we will hear from the person on Webex.
484 Opposition -- I forgot to say in support or opposition. We recognize those who stood in
485 support. And would you state your position please?

486
487 Ms. Slough - I am, excuse me, in support.

488
489 Mr. Blankinship - Oh, okay. What's your name, please?

490
491 Ms. Slough - My name is Devon Slough, S-l-o-u-g-h.

492
493 Mr. Green - And did you have anything else to say?

494
495 Ms. Slough - I'm sorry, I'm not used to this. So I have been a Henrico
496 County resident since 1997. In 2007 my family and I were a very young family -- decided
497 to join the pool. My kids were 7 and 4, respectively, at the time. So we have been a
498 member since then. So very, very, very long time. I'm taking this in a different track.
499 We've talked about the future, which is phenomenal. I'm talking a little bit about the past
500 and what it means to the community.

501

502 Like I said, my family, we've been members since 2007 of the pool and it's where my kids
503 learned how to swim. It's where my kids learned a sense of community. It's been a family
504 to us. And I'm going to refer to my notes. Sorry.

505
506 So I have a very deep personal attachment to this pool because we've been around for
507 so long. Every summer this was our vacation. We decided what we wanted to do with
508 our money. Instead of spending money going somewhere, our pool was our summer,
509 because we could go there every day if we wanted to. We could pick and choose what
510 we wanted to do. They had activities for the kids. They had the activities for the adults.
511 So this is where you could find us every summer and it was a fabulous way to spend our
512 money. And I can't tell you how many families do that every year, because it's feasible
513 for us.

514
515 Again, it's where my kids learned how to swim, we had memories and moments there
516 forever. My daughter learned how to swim there, my son learned how to swim there, my
517 daughter who is actually in the audience today, she has been a member of the summer
518 swim league. She joined when she was 6 so -- and she's 18. She graduated this past
519 summer.

520
521 She swam for 13 years. Last year she was an assistant coach. The year before that she
522 was a mite coach. So she has deep ties to this pool as well. She wants to come back
523 this coming summer and coach. But if the pool is no longer there, then that is not possible
524 for her and her fellow coach, who is not only a SwimRVA lifeguard, but she is also a
525 member of the pool as well. So you take all that away, you take that away from the
526 children and the kids and the young adults who this is what they do and this is what they
527 know.

528
529 Because of that, she was a varsity swimmer for her high school for four years. She was
530 a competitive swimmer for four years. If it weren't for summer league and CAA and now
531 it's SwimRVA North, I don't know what she would be doing. She'd be doing something
532 else.

533
534 But she learned a love of sport from this. She learned teamwork with sportsmanship,
535 community, responsibility, leadership, a love of the sport and, above all, the lifesaving
536 power of learning how to swim and teaching other young people how to swim. Being a
537 coach and being a member of that pool.

538
539 It's the SwimRVA's motto of, Drown proof Richmond. It says it all right there. I'm not sure
540 why anybody would be against that, because it's so highly important to learn how to swim
541 and teach somebody else how to swim. Whether if they be 2, 4, 54, however old you are.
542 It's just incredibly important.

543
544 I was a board member for CAA for 5 years. I was also a swim team rep for just as long.
545 When my daughter graduated, I resigned my post, although I'm sure I'll be roped back in
546 to -- I'm still committed to help, and I will continue to do so.

547

548 My husband was on the board for one year and then he still continued to serve the pool,
549 whether it be mowing the grass or he was our grill master at swim meets and he was
550 standing right beside me every single swim meet to do whatever he needed to do to help
551 run the meets or man the grill or whatever it may be.

552
553 My husband, who is a 28-year deputy sheriff for Henrico County passed away three years
554 ago. And I will tell you that the pool is not just a community, it's a family. Because I
555 cannot tell you how many pool members went to his service and his viewing. It's more
556 than that. It's more than just a place to go. You are not just a member of that pool, you
557 become a member of a family. And I will stand straight and I will tell you that right now.
558 What they do is so important to our community.

559
560 I kind of disagree with Adam when he said he wasn't listening to anybody. Because I
561 worked with Adam because he promised me that the swim team would continue and he
562 would continue as a parent-run volunteer, you know, swim team. And he did. He followed
563 through with everything he wanted to do.

564
565 He listened to our members and our members, you know, they were not too sure about
566 the basketball court. They said, we're probably going to do away with it. Well our
567 members said, We want our basketball courts. They went one step further. They paved
568 our basketball courts, they got us new hoops, they got us new basketballs, which may
569 seem minor, but if you saw the shape of our basketballs, you would understand. So they
570 went one step further.

571
572 I was all of the sudden in a bind for a swim team coach. The same day he called and
573 said I have a number for you. Call them. I had a swim team coach for the summer who
574 was phenomenal. So he listens to what people need and what they want.

575
576 The members said they wanted to keep the snack bar. He listened. They made it happen
577 within reason about things that the pool wanted. So when he says he doesn't listen, I
578 highly disagree. Because they want what's best for the community, and they will listen
579 and they will follow through with what they have promised to do.

580
581 So you all were talking about the future and everything's great and everything's
582 phenomenal. They saved our pool. They saved our bacon when we were not able to
583 open due to COVID. I just want you to take all of this into consideration when you listen
584 to the community who I am representing today as a pool member, as a swim team rep,
585 as a prior board member, as a parent who had, you know, kids on the swim team.

586
587 It's more than just a community. It's more than just a recreational facility. What they
588 provide, the services they provide, are bar none. So whatever concerns that the
589 neighborhood might have and what may or may not occur, they thought of everything and
590 they have listened to them.

591
592 So I just want you all to take everything into consideration when you make your decision.
593 So thank you.

594
595 Mr. Pollard - Thank you. I have a question for the applicant. You said that
596 the rate would be \$40 to \$60 per month. What is it currently now? Is the rate going up?
597 And will you make accommodations for those who may not be in a financial position to
598 pay that on a monthly basis? Do you have a sliding fee scale? Because there may be
599 some families out there that would like to take advantage of it, but they just can't afford it.
600 How do you handle that?

601
602 Mr. Kennedy - Great question. So we have scholarships that we do offer for
603 families. We use the federal guidelines for families in poverty and we have a category 1,
604 2, and 3. So 100 percent, 150 percent, and 200 percent. Very similar to free and reduced
605 lunch. Goes a little bit further in terms of our offerings.

606
607 At 100 percent of the federal poverty level, we offer programming at 20 percent of its fee.
608 At 150 percent, we offer programming at 30 percent, and at 200 percent -- 150 to 200
609 percent we offer programming at 40 percent. Your previous question in terms of what are
610 the rates now -- and, again, what we think is that there's a real opportunity for sort of a
611 business plan that offers sort of two different structures.

612
613 So currently the pool operates just in the summer and the rate is somewhere in the
614 neighborhood of \$550 for a family, a little bit more for a large family. And then there is a
615 single, a couple, there's senior rates, there's multiple different structures that sort of go
616 down from there. I think my staff would have to tell me, but I think a single rate is in the
617 neighborhood of \$250 for the summer for the three months that it operates now.

618
619 What we see in the future is something similar to that in the summer months, but the other
620 9 months a year we see something that is based more along the lines of what we offer at
621 our other locations. And that would be the -- we struggle with calling it a membership.
622 It's really an unlimited use pass for a month, start and stop whenever, no penalties, it's all
623 pro-rated. But that would be that \$40 to \$60 a month depending on if you're an individual
624 or a family. And that's the range and why the range. And then the day passes range
625 from \$8 to \$12. Am I right? In terms of individual for a -- or a family for the day. And we
626 envision that for the 9 months a year.

627
628 We are continuing to really have phenomenal sessions about how that looks in the
629 summer, because with the temporary structure and what they heat -- the heaters for the
630 pools, we have the opportunity to extend that traditional summer experience into May and
631 into September. Right? We all know that somewhere in May it happens and then
632 somewhere in October, you know, the weather changes.

633
634 We're going to have the tents over the pool for 6 months a year by code. It's a temporary
635 structure. And it won't be any more than 180 days. But for the other 180 days in an
636 outdoor structure, we have an opportunity to re-envision and reimagine what that summer
637 membership and fee structure would look like. We don't have the answers today, but
638 today the answer is \$550 for a family for the summer.

639
640 Mr. Pollard - Okay. Thank you.
641
642 Mr. Kennedy - Yes, sir.
643
644 Mr. Green - I think we had one on Webex who wanted to speak. I'm not
645 sure if they were in favor or in opposition.
646
647 Mr. Blankinship - Ms. Deemer.
648
649 Ms. Deemer - Mr. Speaker, Mr. Chairman, the speaker on Webex is Natasha
650 Royal and she is with the opposition and she's unmuted.
651
652 Ms. Royal - Hi. Good morning. Thank you for hearing me as I
653 (indiscernible) not just (indiscernible) community, but I also (indiscernible) district
654 (indiscernible) who oppose this conditional use permit.
655
656 But before I go into that, I would like to (indiscernible) and (indiscernible) for taking
657 (indiscernible) I could (indiscernible) have so far been ignored (indiscernible) the meeting
658 (indiscernible) and (indiscernible) household (indiscernible). And then in our
659 (indiscernible) a couple (indiscernible).
660
661 I can also say (indiscernible) when I was (indiscernible) but that (indiscernible). So I
662 (indiscernible) I am in utter (indiscernible) want (indiscernible) of noise and traffic. And I
663 (indiscernible) I work (indiscernible). I work (indiscernible).
664
665 I work from home. This (indiscernible) on two (indiscernible) I had to stop meetings that
666 I was running and (indiscernible). (Indiscernible) property. At (indiscernible) professional,
667 I'm (indiscernible) and ask somebody (indiscernible). I (indiscernible) property. I bought
668 that (indiscernible).
669
670 The other thing (indiscernible) the (indiscernible). (Indiscernible).
671
672 And then I have a question (indiscernible) as to why (indiscernible) at this pool and
673 (indiscernible) other (indiscernible). And (indiscernible) pool (indiscernible) that's not
674 already (indiscernible).
675
676 (indiscernible) the opportunity (indiscernible). I don't (indiscernible). (indiscernible)
677 oppose (indiscernible). Thank you all for your time and (indiscernible).
678
679 Mr. Green - Thank you. Are there any other individuals on Webex who
680 would wish to speak in support or opposition to this request?
681
682 Ms. Deemer - We have no one else.
683
684 Mr. Green - We have what?

685
686 Mr. Blankinship - No one else.
687
688 Mr. Green - Okay, hearing none, do we have a rebuttal from the applicant?
689
690 Mr. Kennedy - In terms of rebuttal, the 5:00 a.m., 5:00 a.m. is when we
691 operate programming at our North Chesterfield location. We open for our membership at
692 6:00 a.m. So if you were to look at the website, you would see at 6:00 a.m. open time,
693 but we start with our programming at 5:00 a.m.
694
695 As it relates to the fees. I did give you the fees for 2021. So what has been released are
696 the fees for 2022. What everybody, I think, knows is that inflation is hitting us in a really
697 tough way and we did have to increase our rates around 12 percent across the board for
698 next summer. And so that is why the difference there.
699
700 Those are the two things.
701
702 Mr. Green - Thank you.
703
704 Mr. Geiger - Mr. Chairman, if I may.
705
706 Mr. Green - Yes, sir.
707
708 Mr. Geiger - I think just to touch on a few of additional points that the
709 neighbor in opposition raised. I would like you to know that, you know, we were aware of
710 the petition. We reached out to members who signed it, neighbors who signed it to
711 understand, you know, what their concerns were. Part of that outreach resulted in the
712 changes to the hours. And we also educated them on the changes with respect to the
713 traffic impacts. The second entrance. The provision of the trail and the county's
714 partnership with us to allow us to park on the field next door.
715
716 Miguel, may I ask a favor? Could we switch to the slide where we see both the field and
717 the swim facility? I appreciate the comments and the concerns that were just raised about
718 her experience living next door. I would just point out to the Board, the facility has been
719 there for 60 years. She knew what she was buying next to. This is the exact same use
720 that's right next door at Kiehr Field. Same type of recreational enjoyment that our adults
721 and youth get to participate in on both properties.
722
723 From this perspective, in approving the CUP, the request that's before you, the analysis
724 is, you know, how does it fit -- how does this use fit within the Zoning Ordinance? It
725 complies with the zoning. How does it fit within the character? It complies. And so, with
726 that, I would ask that the -- two other things real quick.
727
728 The parking lot, we're not expanding it. Just so she understands. We're keeping it as
729 close as it is today. There's no change. We're just improving it and making aesthetics
730 better and it operates better. The fence may have fallen down. The aquatics association

731 had a hard time maintaining the property. We will do better. And then, Mr. Kennedy
732 answered the point about 5:00 a.m.

733
734 So, with that, I'd appreciate the Board's approval of the request before you subject to the
735 conditions set out in the staff report. Other questions?

736
737 Mr. Blankinship - Mr. Chair, we do now have one more person on Webex. I'm
738 sorry. Go ahead, Mr. --

739
740 Mr. Green - How do you respond to her concern about the noise?

741
742 Mr. Geiger - I would answer it this way. As I mentioned, this facility has
743 been here for 60 years. It's had its hay day. As we've heard from testimony today, it has
744 been used a far more intensely in the way it was operated previously than it has in the
745 last 10 years because it just hasn't been able to keep up. And so the noise, the use, the
746 enjoyment that you're going to hear going forward is what the zoning ordinance says can
747 be placed here. It's the same noise and enjoyment that the county has next door.

748
749 And so the ordinance says that these types of neighborhood facilities are available. Are
750 appropriate for next to residential use. This isn't a commercial use. This is not American
751 Family Fitness. What this is, is a use that comes in under the hours that's already
752 permitted, year-round operation that's already permitted, and we just want to do it better.
753 We want to reinvest. We want to create that social fabric that the neighbor testified to
754 earlier.

755
756 Mr. Green - And I guess my question is with the fact that you are putting
757 up the bubble over two pools, that would substantially mitigate the noise factor that the
758 neighbor would hear. Would that be a true statement?

759
760 Mr. Geiger - Mr. Chairman, we believe that is a true statement. Whatever
761 type of swimming activities that are taking place in the pool under the tents has now been
762 converted to an indoor experience. There are lights in there. There is mechanical
763 equipment that's working to keep the temperatures at the right level. To keep the humidity
764 under control. And so with the just general background noise, it's kind of like having white
765 noise in the background, it would wash out the noise -- what I believe is low-level noise
766 that anybody could hear.

767
768 Mr. Pollard - And the tents are winter months whereas the summer months,
769 currently, is without the tents, but currently you could have activity, programming, there
770 in the summer months without the approval.

771
772 Mr. Geiger - Yep. And recall that you've got the community building next
773 door that had the theater operating in it. There used to be a ballpark on this property.
774 That ballpark became the subdivision to our north.

775

776 Mr. Pollard - I'm sensitive to their concerns about the noise, because it was
777 a lot of people and the people who responded were the people closest to it. And I can
778 imagine if it had been -- 10 years is a long time. Not in the grand scheme of things, if
779 you've been operating for 60 years, but 10 years is a long time. It's long enough for
780 someone to move in with the expectation of things being a certain way. And I can see
781 where some things changing could give them some concern. I think that's every question
782 I had.

783

784 Mr. Green - We have another individual on Webex. Would you please
785 identify yourself and if you're speaking for or against the proposal, please.

786

787 Ms. Deemer - Mr. Chairman, the next speaker is Chris Horton. He or she is
788 now unmuted.

789

790 Mr. Horton - (indiscernible) this is (indiscernible). There is a (indiscernible)
791 County (indiscernible).

792

793 Mr. Green - Excuse me. I can't hear you. I'm not sure if others can. Could
794 you speak louder?

795

796 Mr. Johnson - Closer to the mic.

797

798 Mr. Green - And closer to your mic so we could hear you?

799

800 Unknown Speaker - Can you hear me now?

801

802 Mr. Green - Yes.

803

804 Unknown Speaker - Okay. I'm speaking for the pool. I've been a member and I've
805 been going there since 1974. It is a great thing. And the noise level, to me, it's not that
806 bad. I mean, suppose (indiscernible) hasn't used it. (Indiscernible) to (indiscernible)
807 proposed (indiscernible) and (indiscernible) saying (indiscernible) and they're not
808 (indiscernible). (Indiscernible) signed up (indiscernible) because you don't even
809 (indiscernible) at all (indiscernible). I think that's all I've got to say. But thank you all
810 (indiscernible) pool (indiscernible) asset to the community.

811

812 Mr. Green - Are there any other members or any other persons speaking
813 for or against it -- this proposal on Webex? We'll close that out.

814

815 Ms. Deemer - We have no one else on Webex.

816

817 Mr. Green - Okay. Thank you. Is there discussion among the Board
818 before we decide on this matter? One thing I'd like to say is I appreciate what I saw in
819 the presentation, the bubble. I remember another case that we heard where the bubble
820 was proposed to be put in a residential area, but it would have been extremely intrusive

821 to the neighbors. I think based on what I've seen, you've been very sensitive to making
822 sure that the bubble fits in with the architecture of the property and that.

823
824 We hear a lot of times about people, you know, who are concerned about noise and traffic
825 and all kind of things. But, you know, a lot of times people need to recognize or
826 understand that, like you said, if this place has been there for 60 years, then you should
827 know what you're buying into and you should understand the area in which you're buying.
828 And we hear this, especially with the trash issue on a certain part of town. But I think
829 folks need to pay attention.

830
831 Having no other comments, is there a motion?

832
833 Mr. Pollard - I'm going to make a motion. One final comment. Kind of
834 piggy-back off a couple things. My late grandmother is from that community. And so as
835 a kid I had some experiences with the pool. Some great experiences. I did find it's
836 somewhat restrictive to participate with the pool. I had cousins who lived there and so I
837 was concerned about it being -- things like job opportunities, it being accessible, it being
838 affordable. And I think SwimRVA has made great effort to ensure that it's a community
839 pool.

840
841 Also, just to piggy-back on some things that have been said. As this thing develops, I'm
842 sure there will be additional concerns. So continue to listen and be receptive to it. It's an
843 ongoing process. But I appreciate the fact that this has been deferred three times and
844 that I think all of the concerns have been addressed in some way. And I think the
845 concerns I still hear remain, will prove they have been addressed appropriately.

846
847 So, with that, I move that we approve the conditional use permit subject to the conditions
848 recommended by the staff. It is consistent with Comprehensive Plan because the pool
849 serves the community. It is consistent with the Zoning Ordinance. SwimRVA has been
850 a good neighbor and is making substantial improvements. It will not adversely affect the
851 health and safety or welfare.

852
853 Mr. Green - Is there a second?

854
855 Mr. Johnson - I second it.

856
857 Mr. Green - Motion was made by Mr. Pollard. Seconded by Mr. Johnson.
858 All in favor say aye.

859
860 On a motion by Mr. Pollard, seconded by Mr. Johnson, the Board **approved** case
861 **CUP2021-00012 GREATER RICHMOND AQUATICS PARTNERSHIP's** request for a
862 conditional use permit pursuant to Section 24-12(b) of the County Code to expand a
863 noncommercial recreation facility at 317 N Wilkinson Road (Parcels 792-753-6169 and
864 792-753-8870) zoned One-Family Residence District (R-2A) (Fairfield). The Board
865 approved the request subject to the following conditions:

866

- 867 1. This conditional use permit authorizes the use of the property as a nonprofit recreation
868 facility. All other applicable regulations of the County Code remain in force.
869
- 870 2. This conditional use permit authorizes only the improvements shown on the plans titled,
871 "SwimRVA Northside Pool" by Baskerville HG Design Studio, dated 2/26/21. The
872 improvements may be constructed in phases. Any substantial changes or additions to the
873 design or location of the improvements, except for changes necessary to comply with
874 these conditions, will require a new conditional use permit.
875
- 876 3. Any new or reconstructed building on the property must be constructed in substantial
877 conformance with the illustrations submitted with the application in size, shape, materials,
878 and color. No building will have painted or unfinished concrete block exposed to view.
879 Any new mechanical equipment must be screened from view at ground level by low-
880 maintenance fencing supplemented with landscaping. The buildings may be constructed
881 or reconstructed in phases. The applicant must obtain a building permit for the first phase
882 by December 16, 2026, or the authorization to construct new buildings will expire.
883
- 884 4. Before beginning any clearing, grading, or other land disturbing activity, the applicant
885 must obtain approval of an environmental compliance plan from the Department of Public
886 Works and approval of a construction plan by all County development agencies.
887
- 888 5. Prior to or concurrent with any building permit application, a detailed lighting plan must
889 be submitted to the Planning Department for review and approval. Lights beamed only on
890 the swimming pool, and operated on a timer, must be provided whenever water is in the
891 pool. The existing exterior lighting may be maintained, and the fixtures may be replaced,
892 provided the new fixtures are shielded to direct light away from adjacent property. Any
893 new exterior lighting must be no taller than 20 feet, must be located at least 50 feet from
894 the nearest property line of a dwelling, and must be shielded to direct light away from
895 adjacent property and streets.
896
- 897 6. Prior to or concurrent with any building permit application, a detailed landscaping plan
898 must be submitted to the Planning Department for review and approval. The existing
899 landscaping adjacent to 8001, 8005, and 8009 Frostick Court must be supplemented
900 where necessary to meet the planting requirements of a TB25 transitional buffer. All
901 landscaping must be maintained in a healthy condition at all times. Dead plant materials
902 must be removed promptly and replaced during the next planting season.
903
- 904 7. Before requesting a certificate of occupancy for any new or reconstructed building on
905 the property, the property must be served by public water and sewer, including provision
906 of fire protection meeting the standards of the Division of Fire Safety and the Department
907 of Public Utilities, separation of the water meters for 317 and 319 N Wilkinson Road, and
908 connection of all sewage lines to the public sewer system.
909
- 910 8. Before requesting a certificate of occupancy for any new or reconstructed building on
911 the property, a new entrance onto Wilkinson Road must be constructed. The entrance
912 must be designed and improved consistent with Department of Public Works standards,
913 including sight distance requirements, dedication of additional right-of-way along

914 Wilkinson Road and construction of a right-turn lane. All required signs and pavement
 915 markings must be installed, and fire lanes must be marked and maintained in accordance
 916 with the Fire Prevention Code.

917
 918 9. The existing entrance onto N Wilkinson Road may be improved and the existing parking
 919 lot may be reconfigured to relocate up to 10 parking spaces and create a drop-off loop.
 920 Any other expansion of the parking lot, and any new parking lot, must meet all standards
 921 for new parking lots, including perimeter and interior landscaping, raised planting areas,
 922 curb and gutter, and pavement markings.

923
 924 10. Two seasonal tents will be allowed on the property in the locations shown on the site
 925 plan. The seasonal tents must not exceed 30 feet in height.

926
 927 11. Prior to each swim meet, the owner or operator must communicate to all organizations
 928 participating in the swim meet that access to the property through nearby residential
 929 property is strictly prohibited.

930
 931 12. Public address systems, starter guns, and similar equipment may be used at swim
 932 meets and for emergency purposes, but at no other time.

933
 934 13. The property must be operated and maintained in a clean and slightly manner. All
 935 trash must be in closed containers with regular pickups, the containers must be properly
 936 screened, and litter must be picked up daily.

937
 938 14. The snack bar must be oriented internally toward the pool facility and must primarily
 939 serve members and guests participating in aquatic activities.

940
 941 15. Hours of operation will be limited as set forth in the attached table.
 942

943 Hours of operation will be limited to the following. The only outdoor activity
 944 between 5:00 and 7:00 am. will be lap swimming limited to a maximum of 40
 945 persons.

946
 947 October 1 to December 15 of each calendar year

Monday-Thursday	Friday	Saturday	Sunday
5:00 am – 8:00 pm	5:00 am – 7:00 pm	7:00 am – 7:00 pm	Closed

948
 949 December 16 to April 30 of each calendar year

Monday-Thursday	Friday	Saturday	Sunday
5:00 am – 8:00 pm	5:00 am – 7:00 pm	7:00 am – 7:00 pm	8:00 am – 6:00 pm Lifeguard training only, maximum 40 persons

950
 951 May 1 to September 30 of each calendar year

Monday-Thursday	Friday	Saturday	Sunday

Outdoor activities: 5:00 am – 9:00 pm	5:00 am – 9:00 pm	5:00 am – 9:00 pm	5:00 am – 9:00 pm
Indoor activities: 5:00 am – 11:00 pm	5:00 am – 11:00 pm	5:00 am – 11:00 pm	5:00 am – 11:00 pm

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Affirmative: Bell, Green, Johnson, Pollard, Reid 5
Negative: 0
Absent: 0

Mr. Green - It passes. Thank you. We'll take a 5-minute break.

Mr. Pollard - Okay.

[break in audio]

Mr. Blankinship - The next case is conditional use permit 2021, number 32 Gloria Burgos.

CUP2021-00032 GLORIA BURGOS requests a conditional use permit pursuant to Section 24-4404.A.1 of the County Code to build a detached garage in the side yard at 2425 Ramsey Court (BRANDON PARK) (Parcel 773-760-1211) zoned One-Family Residence District (R-3) (Brookland).

Mr. Blankinship - Would anyone who intends to speak to that case please stand and be sworn in. Ms. Deemer, is there anyone on Webex to speak to case 32?

Ms. Deemer - No, sir. We have no one on Webex.

Mr. Blankinship - Mr. Madrigal. No idea where the applicant might be?

Mr. Madrigal - No idea.

Mr. Green - I move that we defer.

Mr. Blankinship - Okay.

Mr. Green - There a second?

Mr. Johnson - Second.

Mr. Green - All in favor?

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On a motion by Mr. Green, seconded by Mr. Johnson, the Board deferred case **CUP2021-00032 GLORIA BURGOS** to the January 27, 2022 meeting.

Affirmative:	Bell, Green, Johnson, Pollard, Reid	5
Negative:		0
Absent:		0

Mr. Green - Moving on. Next case.

Mr. Blankinship - Yes, sir. Conditional use permit 2021 number 33 has been withdrawn. That's Towanda Tompkins. Conditional Use Permit at 5024 Cedar Acres Court. That case was withdrawn.

So the next case is Conditional Use Permit 2021 number 34 Mark Franko.

CUP2021-00034 MARK FRANKO requests a conditional use permit pursuant to Sections 24-4404.A.1 and 24-4402 of the County Code to allow an accessory dwelling unit at 14 Kanawha Road (CHATHAM HILLS) (Parcel 764-731-3702) zoned One-Family Residence District (R-1) (Tuckahoe).

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

Mr. Gidley - Thank you, Mr. Secretary. Good morning, Mr. Chair, members of the Board..

The subject property is a 4.36-acre parcel located between River Road and the James River. In addition to the main dwelling, which is located right here, there's also a detached garage right here, a pool house here, and a swimming pool here. Up here is actually a garden with a walkway in it.

In 2009 a use permit was approved to allow the detached garage right up here to be located in the front yard. This is a picture of the existing detached garage. The applicant would like to remove this garage and replace it with a two-story structure that would be roughly 48-feet wide and 26-feet deep. And this is a picture of the elevation here. The house would be up here and then the new garage would be right here.

Again, the house and the garage. As you can see, the first floor would be a two-car garage. There would also be a mechanical room, a bathroom, and some storage area here.

1038 The second floor, upstairs, would have a dining room, a kitchenette, living room, a full
1039 bath, and a bathroom here.

1040
1041 When the application originally came in, staff looked at it and said, Okay, this is an
1042 accessory dwelling unit that's located in the front yard, both of which require a conditional
1043 use permit. And so that's what we advertised it as.

1044
1045 While we were reviewing it, we noticed it was over the square footage limit that was
1046 adopted by the Board of Supervisors as part of the accessory dwelling unit ordinance. So
1047 we called up the applicant and the applicant basically said, Hey, it's not an accessory
1048 dwelling unit. I don't have cooking facilities in it. It's just a guest house.

1049
1050 And so there was a little bit of a difference of opinion here. An accessory dwelling unit is
1051 defined in part as having a separate kitchen, bathroom, and sleeping area all of which
1052 this has. So staff sees a kitchen here with sink, counter, refrigerator and what have you.
1053 Whether or not the applicant actually shows a stove on the plans, we still view it as a
1054 kitchen and an accessory dwelling unit. The applicant obviously has a different opinion,
1055 and I can let him make that case.

1056
1057 The reason this is important is because when the accessory dwelling unit was adopted
1058 as a part of the new code, there's a series of regulations that govern it. And one of those
1059 governs the square footage that limits the amount and that's 35 percent of the main
1060 dwelling unit's floor area or 800 square feet, whichever is less. So, in this case, it's an
1061 800-square-foot limit. The dwelling portion upstairs here is roughly 982 square feet, so a
1062 modest reduction would be needed if this is a guest house.

1063
1064 The property itself complies with the lot area and lot width requirements of the Zoning
1065 Ordinance. The proposed structure would have a brick façade to match the existing
1066 residence and it would be over 250 feet from the nearest residence. As a result, staff
1067 does not anticipate a substantial impact on neighboring property if this were approved.

1068
1069 In conclusion, the proposed structure is designed to blend with the existing residence.
1070 It'd be over 250 feet from the nearest residence. So long as the applicant complies with
1071 the requirements for accessory dwelling units, staff can recommend approval subject to
1072 the conditions in your staff report.

1073
1074 This concludes my presentation. If you have any questions, I'll be happy to answer those.
1075 Thank you.

1076
1077 Mr. Green - So what is the square footage that the unit is currently
1078 proposed to be at?

1079
1080 Mr. Gidley - The unit right now upstairs, not counting the landing area,
1081 comes to roughly 982 square feet.

1082
1083 Mr. Green - And you said it's 800 square feet --

1084
1085 Mr. Gidley - Is the limit. Yes, sir.
1086
1087 Mr. Green - They would need to reduce it 182 square feet.
1088
1089 Mr. Gidley - Yes, sir.
1090
1091 Mr. Green - Have they agreed to do that?
1092
1093 Mr. Gidley - No, sir. They've looked at different options, you know,
1094 perhaps removing the kitchenette, or something like that. So there are ways to work
1095 through this. But as of my last communication with them, they were just going to make
1096 their point to the Board and let the Board decide.
1097
1098 Mr. Green - Wait. This is brand new structure?
1099
1100 Mr. Gidley - It would be. Yes, sir. The current structure right now is right
1101 here. And they would remove that and then the new structure would be right here.
1102
1103 Mr. Green - What about the house? Is the house new or is it current?
1104
1105 Mr. Gidley - No, sir. The house is there now. Let's see here. There's the
1106 house now.
1107
1108 Mr. Blankinship - You can just see the garage in the left side of that picture.
1109
1110 Mr. Johnson - When it said moved, did you mean tear it down and then
1111 rebuild it? Or move it?
1112
1113 Mr. Gidley - They would tear down the garage right here on the left side of
1114 the picture. Let's see here. They would tear this garage down and then they would go
1115 ahead and construct the new garage, which would be right here.
1116
1117 Mr. Reid - Is there any opposition from the neighbors?
1118
1119 Mr. Gidley - I had three written comments. Two of them were in your staff
1120 report basically saying they were okay with the general application. They thought the
1121 applicant should adhere to the floor area requirements of the Zoning Ordinance, but
1122 beyond that they were comfortable with it. And then one came in that should have been
1123 at your desk this morning and that basically said they thought it looked fine and they had
1124 no issues with it. So those are the three comments I received.
1125
1126 Mr. Reid - Right. I did see the two that were insistent on the 800-square-
1127 foot limit
1128
1129 Mr. Gidley - Yes, sir.

1130
1131 Mr. Reid - Okay. Thank you.
1132
1133 Mr. Gidley - Yes, sir.
1134
1135 Mr. Green - Are there any other questions from the Board to the staff?
1136 Hearing none, we'll hear from the applicant.
1137
1138 Mr. Franko - Good morning, Mr. Chairman, members of the Board. I'm
1139 Mark Franko, F-r-a-n-k-o. I'm the contractor for the owners of the house, the O'Briens.
1140 They apologize for not being here. They just moved across country from Seattle. Mr.
1141 O'Brien travels extensively with his job and they just had their third child in the midst of a
1142 move, and so Mrs. O'Brien's a little tied up right now.
1143
1144 With respect to the project, I do want to give a little bit of context. The first piece is that
1145 the front corner, the end of the garage that's closest to the road, is basically where that
1146 existing garage is located. To give you guys a little bit of a feel for exactly where this is
1147 going. And so the new garage will be located nowhere closer to the road.
1148
1149 The project is being driven partly by the desire to have a place to park under cover, but
1150 also Mrs. O'Brien's parents are from Seattle and this is being driven by their desire to visit
1151 and stay for extended periods of time.
1152
1153 In general, we could probably work with the 800 square foot requirements. And so overall
1154 don't take great exception to this. My comments with staff were generated more around
1155 wondering -- being a builder on the other side of these things, were I to build a house and
1156 go for my final inspection and CO and I don't have an ability to cook in the kitchen, I
1157 couldn't get a CO. And so when I look at it from the opposite direction, I'm like, I'm not
1158 sure how it can be considered a dwelling unit if in other instances I'm not afforded the
1159 opportunity to get a CO if I don't have a full cooking kitchen.
1160
1161 In addition to that, the County always does have recourse. The analogy I use is there are
1162 many cars out on the road today that will go 100 miles per hour, and we don't prohibit that
1163 from being built, we just prohibit that use. And the County, of course, has recourse in the
1164 instances where people violate those laws.
1165
1166 So, in general, again, if it's the wisdom of the Board that the 800 square foot is absolutely
1167 a requirement, we can live with it. But I do want to bring up the context of why this is
1168 being done as well as the recourse the County has should this be used as a fulltime
1169 dwelling unit.
1170
1171 And, of course, glad to answer any questions that you have.
1172
1173 Mr. Blankinship - And, Mr. Chair, just to clarify the staff's position the applicant
1174 is correct. It is not a requirement for a guest house. And as long as this building is only

1175 used as a garage and a guest house, the requirement would not apply. It only applies if
1176 it is used in the future as an accessory dwelling unit.

1177

1178 Mr. Green - Which the applicant has said it would be.

1179

1180 Mr. Blankinship - He wants to use it as a guest house is our understanding.

1181

1182 Mr. Franko - That's correct. Use is as a guest house. Correct.

1183

1184 Mr. Blankinship - So it really could go either way is what I'm saying.

1185

1186 Mr. Gidley - Our position, though, was we had a concern about the ease
1187 of which it could be converted, for one thing. I mean, anyone can bring in a microwave
1188 or a refrigerator and then, at that point, we have no legal way to get inside and to
1189 determine that. So it's best upfront to go ahead and get it cleaned up.

1190

1191 Mr. Green - I can't understand you. Could you take your mask off? I really
1192 can't understand you.

1193

1194 Mr. Gidley - Yeah. Staff's position was that it's easy to -- you have a
1195 kitchenette there that's shown on the plans and it's being maintained that simply because
1196 a stove is not being shown that this all of the sudden doesn't qualify. The definition said
1197 a kitchen, bathroom, and sleeping quarters for an accessory dwelling unit.

1198

1199 Our concern was the ease at which someone could bring it -- in a cooking facility, you
1200 know, a stove, a microwave, what have you, and then staff has no right to go ahead and
1201 access it. So it's best to get it cleaned up, up front.

1202

1203 The other point that would be made, as Mr. Madrigal pointed out, is a guest house is
1204 typically limited to one-month occupancy. Because it is just simply a guest house rather
1205 than a residence. So if their family is going to be in here long term, for more than a month,
1206 then it would not really qualify as a guest house. So we were just trying to get it cleaned
1207 up, up front. Thank you.

1208

1209 Mr. Green - So you say if they are in it for longer than a month, it is not a
1210 guest house.

1211

1212 Mr. Gidley - A guest house is for intermittent occupancy. Typically we tell
1213 people a month is a rough rule of thumb on that. He was talking about an extended period
1214 of time. So if it's months, plural, then that could be a problem.

1215

1216 Mr. Franko - That's definitely not the intent. It's longer than a hotel stay.
1217 I'm sure it'd be more than a week, but I don't believe it'd be months at a time. Thus far,
1218 Mrs. O'Brien's mother has been in town helping her with the move. But I don't believe
1219 she's been in town more than a month under current conditions.

120

1221 And just to the point of the ease of conversion. In the business I do it's pretty easy to
1222 convert any two-car garage into a 600-square-foot apartment. It's pretty readily done.
1223 I've done it many times down in the city, for example. So ease is a relative thing. And
1224 I'm sympathetic to staff and the County's concerns with respect to yes it is much easier
1225 to simply put in that cooking piece. And if, to help alleviate the concern of staff and the
1226 Board, we were to diminish or even fully remove the kitchenette, I can certainly talk with
1227 my client about that.

1228

1229 Some of what they've maintained to me is that the owner, Mrs. O'Brien, has absolutely
1230 no intentions of cooking anything now or in the future. So I don't think that that would be
1231 a concern.

1232

1233 Mr. Green - My question to staff is that if in fact they put in that little
1234 kitchenette and the applicant decides to sell, then the new individual who purchased the
1235 home will think that, Okay, I have a --

1236

1237 Mr. Gidley - An accessory dwelling unit.

1238

1239 Mr. Blankinship - That's exactly the concern.

1240

1241 Mr. Green - All right. Yeah. I have an in-law suite. This looks like, to me,
1242 like they're building an in-law suite.

1243

1244 Mr. Gidley - And that's why we advertised it as an accessory dwelling unit.
1245 We looked at it and assumed that's what we were dealing with here.

1246

1247 Mr. Green - What is the square footage of the house?

1248

1249 Mr. Gidley - Give me just a moment.

1250

1251 Mr. Franko - I believe they have it at 7,800 square feet, but --

1252

1253 Mr. Gidley - You said the house?

1254

1255 Mr. Franko - The house. Correct. I think that's what it's listed. That may
1256 even be what's in the property records. But I've worked in this -- by the way, I worked for
1257 the -- on this property the previous owner and we built the pool and pool house complex,
1258 and I think this house is a little closer to 10,000 square feet.

1259

1260 Mr. Gidley - Yeah real estate is at 7,800. You're correct there. But it may
1261 be more, as he said.

1262

1263 Mr. Franko - Yeah. Part of what might not be shown in the past property
1264 records is that the third floor is finished. And that might not have been the case when the
1265 record was originally created.

1266

1267 Mr. Green - Are there any other questions from the Board to staff? I mean
1268 to the applicant. Are there any individuals in the audience or on Webex to speak for or
1269 against this project?
1270

1271 Ms. Deemer - No one on Webex.
1272

1273 Mr. Green - Hearing none, is there a motion?
1274

1275 Mr. Reid - Mr. Chairman, before I make a motion, I just wanted to ask,
1276 Mr. Franko, do you and the owners accept and agree with the conditions?
1277

1278 Mr. Franko - If it's the wisdom of the Board. Yes. We do accept those
1279 conditions. My presence here this morning is to, first and foremost, state that. But also
1280 just trying to see if there's any latitude with respect to that in the eyes of the Board.
1281

1282 Mr. Reid - Thank you. I move that we approve the conditional use permit
1283 subject to the conditions recommended by the staff. This --
1284

1285 Mr. Green - The motion was made by Mr. Reid. Seconded by --
1286

1287 Mr. Johnson - Mr. Bell.
1288

1289 Mr. Green - Seconded by Mr. Bell. All in favor say aye. Opposed. None.
1290 Approved. Thanks.
1291

1292 On a motion by Mr. Reid, seconded by Mr. Bell, the Board **approved** case **CUP2021-**
1293 **00034 MARK FRANKO's** request for a conditional use permit pursuant to Sections 24-
1294 4404.A.1 and 24-4402 of the County Code to allow an accessory dwelling unit at 14
1295 Kanawha Road (CHATHAM HILLS) (Parcel 764-731-3702) zoned One-Family Residence
1296 District (R-1) (Tuckahoe). The Board approved the request subject to the following
1297 conditions:
1298

1299 1. This conditional use permit authorizes a detached accessory building, including an
1300 accessory dwelling unit, in the front yard. All other applicable regulations of the County
1301 Code remain in force.
1302

1303 2. This conditional use permit applies only to the improvements shown on the plot plan
1304 and building design filed with the application, as modified by these conditions. Any
1305 additional improvements must comply with the applicable regulations of the County Code.
1306 Any substantial changes or additions to the design or location of the improvements will
1307 require a new conditional use permit.
1308

1309 3. The floor area of the accessory dwelling unit must be reduced to 800 square feet or
1310 less to comply with the requirements of §24-4406 of Henrico County Code.
1311

1312 4. Before beginning any clearing, grading, or other land disturbing activity, the applicant
1313 must obtain approval of an environmental compliance plan from the Department of Public
1314 Works.

1315
1316 5. Any exterior lighting must be shielded to direct light away from adjacent property and
1317 streets.

1318
1319 6. A building permit must be obtained for the proposed building by December 18, 2023,
1320 or this conditional use permit will expire. If the building permit is cancelled or revoked after
1321 that date due to failure to diligently pursue construction, this conditional use permit will
1322 expire at that time.

1323
1324
1325 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5
1326 **Negative:** 0
1327 **Absent:** 0

1328
1329
1330 Mr. Blankinship - All right. Conditional Use Permit 2021, number 35, Drs.
1331 Madhu and Soundarya Gowda.

1332
1333 **CUP2021-00035 DRS. SOUNDARYA N. AND MADHU S. GOWDA** request a conditional
1334 use permit pursuant to Section 24-4404.A.1 of the County Code to allow a pool and pool
1335 house in the side yard at 12198 Kain Road (Parcel 738-767-2794) zoned One-Family
1336 Residence District (R-3C) (Three Chopt).

1337
1338 Mr. Blankinship - Would everyone who intends to speak to this case, please
1339 stand and be sworn in? Raise your right hand, please. Do you swear the testimony
1340 you're about to give is the truth, the whole truth, and nothing but the truth so help you
1341 God? Thank you.

1342
1343 Mr. Gidley - Thank you again, Mr. Secretary. The subject property here is
1344 7.45 acres in area and it's located on the north line of Kain Road. As you can see here,
1345 the parcel contains an existing single-family dwelling.

1346
1347 I would draw your attention to the white area here. This is their parking area. When the
1348 home was built, they basically built it facing the western property line here. And if you
1349 drive up the driveway, basically the parking area is here and this is the front of the home.
1350 So, from the applicant's perspective, the home actually faces the western property line.

1351
1352 They are interested in adding to the property, a swimming pool and a pool house that
1353 would be located in the side yard and also in the front yard. They tend to view it as their
1354 rear yard but, as you know, the property's frontage on Kain Road is considered the front
1355 yard. As a result, they are requesting a conditional use permit today.

1356

1357 In addition to that, they have a patio right here, and they would like a shade structure over
1358 a portion of the patio. So because that would be an accessory structure in the side yard,
1359 that also needs a conditional use permit for it. It does, however, fully meet setback
1360 requirements.

1361
1362 In evaluating this request, the use of the property as a one-family dwelling is consistent
1363 with the zoning ordinance and the land use designations. The parcel easily complies with
1364 the lot area and lot width requirements.

1365
1366 Beyond the way the home faces, the other reason the applicant would have trouble
1367 placing this in their rear yard is right behind the house here you can see they have a
1368 drainfield for their septic system and that also has a setback off of it. So this whole area
1369 here would be unusable for their proposed structures. And so that's another reason they'd
1370 like to place them over here.

1371
1372 As for impact on nearby property, the nearest home is actually located across Kain Road,
1373 roughly 150 feet away from the proposed pool house. This is a view basically from the
1374 side of the street where the other residence is located. The pool and pool house would
1375 be located opposite the fence and the trees you see here. And between those and the
1376 Leyland Cyprus here there's really nothing to see. So, as a result, staff does not really
1377 see where there'd be a substantial detrimental impact to this neighbor. And, as far as the
1378 property to the side here, this is a pond here and there's a ton of woods over here, so
1379 staff really sees no negative impact on nearby property.

1380
1381 So, in conclusion, this is a 7 1/2-acre parcel with an existing dwelling. Between the home
1382 facing the western property line and the drainfield located behind it, the applicants would
1383 prefer to place their structures in the side yard and partially in the front yard as well. They
1384 would be located more than 150 feet from the nearest residence. And staff anticipates
1385 no detrimental impact to nearby property from this request. As a result, we recommend
1386 approval subject to the conditions in your staff report.

1387
1388 If you have any questions, I will be happy to answer those. Thank you.

1389
1390 Mr. Green - Are there any questions from the Board to staff? Hearing
1391 none, we'll hear from the applicant.

1392
1393 Ms. Deemer - Mr. Chairman, Madhu Gowda is now unmuted.

1394
1395 Mr. Blankinship - I'm sorry, Mr. Gowda, we can't hear you. Can you get closer
1396 to your microphone?

1397
1398 Mr. Gowda - Let's see if I can. Is that any better?

1399
1400 Mr. Blankinship - Yes. Thank you, Dr.

1401

1402 Mr. Gowda - (indiscernible) the house (indiscernible) and (indiscernible)
1403 house that is (indiscernible) for (indiscernible) years and (indiscernible). (Indiscernible)
1404 we plan (indiscernible) with (indiscernible) certain (indiscernible). (Indiscernible).

1405

1406 Mr. Green - Are there any questions from the Board to the applicant? I
1407 think we have another individual.

1408

1409 Donnie Garstang - I don't really need to speak. I'm the contractor. If you have
1410 any questions, I'm here to answer them. It sounds like it's recommended. So, I think we
1411 need to go with that. If you have any questions, I'll be here to answer them.

1412

1413 Mr. Blankinship - Since he's not on microphone I'll repeat that. The contractor
1414 is here in the room to answer questions.

1415

1416 Mr. Green - Are there any questions from the Board to the contractor? Are
1417 there any other individuals on Webex to speak for or against this project?

1418

1419 Ms. Deemer - We have no one else on Webex.

1420

1421 Mr. Green - All right. Hearing none. I move that we approve the
1422 conditional use permit subject to conditions recommended by staff. It is consistent with
1423 the Comprehensive Plan and Zoning Ordinance. The new owner does not intend to build
1424 the proposed subdivision. The pool will be screened by Kain Road and will not be clearly
1425 visible from the neighboring property. Is there a second?

1426

1427 Mr. Reid - I second.

1428

1429 Mr. Green - The motion was made by myself, Mr. Green, seconded by Mr.
1430 Reid. All in favor say aye. All opposed. Passes. On a motion by Mr. Green, seconded
1431 by Mr. Reid, the Board **approved** case **CUP2021-00035 DRS. SOUNDARYA N. AND**
1432 **MADHU S. GOWDA's** request for a conditional use permit pursuant to Section 24-
1433 4404.A.1 of the County Code to allow a pool and pool house in the side yard at 2198 Kain
1434 Road (Parcel 738-767-2794) zoned One-Family Residence District (R-3C) (Three Chopt).
1435 The Board approved the request subject to the following conditions:

1436

1437 1. This conditional use permit authorizes the placement of the proposed swimming pool,
1438 pool house, and covered patio in the side and front yards. All other applicable regulations
1439 of the County Code remain in force.

1440

1441 2. This conditional use permit applies only to the improvements shown on the plot plan
1442 and building design filed with the application. Any additional improvements must comply
1443 with the applicable regulations of the County Code. Any substantial changes or additions
1444 to the design or location of the improvements will require a new conditional use permit.

1445

1446 3. Before beginning any clearing, grading, or other land disturbing activity, the applicant
1447 must obtain approval of an environmental compliance plan from the Department of Public
1448 Works.

- 1449
 1450 4. Any exterior lighting must be shielded to direct light away from adjacent property and
 1451 streets.
 1452
 1453 5. The swimming pool must be enclosed as required by the Building Code.
 1454
 1455 6. The pool house must not be used as a short-term rental or as an accessory dwelling
 1456 unit.
 1457
 1458 7. The applicant must obtain a building permit for the proposed swimming pool and pool
 1459 house by December 18, 2023 or this conditional use permit will expire. If the building
 1460 permit is cancelled or revoked after that date due to failure to diligently pursue
 1461 construction, this conditional use permit will expire at that time.
 1462

1463
 1464 **Affirmative:** **Bell, Green, Johnson, Pollard, Reid** **5**
 1465 **Negative:** **0**
 1466 **Absent:** **0**
 1467

1468
 1469 Mr. Blankinship - All right. That is the end of the conditional use permits for this
 1470 morning. There are no variances on this morning's agenda. There is one appeal and
 1471 that is appeal 2021, number 3 Staples Mill Land Trust.
 1472

1473 **APL2021-00003 STAPLES MILL LAND TRUST** appeals a decision of the Director of
 1474 Planning pursuant to Section 24-2320 of the County Code regarding the property at 2100
 1475 Staples Mill Road (MAYFIELD) (Parcel 774-738-9946) zoned General Residence District
 1476 (R-5) and Office District (O-2) (Brookland).
 1477

1478 Mr. Blankinship - Ms. Powell is going to hand out some additional information.
 1479 Would everyone who intends to speak to this case, please stand and be sworn in? Raise
 1480 your right hand, please. Do you swear the testimony you're about to give is the truth, the
 1481 whole truth, and nothing but the truth so help you God? Thank you.
 1482

1483 Mr. Green - Okay.
 1484

1485 Mr. Blankinship - I apparently did all of that with microphone off. So while there
 1486 is a pause I'll just repeat. This is appeal 2021 number 3 Staples Mill Land Trust.
 1487

1488 **APL2021-00003 STAPLES MILL LAND TRUST** appeals a decision of the director of
 1489 planning pursuant to Section 24-2320 of the County Code regarding the property at 2100
 1490 Staples Mill Road (MAYFIELD) (Parcel 774-738-9946) zoned General Residence District
 1491 (R-5) and Office District (O-2) (Brookland).
 1492

1493 Mr. Murphy - May I approach the Board?
 1494

1495 Mr. Green - Yes.
1496
1497 Mr. Murphy - My name is Ryan Murphy. I'm an Assistant County Attorney
1498 with the Henrico County Attorney's Office. I represent the Director, Mr. Emerson, in the
1499 appeal brought by Staples Mill Land Trust.

1500
1501 So this appeal presents the question of whether the Planning Director correctly
1502 determined that the proposed duplex development is not allowed on the appellant's
1503 property under the Zoning Ordinance. My office asks the Board to find that the answer
1504 to that question is, Yes. The Director was correct. The Zoning Ordinance does not allow
1505 duplexes on the appellant's property in the R-5 and O-2 Districts.

1506
1507 That said, we did receive some information this morning and I want to let the Board know
1508 that it does have the option to defer its decision and allow for additional briefing on the
1509 question. It would allow for me additional time to consult with my client as well. With that
1510 said, I'll move on to the next stage in my presentation.

1511
1512 Before moving to the substance, I'll note that by law the Director's determination is
1513 presumed to be correct. It's the appellant's burden to overcome that presumption of
1514 correctness and to prove that the determination was incorrect.

1515
1516 There are five basic points to my presentation today. First, the appellant's property is
1517 zoned R-5 and O-2. The property is located at 2100 to 2118 Staples Mill Road. The
1518 property consists of the remnants of 10 lots originally created as part of the Mayfield
1519 Subdivision. That's portions of lots 5 through 14. And the appellant has asked the
1520 Planning Director whether duplexes can be built on that property.

1521
1522 So the County's new Zoning Ordinance which went into effect on September 1, 2021 does
1523 not permit duplexes in the R-5 or the O-2 District. And that's our position at this stage.
1524 And, as I said, we can submit additional briefing on the matter. But the old zoning
1525 ordinance does not apply but would not allow duplexes on the property.

1526
1527 So, turning to the zoning. The property in question is outlined in black. Nine of the 10
1528 lots are zoned R-5. One lot is zoned O-2. I believe it's 2018 that is zoned O-2. The others
1529 are all zoned R-5.

1530
1531 Going back to some history. The Mayfield Subdivision Plat was recorded in July of 1940.
1532 Lots 5 through 14 were generally 60-feet wide along Staples Mill Road and they extended
1533 about 130- to 140-feet deep from Staples Mil Road. Between 1940 and 1948 single-
1534 family dwellings were constructed on 9 of the 10 lots. And after 1945, there were
1535 amendments to the Zoning Ordinance that increased the lot-area and width requirements
1536 for duplexes to 1 1/2 times those for single-family dwellings. After those amendments,
1537 duplexes would not have been allowed on the lots.

1538
1539 In the early 1970s VDOT acquired lots 5 through 14 in their entirety, including the
1540 dwellings that were constructed thereon. That was acquired for the purpose of widening

1541 Staples Mill Road. This slide shows the shaded area that is the portion of the lots that
1542 was used for the widening of Staples Mill Road at the time.

1543
1544 In 1987 after widening Staples Mill Road, VDOT sold the unused portion of the lots to
1545 Dominion Land and Development Corporation. By describing the lots in the aggregate,
1546 and you can see the plat that, on the right-hand side of the screen, those are the lots that
1547 are in question. The property has changed hands a few times since then and the
1548 appellant acquired the property in 2013.

1549
1550 So on September 6, 2021, the Director received a request for interpretation. In the
1551 request, the appellant proposed consolidating the lots and constructing duplexes. And,
1552 in the appellant's view, the lots could be combined provided that each proposed new lot
1553 contained an original lot of record.

1554
1555 So, as I noted, the new zoning ordinance went into effect on September 1, 2021. It does
1556 not allow duplexes in R-5 or the O-2 District under any circumstances. You can see that
1557 here in section 24-4205. And it is our position at this time that because the request was
1558 received after September 1st the new Zoning Ordinance applies.

1559
1560 I'll turn now briefly to what we received before the meeting. We have an email from
1561 Michael Kennedy to a representative of the developer explaining, I think some of the
1562 conditions that would be required to place duplexes on this property.

1563
1564 It is my understanding of the appellant's position that their view is that this was a decision
1565 that created vesting under 15.2-2311(c). For the vesting to occur there needs to be
1566 evidence that the property owner has materially changed his position and reliance on that
1567 decision.

1568
1569 The appeal that was submitted to you does not reference 2311(c) or present evidence of
1570 material change in circumstances. However, as I noted, given that appeals from the BZA
1571 to the Circuit Court are de novo and additional evidence can be received, an option
1572 available to you is to request additional briefing and to defer the decision in this matter.

1573
1574 So, going on, this is the submission notification that was triggered on September 6th and
1575 that was the basis for my office's application of the new Zoning Ordinance for this request.
1576 And, as I noted in our letter, it is our position that the old Zoning Ordinance did not apply
1577 because the new Zoning Ordinance had taken affect. But even under the old zoning
1578 ordinances, duplexes were never allowed in the O-2 District under the provisions there.

1579
1580 There was some exceptions to the R-5 that permitted duplexes under certain
1581 circumstances. But, importantly, if approved on the subdivision plat. The subdivision plat
1582 for Mayfield does not include any approval of duplex. And, as I noted earlier, duplexes
1583 would not have been permitted on any of these lots based on the development standards
1584 after 1945.

1586 And so we have two different copies of the plat. This is the one that's on record at the
1587 Clerk's Office. This is the plat that is on record in the Planning Department. Neither
1588 contained any approval of duplexes.

1589
1590 So, with that, I'll turn back to the question that was presented by this appeal and that is
1591 whether the Planning Director correctly determined that the appellant's proposed duplex
1592 development is not allowed on the property under the Zoning Ordinance. Based on the
1593 evidence in this appeal -- and, again, we don't have any evidence that was presented with
1594 the appeal of any material change in position. My office contends that, yes, the Zoning
1595 Ordinance does not allow duplexes on appellant's property in the R-5 and O-2 Districts.

1596
1597 If you're inclined to vote on this matter today, I suggest filing a motion that for the reasons
1598 presented by the County Attorney, the Board finds the duplexes are not allowed on the
1599 appellant's property in the R-5 and O-2 Districts according to the zoning ordinance,
1600 accordingly, the Board affirms and upholds the Director's decision. And, as I noted, you
1601 do have another alternative available to you to defer it and allow for an additional briefing,
1602 but that is in your discretion.

1603
1604 I'm happy to answer any questions.

1605
1606 Mr. Green - Are there any questions from the Board to the City Attorney?
1607 County Attorney?

1608
1609 Mr. Bell - The only basic fact seems to be there was no factors or any
1610 things that was changed than what we got right now.

1611
1612 Mr. Pollard - Speak up in your mic.

1613
1614 Mr. Murphy - I'm sorry. I can't hear you, sir.

1615
1616 Mr. Blankinship - Would you lean forward in your mic? There you go.

1617
1618 Mr. Bell - The defendant did not provide any factor or legal information
1619 to change any of this?

1620
1621 Mr. Murphy - There's nothing that is in the appeal that was filed. You have
1622 the form in front of you and also the letter that was submitted in support of the appeal. As
1623 I noted, that appeal does not reference 15.2-2311(c), and it does not present any factual
1624 evidence as to material change in position.

1625
1626 Mr. Bell - Thank you.

1627
1628 Mr. Johnson - Also, I noticed that in 1993 the Zoning Ordinance was
1629 amended to prohibit duplexes in the R-5.

1630
1631 Mr. Murphy - Yes, sir.

1632
1633 Mr. Johnson - Also, I noticed that when they sent the application in for this it
1634 was before or after September 1st?
1635

1636 Mr. Murphy - The letter is dated, I believe, August 20, 2021. Based on the
1637 submittal notification that we received, it appears to have been submitted and received
1638 on September 6, 2021. So after September 1, 2021, after the new ordinance went into
1639 effect.
1640

1641 Mr. Johnson - Okay.
1642

1643 Mr. Reid - Mr. Murphy, how do we explain the 2019 email from Mr.
1644 Kennedy to Mr. Condlin and Gidley?
1645

1646 Mr. Murphy - So assuming for purposes of argument that that is a decision
1647 -- that's not a question I've been able to research at this point. But assuming for purposes
1648 of argument that it's a decision, 2311(c) provides for a 60-day period where it can be
1649 changed. However, the appellant must have materially changed his position in reliance
1650 on that decision. So that's the basis for my argument that lacking that evidence the Board
1651 can go ahead and decide the case today if it chooses to do so.
1652

1653 Mr. Reid - Thank you.
1654

1655 Mr. Green- Are there any other questions from the Board to the County
1656 Attorney? We'll now hear from the other side.
1657

1658 Mr. Kronenthal - Good morning, Mr. Chairman, members of the Board. My
1659 name is Mark Kronenthal and I represent the appellant, Staples Mill Land Trust, in this
1660 matter. The appellant -- the principal of the appellant, Zach Kennedy, is also here and
1661 will provide a few comments with respect to his reliance on the original email.
1662

1663 Staff and the County Attorney have ably prepared an argument in this matter that we
1664 would find very compelling if the September 2021 Zoning Conformance Letter was in a
1665 vacuum. And, of course, you do have the email from -- thanks, Miguel -- from March 11,
1666 2019.
1667

1668 The reason for the Zoning Conformance Letter Request was to confirm two years of work
1669 with staff in which the premise that was accepted by everyone was that two-family
1670 dwellings were permitted.
1671

1672 So you have the March 11, 2019 email. In the second sentence. This is from a planner
1673 with the Zoning Administrator copied is that two-family dwellings were permitted. And the
1674 rest of the email is just a sort of workman-like checklist of next steps. So it's a
1675 determination and a process checklist of next steps.
1676

1677 From that 2019 date, of course, we know that that period goes into a time of
1678 unprecedented change in the development community. The applicant, and he will be able
1679 to state himself, he extended money and provided applications and provided submittals
1680 for review based on the two-family concept and in complete reliance on that.

1681
1682 And then in August of this year submitted a zoning confirmation letter as sort of a belt and
1683 suspenders request. Because of all of the changes in the supply-chain, the change in
1684 costs, he wanted to have an additional writing that confirmed all of what he already knew
1685 working with staff as he went forward.

1686
1687 And so what our position is, is that from the 2019 email, that the applicant did indeed
1688 make material reliance and change his position from that point forward. Worked with staff
1689 directly. And then it was, candidly, something of a surprise to receive a different answer
1690 in September.

1691
1692 And if I might impose upon Mr. Kennedy to stand up and just give a few remarks just
1693 summarizing some of the meetings and some of the activities that he performed in
1694 furtherance and reliance.

1695
1696 Mr. Kennedy - Thank you for your time today. My name is Zach Kennedy.
1697 Well, first of all, we got to the point of consolidating lots over at this property and doing
1698 the two-family dwellings based off of staff recommendations through conversations with
1699 Mr. Kennedy and Mr. Sehl over at the County.

1700
1701 After this email that you all have in front of you all, I engaged with my engineer and we
1702 developed out a further plan and then we presented it to all of the departments at the
1703 County that we were required to meet with. We set up those meetings. We met every
1704 piece of their response. We were able to meet that.

1705
1706 You know, I met with the Police Department, Fire Department, everybody that needed to
1707 be -- to have a meeting with, my engineer and I discussed with them.

1708
1709 We were moving towards development. I talked with Mr. Sehl a few other different times
1710 about different ways of strategizing with utilities and things like that. And then we had the
1711 idea of maybe having one last conversation with the Board of Supervisors and met with
1712 the Chairman. And at the meeting, one of the gentlemen in there with -- Mr. Schmidt, I
1713 believe is his name, Mr. Sehl, and another gentleman. The other gentleman had shared
1714 -- he was not aware of some of the information on this and Mr. Sehl said, well this is a by-
1715 right project.

1716
1717 And at that point we wanted to get one last little bit of confirmation. And that's why that
1718 zoning confirmation letter was sent before significant development was done on the
1719 property or build out was done, we wanted to make sure one last time that everybody was
1720 on the same page.

1721

1722 That letter may have been received until after September 1 but was certainly mailed prior
1723 to that time. I cannot rely on the USPS.

1724
1725 Mr. Kronenthal - So I think, in summary, you know, we -- what we do have, you
1726 know, from the applicant directly, you know, that he did materially rely on the information
1727 that was provided in 2019. Proceeded at the best pace that he could in furtherance of
1728 the exact checklist items that were listed in that email.

1729
1730 And, you know, if this were, you know, what we have here -- we have a relatively small
1731 developer proceeding as best he can in an unprecedented time. If you took out the word
1732 two-family dwelling in the email from 2019 and say it was a hotel, a 100-key hotel, and
1733 the zoning ordinance had changed later and took out hotel. You know. If a hotel operator
1734 relying on an email from staff in 2019 continued to pursue their drawings and the
1735 comparison of what he had -- what the applicant had done would be in the millions of
1736 dollars of expenditures. You know. Here we're only in the thousands. So, but still, it is
1737 indeed a material reliance on that email.

1738
1739 So, respectfully, we're here to answer any questions you may have. You know. If this
1740 does require staff to do some more review of their own materials, we're happy to discuss
1741 that as well.

1742
1743 Mr. Green - Okay. Are there any questions from the Board to the
1744 applicant? Is there any additional concerns? Rebuttal?

1745
1746 Mr. Murphy - No, sir. I would just say that certainly the decision is yours as
1747 to whether to go forward today or to provide an opportunity for additional briefing. So I
1748 want to make sure you understand the options available to you. Thank you.

1749
1750 Mr. Green - Thank you. Hearing none, is there a motion?

1751
1752 Mr. Bell - I move that we uphold the determination that duplexes are not
1753 allowed on the property. State code requires the Board to assume that the determination
1754 is correct. And the County Attorney Office explained why the determination is correct.
1755 The applicant did not prove that the determination is incorrect. In my mind, as I look
1756 through it, it's the code again that we have to show something changed to cause this.
1757 And, therefore, I move that we uphold the determination.

1758
1759 Mr. Johnson - I'll second it.

1760
1761 Mr. Green - Motion was made by Mr. Bell, seconded by Mr. Johnson. All
1762 in favor say aye. Opposed. Passes, three to one.

1763
1764 On a motion by Mr. Bell, seconded by Mr. Johnson, the Board **affirmed the decision of**
1765 **the Director of Planning and denied the appeal** with regard to case **APL2021-00003**
1766 **STAPLES MILL LAND TRUST's** appeal of a decision of the director of planning pursuant
1767 to Section 24-2320 of the County Code regarding the property at 2100 Staples Mill Road

1768 (MAYFIELD) (Parcel 774-738-9946) zoned General Residence District (R-5) and Office
1769 District (O-2) (Brookland).

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1775
1776

Affirmative:	Bell, Green, Johnson, Pollard	3
Negative:	Reid	1
Absent:	Pollard	1

1777 (Mr. Pollard had to step away briefly.)

1778
1779

1780 Mr. Blankinship - All right. Next item on the agenda is the November minutes.

1781
1782
1783
1784

1782 Mr. Green - Has everyone had an opportunity to review their minutes of
1783 the November meeting?

1785
1786

1785 Mr. Reid - Yes.

1787
1788
1789

1787 Mr. Green - Are there any -- Mr. Johnson? You have some? Is there a
1788 motion to approve the minutes?

1790
1791

1790 Mr. Reid - So moved.

1792
1793

1792 Mr. Johnson - Second.

1794
1795

1794 Mr. Green - Who did that?

1796
1797

1796 Mr. Blankinship - Mr. Reid.

1798
1799
1800

1798 Mr. Green - Mr. Reid, seconded by Mr. Johnson. All in favor say aye. The
1799 minutes have been approved.

1801 On a motion by Mr. Reid, seconded by Mr. Johnson, the Board **approved the minutes**
1802 of the November 18, 2021 Board of Zoning Appeals meeting.

1803
1804

Affirmative:	Bell, Green, Johnson, Pollard, Reid	5
Negative:		0
Absent:		0

1808
1809

1810 Mr. Green - This concludes our December meeting and we look forward
1811 to seeing everyone in January. Have a happy holiday everyone.

1812
1813

1813 Mr. Blankinship - Thank you.

1814

1815

Mr. Bell -

Have a happy holiday.

1816

1817

Mr. Johnson -

Yes.

1818

1819

1820

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1822

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1825

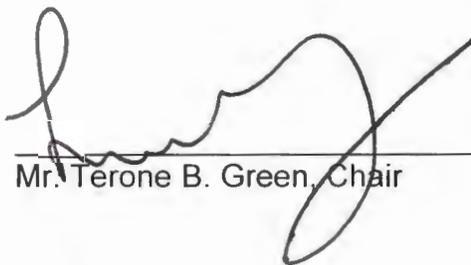
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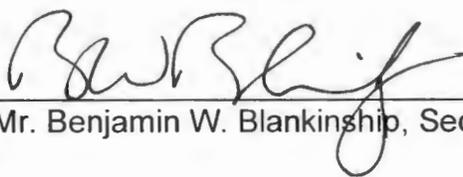
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Mr. Terone B. Green, Chair



Mr. Benjamin W. Blankinship, Secretary