

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**  
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY**  
3 **ADMINISTRATION BUILDING IN THE GOVERNMENT CENTER AT PARHAM**  
4 **AND HUNGARY SPRING ROADS, ON THURSDAY NOVEMBER 19, 2015 AT**  
5 **9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**  
6 **DISPATCH NOVEMBER 2, 2015, AND NOVEMBER 9, 2015.**

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Members Present: Gentry Bell, Chairman  
Greg Baka, Vice Chairman  
Dennis J. Berman  
Helen E. Harris  
Mark W. Romers

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

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9  
10 Mr. Bell - Welcome to the November meeting of the Henrico  
11 County Board of Zoning Appeals. I ask you all to please stand and join me in  
12 pledging allegiance to the flag of our country.

13  
14 Thank you. Mr. Blankinship, please read our rules.

15  
16 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,  
17 ladies and gentlemen, the rules for this meeting are as follows. Acting as  
18 secretary, I will call each case. And as I'm speaking, the applicant should come  
19 up to the podium. We will then ask everyone who intends to speak to that case to  
20 stand and be sworn in. Then a member of our staff will give a brief presentation  
21 on the case. Then the applicant will present their case. And then anyone else  
22 who wishes to speak will be given the opportunity. After everyone has had a  
23 chance to speak, the applicant, and only the applicant, will have an opportunity  
24 for rebuttal. After they have heard all the testimony and asked any questions, the  
25 Board will take that matter under advisement and will proceed to the next item on  
26 the agenda. They will render all of their decisions at the end of the meeting. So if  
27 you wish to hear their decision on a specific case, you can either stay until the  
28 end of the meeting, or you can check the Planning Department website—we  
29 usually get it updated within the hour after the meeting ends—or you can call the  
30 Planning Department this afternoon.

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

36 Mr. Chairman, we do have two requests for deferral this morning, if you'd like to  
37 begin with those.

38  
39 Mr. Bell - Okay, let's begin with those.

40  
41 **CUP2015-00030** **BILL PHILLIPS** requests a conditional use permit  
42 pursuant to Section 24-95(i) (4) of the County Code to build a detached garage in  
43 the side yard at 9516 Arrowdel Court (RIVER ROAD FARMS) (Parcel 744-738-  
44 7017), zoned One-Family Residence District (R-1) (Tuckahoe).

45  
46 Mr. Blankinship - Is Mr. Phillips here this morning? This is Mr. Phillips'  
47 third deferral, I believe. He is still pursuing getting a building permit. If that is  
48 approved and issued, he will not need the conditional use permit. So he has  
49 requested deferral for another month in the hope of getting that worked out.

50  
51 Mr. Baka - Mr. Chairman, based on that information, I would  
52 make a motion we defer CUP2015-00030 to the December meeting.

53  
54 Mr. Berman - I second the motion.

55  
56 Mr. Bell - Is there any discussion?

57  
58 Ms. Harris - I have a question. It is my understanding that the  
59 house has not been built?

60  
61 Mr. Blankinship - That is correct, yes ma'am.

62  
63 Ms. Harris - Okay. They're trying to decide whether to have an  
64 attached or detached garage?

65  
66 Mr. Blankinship - Yes ma'am, exactly.

67  
68 Ms. Harris - Thank you.

69  
70 Mr. Bell - Any other discussion? Hearing none, all those in favor  
71 of the motion say aye. All those opposed say nay. The ayes have it. It has been  
72 deferred until our next meeting.

73  
74 After an advertised public hearing and on a motion by Mr. Baka seconded by  
75 Mr. Berman, the Board **deferred** application **CUP2015-00030, BILL PHILLIPS,**  
76 to its meeting on December 17, 2015.

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79 Affirmative: Baka, Bell, Berman, Harris, Romers 5  
80 Negative: 0  
81 Absent: 0

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Mr. Blankinship - Thank you, Mr. Chairman.

**CUP2015-00036** **RIDGETOP RECREATION ASSOCIATION** requests a conditional use permit pursuant to Section 24-12(b) of the County Code to expand a noncommercial recreation facility at 901 Ridge Top Road (WESTHAMPTON HILLS) (Parcel 762-738-1098, 6196 and 2998), zoned One-Family Residence District (R-3) (Tuckahoe).

Mr. Blankinship - The applicant is here, so if you'd like to come forward and explain the request for deferral, please.

Ms. Cosby - Yes. Good morning. My name is Ann Neil Cosby. I'm here on behalf of Ridgetop Recreation Association.

Mr. Bell - Would you spell your last name, please?

Ms. Cosby - Yes. It's Cosby—C-o-s-b-y. Ann Neil is a double first name. It's not a double last name. The recreation association has filed a request to amend its existing conditional use permit. So they are amendments to the use permit, not technically an expansion to the recreation facility. But we did file the application and have since been working with staff and the community. There's a community meeting tonight. So we thought that seeking a deferral would be in order so that we could have additional time to bring forward our case.

Mr. Bell - Are there any objections being deferred until after the meeting? We have the options to do several things. Go ahead.

Mr. Johnston - Gentlemen, my name is Tom Johnston—J-o-h-n-s-t-o-n. I live two houses from the swimming pool. The folks over here that I've just circled with my pen also live close to the swimming pool. We have submitted letters in adamant opposition to all of the proposed amendments to the CUP. It's my understanding that is also going to be the recommendation of the Planning Commission. For that reason, I don't see how a continuance would solve anything. I'm asking the Board of Zoning Appeals to vote down all of those requested amendments, which are basically to extend the membership by ninety-five people, exacerbating the parking problems in the neighborhood, and to increase the noise levels with the loudspeaker systems and a 500-watt system. And also they're seeking to stay open until midnight so that they can party all night. All of these things are inimicable to a neighborhood pool, and we're the neighbors. So I'm asking you all that you hear it today.

Mr. Bell - All right. Thank you.

128 Mr. Baka - I have a question for the gentleman. Just to clarify so I  
129 understand. As I understand it, I heard that there is a neighborhood meeting  
130 scheduled for tonight to hold a discourse or discussion on these very issues and  
131 topics. What you're asking is that we basically ignore the conversations that  
132 might take place between neighbors and the property owner, Ridgetop, tonight,  
133 and just ignore that and go ahead and decide that right now. Why wouldn't it be  
134 better to allow that to work itself out and to see whether there is any common  
135 ground that can be reached, or perhaps not, and wait for a time after those  
136 conversations have at least been held, since a meeting has been scheduled for  
137 tonight. Is that correct? Why would that not be preferable?  
138

139 Mr. Johnston - Mr. Baka, there will be nothing accomplished at that  
140 meeting. Those who are within hearing of the six loudspeakers that the pool is  
141 proposing to expand the use of are adamantly opposed. There will be no  
142 compromises because the Ridgetop Recreation Association has everything every  
143 community pool already has—reasonable closing times, reasonable swim meets,  
144 reasonable use of their loudspeakers—and they're seeking to expand  
145 themselves beyond the parameters of a neighborhood pool. I think that the  
146 neighborhood meeting that was scheduled, was scheduled after the proponents  
147 found that there was extensive neighborhood opposition to the program and is  
148 simply something where they can come back to you and say, "Well, we  
149 scheduled a meeting and couldn't work anything out because the neighbors are  
150 too stubborn." So that's my response.  
151

152 Mr. Baka - Yes sir, I understand. And we're in receipt of much  
153 new information here. With that in mind, Mr. Chairman—  
154

155 Mr. Blankinship - Let's see if anyone else wants to speak.  
156

157 Mr. Bell - Any other questions? Is there anybody else that  
158 would like to speak to this issue or speak about whether we continue or not?  
159 Please stand and be sworn in, please.  
160

161 Mr. Blankinship - We're not actually holding a hearing, so we don't  
162 swear them.  
163

164 Mr. Baugham - Good morning. My name is Vance Baugham—B-a-u-  
165 g-h-a-m. I live on the southwest corner that covers the entire area going from the  
166 pool area up to Ridgetop Road. I would like to inform you that not all people will  
167 be allowed that have an interest in this issue. We have received a notice this  
168 morning that one of the participants was disinvited, meaning told not to attend.  
169 So we don't think it's really going to be a community meeting. We think it's  
170 primarily a meeting of pool members. So I think that's a critical issue in  
171 considering whether to cover it right now.  
172

173 Mr. Bell - Thank you. Any questions? Thank you. Is there  
174 anybody else who wishes to speak?  
175

176 Mr. Allen - Good morning. My name is Robert Allen. I represent  
177 several of the neighbors in this community, including John Perry, who is the  
178 disinvented individual. We don't necessarily object to the continuance. But at the  
179 same time, we're not that optimistic that anything productive is going to come out  
180 of this community meeting. However, we don't object. And I understand there has  
181 been a new submission. On that basis, we don't object.  
182

183 Ms. Harris - I have a question. The meeting is being called by  
184 whom?  
185

186 Mr. Allen - It is a meeting that has been convened by the  
187 association. And certain, but not all, neighbors have been invited to participate.  
188

189 Ms. Harris - Okay.  
190

191 Mr. Berman - When you said "new submission," what are you  
192 referring to?  
193

194 Mr. Allen - I think the applicant has revised the conditions, if I  
195 understand that correctly.  
196

197 Mr. Blankinship - Yes. The request has been revised substantially.  
198

199 Mr. Romers - Mr. Allen. Are you invited or planning to participate in  
200 this meeting tonight?  
201

202 Mr. Allen - I haven't decided. I'm not sure about that.  
203

204 Mr. Bell - Is this for anyone in the neighborhood or just  
205 members of the association?  
206

207 Mr. Allen - I understand that some members—  
208

209 Mr. Blankinship - Ms. Cosby would probably be the better person to  
210 answer that.  
211

212 Mr. Allen - I agree with that.  
213

214 Mr. Bell - How were you notified and when?  
215

216 Mr. Allen - How was I notified of the meeting?  
217

218 Mr. Bell - And when.

219  
220 Mr. Allen - I have not seen a formal invitation to it. I think it's  
221 more of an informal discussion that's been planned.  
222  
223 Mr. Bell - How did you find out about it?  
224  
225 Mr. Allen - I've heard through my clients about the meeting. And  
226 then this morning I saw the letter that was left on one of my client's doors saying  
227 that he's not invited, he should stay off of the premises.  
228  
229 Mr. Berman - When you say "client," are you a legal advisor to  
230 these residents?  
231  
232 Mr. Allen - Yes.  
233  
234 Mr. Bell - Any other questions? Thank you.  
235  
236 Mr. Berman - Mr. Blankinship, you referenced a lot of updates to the  
237 existing conditions. Is it the one that was in our packet that we received?  
238  
239 Mr. Blankinship - No sir. They can in just—I'm not sure if it was  
240 yesterday or the day before it came in by e-mail. I have had a chance to skim  
241 through it, but have not had an opportunity to read it in detail yet.  
242  
243 Mr. Berman - Okay, thank you.  
244  
245 Ms. Seal - Could I speak?  
246  
247 Mr. Blankinship - Yes ma'am.  
248  
249 Mr. Bell - Yes ma'am.  
250  
251 Ms. Seal - Okay. My name is Cynthia Seal. And my husband and  
252 I live—Seal, S-e-a-l. Excuse me. Okay. My husband I live at 907 Ridgetop Road.  
253 This is the adjoining property to the Ridgetop Recreation Association. We have a  
254 large amount of property there. The only way that we were informed of this  
255 meeting tonight is a letter from McGuire Woods, who is representing the pool,  
256 dated November 5th, telling us that they have a filing before you. They want to  
257 increase the hours of operation, which have never been addressed. Wanting to  
258 stay open till midnight six days a week. Currently, sound amplification is only  
259 permitted during swim meets. The requested amendment would allow Ridgetop  
260 to use its existing speaker system additionally, and they list some occasions. And  
261 then also that while Ridgetop has expanded its facilities over the years as  
262 approved, it has never increased membership levels. So they want to allow  
263 twenty additional memberships with access to only the tennis courts.  
264

265 Now, it says you may have already received a notice of the BZA hearing on  
266 November 19th at 9 a.m. And as an adjoining property owner, we did receive that  
267 notice from the County. We have requested deferral of that hearing to December  
268 17th. We invite you to a community meeting on Thursday, November 19th, 7:00  
269 p.m. to 8:30 p.m., to learn more about Ridgetop's request and to ask any  
270 questions you may have. The meeting will be held at the Ridgetop Recreational  
271 Association. That is how we got informed.

272

273 Mr. Blankinship - Thank you very much, ma'am.

274

275 Ms. Seal - We are adjacent property owners. We moved there in  
276 2000. We knew there was a small swimming pool there and some tennis courts  
277 on an upper level. We researched it and found that it was a small family-oriented  
278 swimming pool that had been erected in 1956. So we decided to buy the  
279 property, and we felt real good about it. We felt we were good neighbors. We felt  
280 they were good neighbors until 2006.

281

282 Mr. Blankinship - Ms. Seal, I don't mean to interrupt you. The question  
283 on the floor right now is whether to hear the case this morning or defer until  
284 December 17th.

285

286 Ms. Seal - Well, you know, why stress it out? I think the facts  
287 present themselves, and let's get on with it. And especially if there's been a  
288 notice floating around, which I'm an adjacent property owner and nothing's in my  
289 door that I know of. So let's move on with it now, and then I can enjoy the holiday  
290 season.

291

292 Mr. Blankinship - Thank you, ma'am.

293

294 Mr. Berman - Thank you, Ms. Seal.

295

296 Mr. Bell - Anybody else have anything they'd like to say?

297

298 Mr. Blankinship - Do you want to ask those questions that you had for  
299 Ms. Cosby? Or are you satisfied?

300

301 Mr. Berman - I would find it very helpful if we would see the latest  
302 and greatest list from Ms. Cosby for edits to the conditions.

303

304 Mr. Blankinship - Before voting on the deferral?

305

306 Mr. Berman - Yes sir.

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308 Mr. Blankinship - Okay.

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310 Mr. Romers - Can I ask a question?

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Mr. Bell - Yes, go ahead Mark.

Mr. Romers - Ms. Cosby. The meeting that's being held tonight, I'm sure there are some goals and objectives that you folks have in the recreation center. And we know that the neighbors are here and there are objections. So I guess if we were deferring it, my question would be do you hope to find some middle ground in the current requests and update them and have them to us by December that might reflect some form of compromise on this?

Ms. Cosby - Absolutely. That's definitely the intent. The original conditions after they were filed, I think Mr. Allen or whoever spoke is absolutely right. There were some serious concerns from the neighbors that you heard. We took those very seriously. It's not our intent to be anything but a good neighbor. So we met with staff who also shared some concerns. And so we took those very seriously. I've been working with the Board. The revised conditions are really—there is no request any longer for additional membership. The hours, we're just seeking two additional hours on Friday and Saturday from 9:00 p.m. to 11:00 p.m. That's it. Inside the recreation center that's already there. And have included restrictions on noise for those two hours that are taken directly from the noise ordinance so that while the—if the recreation center were allowed to be open from 9 to 11, there could not be any noise that was audible from any occupied dwelling or from 100 feet from the recreation center, which is taken directly from the noise ordinance for social gatherings.

So we tried to incorporate that same standard so that the neighbors would realize that there is a provision in there to restrict noise. We're trying to address their problems. The sound amplification, we're only asking that it be permitted during dive meets, which are held during the day. And also for general announcements and for emergencies. We're not asking for anything else. We're just trying to make the pool safer, you know, frankly a better neighbor. If there's a problem, we want to alert people. But very limited amplification. It's not intended for parties or for anything else like that. And then the only other request is to extend for swim meets, which are limited to three, that the hours be—right now the cutoff is at ten. Sometimes that's a problem when there are rain delays. And also, swim meets are getting bigger; it's very popular. So having a lot of kids, we're just asking that those be permitted for one more hour.

So we think that—you know, we're trying to listen to our neighbors. We're trying to be good neighbors. The association is made up of parents and families and kids. We're not trying to be a party group. So the intent tonight is to try to have that dialogue with the neighbors, introduce ourselves, speak to them about these new conditions. Find out are they more comfortable with that? If not, is there something else that we can do? We did invite all the neighbors except two. Those two have been asked not to come on our property for safety reasons, frankly, which I'd prefer not to get into.

357  
358 Mr. Romers - One more question for you, ma'am. These changes  
359 that you just addressed are in the revised document that's been submitted?  
360  
361 Ms. Cosby - Yes sir.  
362  
363 Mr. Romers - So I'll go back to my original question. Holding the  
364 meeting tonight, do you anticipate further revisions that may come from the  
365 meeting tonight or is it more for clarification, including the community?  
366  
367 Ms. Cosby - Both. If there is a request that a neighbor has where  
368 they've said, you know, instead of—we're open. We want a dialogue. We want to  
369 be a good neighbor. We want this to be successful. We want to be friends with  
370 our neighbors. Obviously there are concerns, so we want to hear those concerns.  
371 And if somebody comes in and says I'm not okay with that, what about  
372 something else? Absolutely we would listen to that.  
373  
374 Mr. Romers - I have one last question. It's my understanding that at  
375 least one neighbor has been disinvited?  
376  
377 Ms. Cosby - Yes.  
378  
379 Mr. Romers - Why would that be?  
380  
381 Ms. Cosby - There are two neighbors who have been disinvited.  
382 One is because in the past there has been some behavior that has been  
383 intimidating and threatening to members, particularly some of the women. And so  
384 he has not been permitted on the premises. That's for safety. Frankly, the other  
385 member is a registered sex offender, and so he's not permitted on the property  
386 for I think obvious reasons.  
387  
388 Mr. Romers - Thank you. Those are my questions.  
389  
390 Mr. Baka - If I may, it sounds like there are a number of issues  
391 which may or may not be worked out amongst different parties tonight. However,  
392 the differences are very practical and tangible, specific issues that are at least  
393 probably worthy of discussion. It would be highly unusual for this board to not  
394 allow public discourse to go forward and say sure, we'll hear the case today. I  
395 would echo Mr. Allen's comments a few minutes ago that he did not necessarily  
396 object to a deferral, but at the same time he was not necessarily optimistic that  
397 anything productive may necessarily come out of such a meeting tonight. With  
398 that in mind, I think it's appropriate for this board to consider a motion to defer the  
399 case. And not only for one month, but also consider whether two months is even  
400 adequate to work out some of these issues. Again, they may not be worked out  
401 to satisfactory reconciliation of any differences. But at this point, my question

402 would be, does the applicant have any objection to deferring this case for two  
403 months until the January 2016 Board of Zoning Appeals meeting?  
404

405 Ms. Cosby - We have no objection to that.  
406

407 Mr. Baka - At this time, I would make a—  
408

409 Mr. Blankinship - Before you make a motion, let me just ask  
410 Mr. Berman. You had asked to see the written conditions. Ms. Cosby has gone  
411 over them. Do you still need to see them?  
412

413 Mr. Berman - Ms. Cosby, you mentioned four points. You've  
414 mentioned the difference between the original and your revised, ignoring the one  
415 we have in the middle.  
416

417 Ms. Cosby - Yes sir.  
418

419 Mr. Berman - It's just four basic points: no increase in membership;  
420 extra hours from 9 to 11; no noise outside (pinned to our noise ordinance in  
421 Henrico); sound equipment is limited to swim meets, emergency, and  
422 announcements; and the swim meets extended one hour to 11:00 p.m.  
423

424 Ms. Cosby - Yes.  
425

426 Mr. Berman - Is that the total summary of the changes that we will  
427 see?  
428

429 Ms. Cosby - Yes sir.  
430

431 Mr. Berman - And since you want to be a good neighbor, I assume  
432 that this is your best foot forward as a compromise.  
433

434 Ms. Cosby - It is. We're always willing to compromise. If there is  
435 something that the neighbors would prefer, again, we're open to discussion. We  
436 won't ask for anything more intensive than that. If there's a way we can work with  
437 the neighbors to do something less than that that still has a reason for us to be  
438 here, we would certainly do that.  
439

440 Mr. Berman - Okay. Thank you.  
441

442 Ms. Cosby - Thank you.  
443

444 Ms. Harris - Ms. Cosby, I have some questions. You have had  
445 conditions in the past. Even with those conditions, we have allegations about  
446 noise, parking—this is in the staff report that you might have picked up when you  
447 came in.

448

449 Ms. Cosby - Yes ma'am.

450

451 Ms. Harris - Parties extending after the permitted hours of  
452 operation; amplified sound equipment—the list just goes on and on. And for us to  
453 defer it for two months, I think we're torturing the neighbors. I think they've been  
454 tortured enough.

455

456 Let me ask you this question. How do we know that with the new conditions that  
457 you are going to go by or conform to the new conditions when you have not  
458 conformed to the previous conditions? So I don't know about extending this any  
459 longer. Somebody mentioned having a nice Christmas? I think everyone wants to  
460 have a nice Christmas. But with all of this going on and Christmas parties going  
461 on I think—and I don't know. I've been on the Board longer, I think, than anyone  
462 here—on this Board. I don't remember receiving this many letters for any  
463 particular issue. To me, if you're going to delay it, it's going to intensify the  
464 resentment, which I don't want to be a part of.

465

466 Ms. Cosby - Yes ma'am.

467

468 Ms. Harris - So are you with McGuire Woods?

469

470 Ms. Cosby - Yes ma'am.

471

472 Ms. Harris - Okay. I'm just very concerned that delaying this will  
473 just put fire in the furnace.

474

475 Ms. Cosby - If I may. I appreciate—I think you opened that remark  
476 with the allegation of the violations. And part of our evidence that we hope to  
477 present is that there are two sides to every story. Certainly, you have letters, and  
478 we would like to be able to address those. It's our position that those are not—  
479 there's a response to that. Obviously, we're here on a deferral, but we'd like to be  
480 able to respond to that and address those during the hearing.

481

482 Ms. Harris - If we had the hearing today, you could still respond,  
483 could you not?

484

485 Ms. Cosby - I don't believe I could today. That's the reason for the  
486 deferral. I'm not prepared to address those with the records.

487

488 Ms. Harris - So you're not prepared to address that.

489

490 Mr. Blankinship - We haven't received all of the information that we've  
491 requested from the Division of Police regarding some of those matters.

492

493 Ms. Harris - I just hope we don't put a stop to this for two months. I  
494 think we're torturing the neighbors too much.  
495  
496 Mr. Blankinship - Is the recreation center operating now or is it pretty  
497 much Memorial Day to Labor Day?  
498  
499 Ms. Cosby - It's open for tennis. The pool is not open.  
500  
501 Ms. Harris - What about for parties?  
502  
503 Ms. Cosby - It's open until 9:00 p.m., so folks can use the  
504 recreation center.  
505  
506 Ms. Harris - But the complaints were parties into the night hours.  
507  
508 Ms. Cosby - Yes ma'am. Those were the complaints. But again, I  
509 would submit to you whether or not those are verified complaints should be  
510 something that should be considered by the BZA.  
511  
512 Ms. Harris - So you're saying that these will not occur over this  
513 deferred period.  
514  
515 Ms. Cosby - Absolutely.  
516  
517 Mr. Blankinship - Certainly that would put them in a very unfavorable  
518 light when they come back in January.  
519  
520 Ms. Cosby - We don't believe it's happening now. So I can assure  
521 you that we don't believe it will happen if we're given an extra two months.  
522  
523 Ms. Harris - Well we have a lot of neighbors who are lying if it's  
524 not happening now. We have quite a few who are lying to us. And to me. I  
525 believe there are three sides to every story.  
526  
527 Mr. Baka - All right, thirty days. I make a motion that we defer the  
528 case for thirty days to the Thursday, December 17th BZA meeting based on the  
529 information from the applicant.  
530  
531 Mr. Bell - Any more discussion?  
532  
533 Mr. Romers - Second.  
534  
535 Mr. Blankinship - Mr. Romers, did you second that?  
536  
537 Mr. Romers - I seconded it, yes.  
538

539 Mr. Bell - All those in favor of the motion say aye. All those  
540 opposed say nay.

541  
542 Mr. Berman - Nay.

543  
544 Mr. Bell - The ayes have it, the motion passes. It will be  
545 continued until our December 17th meeting at 9:00 a.m.

546  
547 After an advertised public hearing and on a motion by Mr. Baka seconded by  
548 Mr. Romers, the Board **deferred** application **CUP2015-00036, RIDGETOP**  
549 **RECREATION ASSOCIATION**, until its December 17, 2015 meeting.

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552 Affirmative: Baka, Bell, Harris, Romers 4  
553 Negative: Berman 1  
554 Absent: 0

555  
556  
557 **CUP2015-00035 ANALYTICAL SERVICES, INC** requests a  
558 conditional use permit pursuant to Section 24-12(c) of the County Code to  
559 expand a telecommunications facility at 5101 Randall Avenue (Parcel 805-713-  
560 6858), zoned One-Family Residence District (R-4) (Varina).

561  
562 Mr. Blankinship - Everyone who intends to speak to this case, please  
563 stand and be sworn in. Raise your right hands, please. Do you swear the  
564 testimony you're about to give is the truth, the whole truth, and nothing but the  
565 truth so help you God?

566  
567 Thank you. You may be seated. Mr. Madrigal.

568  
569 Mr. Madrigal - Good morning, Mr. Chair, members of the Board. The  
570 applicant is requesting a conditional use permit to replace an underground fuel  
571 storage tank at an existing telecommunications facility. The existing property is  
572 1.35 acres in size and is residentially zoned.

573  
574 The existing facility was established in 1967 by way of a conditional use permit. It  
575 allowed the construction of an 11,300-square-foot telephone dial exchange  
576 building with at-grade parking. The facility was expanded in 1978 through the  
577 approval a second conditional use permit. The expansion added 3,600 square  
578 feet to the rear of the building, bringing the total square footage to approximately  
579 14,900 square feet. The perimeter of the parking lot was also expanded as a  
580 result of the addition. There are a total of seventeen parking stalls that serve the  
581 facility.

582  
583 In September of this year, the applicant requested a mechanical permit to  
584 change out the existing fuel system for their 350-kilowatt emergency generator.

585 The diesel generator has a two-stage fuel system that consists of a 50-gallon day  
586 tank, which is located inside the building adjacent to the generator, and 1,000-  
587 gallon underground tank located in the side yard adjacent to the building. You  
588 can see that slab here is where the tank is located.

589

590 The underground tank was installed in 1991 and is nearing the end of its life  
591 expectancy. In order to avoid any potential ground contamination and ensure that  
592 emergency power can be provided for at least seventy-two hours during a power  
593 outage as required by the State, the applicant will be replacing the existing fuel  
594 system. The new system includes a 100-gallon day tank and a 2,000-gallon  
595 above-ground tank. This larger tank will be located further back on the lot behind  
596 an existing security fence in a corner area of the building. This location will  
597 consolidate mechanical equipment, provide screening, improve security, and  
598 provide additional distance between the tank and the closest home located to the  
599 southwest of the site. You can see the home here.

600

601 The site is zoned R-4 and has a Comprehensive Plan designation of SR-2. The  
602 public utility structures and facilities are permitted by way of special exception. In  
603 this instance, the existing facility has been in operation for the last forty-eight  
604 years, providing an essential service to the community. Both the emergency  
605 generator and the associated fuel tanks are standard pieces of equipment  
606 accessory to the principal use. As such, the proposal is consistent with both the  
607 Zoning Ordinance and the Comprehensive Plan designation.

608

609 The applicant will be upgrading and enhancing an essential mechanical  
610 component of the facility. The new equipment will meet current building codes  
611 and satisfy State requirements for emergency operations. The project will not  
612 affect the character of the area and will have minimal impacts on the aesthetic  
613 conditions of the building and the site. On-site security will be addressed by way  
614 of placement and design. Staff does not anticipate any significant or detrimental  
615 impacts on nearby property as a result of the proposal. Specific conditions of  
616 approval have been drafted to mitigate and lessen any potential detrimental  
617 impacts on nearby property.

618

619 In conclusion, the proposal is consistent with the Comprehensive Plan and the  
620 Zoning Ordinance. Although the facility does not fit the residential character of  
621 the area, it is an existing use and necessary public utility. The proposed tank  
622 placement and layout minimizes its impact on adjoining properties through  
623 distance, screening, and security. And the new equipment will meet current  
624 building code and satisfy emergency operation requirements. For these reasons,  
625 staff recommends approval subject to the recommended conditions.

626

627 This concludes my presentation. I stand ready to answer any questions.

628

629 Mr. Bell - Thank you. Any questions?

630

631 Ms. Harris - Mr. Madrigal, you said the applicant will be upgrading  
632 and enhancing an essential mechanical component. What upgrades? I know  
633 they're going to replace the 1,000-gallon underground tank with a 2,000  
634 aboveground. What's the enhancement? Any other upgrades?

635  
636 Mr. Madrigal - It's a two-stage system, so it's actually two tanks.  
637 There's a 50-gallon tank inside the building and then the 1,000-gallon tank  
638 underground outside. Both of those will be replaced. The new tank inside will be  
639 100 gallons, and then the outside one is 2,000 gallons. Along with that are all the  
640 electrical components that go along with that, as well as new piping for the fuel to  
641 be delivered. The new electrical components will probably have monitoring  
642 systems to ensure safety as well as updated shutoff valves. And all that will be  
643 reviewed by our plan reviewers and building inspections as well as inspected by  
644 our building inspectors. So it should be a safer system. The system is from 1991,  
645 and all of those components are probably from that time as well. So all of that is  
646 going to be updated and upgraded.

647  
648 Ms. Harris - That fuel tank that's in the ground, will that actually be  
649 uprooted?

650  
651 Mr. Madrigal - The tank will be removed, yes.

652  
653 Ms. Harris - Okay. I have some other questions, but I think they  
654 are mainly for the applicant.

655  
656 Mr. Madrigal - Yes ma'am.

657  
658 Mr. Bell - Any other questions?

659  
660 Mr. Romers - I guess the only question I would have is that with the  
661 tank being removed, is the soil going to be tested at the same time it's removed?

662  
663 Mr. Madrigal - Yes. The applicants are saying yes.

664  
665 Mr. Romers - And appropriate actions taken if there is any  
666 contamination that happens to exist?

667  
668 Mr. Madrigal - Right. If there has to be any kind of remediation then  
669 that will occur.

670  
671 Mr. Bell - Thank you, Miguel.

672  
673 Mr. Madrigal - Thank you.

674  
675 Mr. Abbondanza - Ralph Abbondanza—A-b-b-o-n-d-a-n-z-a. I'm with  
676 Analytical Services. And also—

677  
678 Mr. Hoephner - Colby Hoephner—H-o-e-p-h-n-e-r. Project engineer  
679 for Verizon, the owner.  
680  
681 Mr. Moore - Randy Moore—M-o-o-r-e. I'm the environmental  
682 manager for Verizon.  
683  
684 Mr. Abbondanza - We will be happy to answer any questions the Board  
685 has.  
686  
687 Mr. Berman - Yes, I have a few questions. In a prior life, I used to  
688 manage underground tanks, so I can appreciate the urgency of this issue to  
689 protect the business as well as the surrounding community. A couple of quick  
690 questions. How many businesses and residents does this emergency backup  
691 serve? If it were to fail, how many people would be without service,  
692 approximately?  
693  
694 Mr. Hoephner - I don't have an answer to that. I don't know the total  
695 number of circuits through the facility. That would be something we could obtain,  
696 if we needed to.  
697  
698 Mr. Berman - I was just curious if it was the local neighborhood or if  
699 it was eastern Henrico.  
700  
701 Mr. Hoephner - It is the local neighborhood. Probably the next nearest  
702 office is roughly eight miles away.  
703  
704 Mr. Berman - All right, I understand the region, then. Did current  
705 tests of the soil and the tank contents review any current failure?  
706  
707 Mr. Hoephner - We haven't done any testing on the soil. And we  
708 wouldn't do that until the tank came out of the ground.  
709  
710 Mr. Berman - But you've stuck the tank and you've seen what's  
711 inside.  
712  
713 Mr. Hoephner - That's correct.  
714  
715 Mr. Berman - Is there water, sludge or? Is it failing?  
716  
717 Mr. Hoephner - Not any significance, no.  
718  
719 Mr. Berman - Okay. But it is fifteen years old. And the life  
720 expectancy is what, given the thickness of—  
721

722 Mr. Hoephner - Typically, underground tanks are warrantied for thirty  
723 years. From '91 until now, we're nearing the end of life.  
724

725 Mr. Berman - Okay. And what would the frequency of testing this  
726 backup be? And what time of day or night is it done?  
727

728 Mr. Hoephner - Regarding the new tank or the existing?  
729

730 Mr. Berman - The new ones.  
731

732 Mr. Hoephner - The new tank will be electronically monitored 24/7. It  
733 has an interstitial leak sensor that will report to an electronic monitor that will then  
734 convey that to our network operations center that's manned 24/7. And then a  
735 ticket can be issued if there is a problem. But we have electronic monitoring  
736 that's required by code, as well as inventory monitoring, overfill prevention, and  
737 all the things that are required on any new system.  
738

739 Mr. Moore - We will also be doing physical inspections once a  
740 month.  
741

742 Mr. Hoephner - We mandate a physical inspection every thirty days.  
743 And sometimes they happen more frequently.  
744

745 Mr. Berman - That was actually my question. Do you fire them up to  
746 make sure that they work once a month?  
747

748 Mr. Hoephner - The engine itself?  
749

750 Mr. Berman - Yes.  
751

752 Mr. Hoephner - Absolutely yes.  
753

754 Mr. Berman - And what is the noise impact to the surrounding  
755 community? Your building is very closely situated to a lot of neighbors.  
756

757 Mr. Hoephner - It is. The generator is actually inside the building with  
758 a rooftop exhaust, so it's minimal. I don't know what the—I'm certain we have a  
759 permit for the operation of the existing engine.  
760

761 Mr. Berman - So the two tanks that you're replacing, one is in-  
762 house, the day tank, and the other is underground. Let's say, God forbid, the  
763 thing blows up. Is there any fire suppression to mitigate risk to the surrounding  
764 community?  
765

766 Mr. Hoephner - The new tank is a UL2085-listed tank, which has  
767 impact resistance from both traffic and ballistics. It also has a two-hour fire rating

768 built in as an integral part of the tank. It's basically a lightweight concrete material  
769 surrounding a steel tank that provides that fire rating. As well as emergency  
770 venting to keep the vessel from becoming pressurized should there be heating of  
771 the contents.

772

773 Mr. Berman - All right. Thank you for your answers.

774

775 Mr. Hoephner - Certainly.

776

777 Mr. Romers - Two quick questions. Is this a double-wall tank?

778

779 Mr. Hoephner - Yes sir. The UL2085-listed tank is a double wall, two  
780 walls of steel plus a four-inch layer of concrete, lightweight concrete.

781

782 Mr. Romers - Between walls, is it able to catch the leakage?

783

784 Mr. Hoephner - Yes sir. That's where the interstitial monitoring is.  
785 There is actually a steel port that goes all the way to the bottom of the tank. It's a  
786 corrugated pipe. So if anything leaks from the main tank into the secondary  
787 space, there's a sensor in there that would pick that up before—and obviously,  
788 you have your outer wall of your tank as your second line of defense.

789

790 Mr. Abbondanza - And also, the tank that's inside, the day tank will also  
791 be a double-wall, state of the art tank.

792

793 Mr. Romers - You mentioned ballistic. I assume that's for bullets  
794 and things that might be floating around in the neighborhood?

795

796 Mr. Abbondanza - Yes sir.

797

798 Mr. Romers - I guess I shouldn't ask what caliber it can handle. The  
799 other more serious question I want to ask is because of the double-wall lining  
800 and safety that are built into the tank itself, we don't need a retaining structure  
801 under it in case there's a leak at that point?

802

803 Mr. Hoephner - Yes sir, that is correct. That is how the tank is  
804 designed, to be standalone. And it's 30 caliber, I think at a thousand feet and  
805 2,500 feet per second. That's actually from the UL listing.

806

807 Mr. Romers - That's impressive. I've asked my questions.

808

809 Mr. Bell - Any other discussion?

810

811 Ms. Harris - I think Mr. Baka has one.

812

813 Mr. Baka - I have just one. Go ahead.

814  
815 Ms. Harris - Go ahead. I have several.  
816  
817 Mr. Baka - Just one question. Mine was about security and  
818 screening. So as I understand it, there's an eight-foot chain link fence. But in the  
819 chain link, you've got black poly knitted throughout and you have landscape  
820 screening evergreens. So my question is are you rather confident that this will  
821 not be visible from the surrounding properties given that screening and fencing?  
822  
823 Mr. Abbondanza - Yes sir, we are.  
824  
825 Mr. Baka - Okay. Thanks.  
826  
827 Ms. Harris - Yesterday I noticed you have a caution sign on the  
828 door. Are you familiar with that? It's yellow. I didn't go on the premises because it  
829 said no trespassing. But I was wondering what is the caution there.  
830  
831 Mr. Hoephner - I haven't been to the facility in several months since  
832 we did the actual engineering package, so I couldn't answer that.  
833  
834 Mr. Moore - I know some of our buildings have a caution sign on  
835 them to notify contractors before they do work in the building that our buildings  
836 could contain asbestos materials and that they should check and have those  
837 tested before they do any construction work in the buildings.  
838  
839 Ms. Harris - Right. If it does have asbestos, what do you all do  
840 about that problem?  
841  
842 Mr. Moore - We have to abate it before any demolition could  
843 occur. But this tank would not involve any asbestos materials.  
844  
845 Ms. Harris - What are dimensions of that tank? I know it's above  
846 ground. How tall is it, how wide is it?  
847  
848 Mr. Abbondanza - I believe that on here.  
849  
850 Ms. Harris - I did look. I didn't see how tall it was.  
851  
852 Mr. Blankinship - Can you bring up the site plans?  
853  
854 Mr. Berman - It's 10 by 6?  
855  
856 Mr. Madrigal - I believe the tank is 7 by 12 and about five foot tall.  
857  
858 Ms. Harris - Five feet? Okay.  
859

860 Mr. Blankinship - That was 7 feet by 12 feet and 5 feet tall?  
861  
862 Mr. Hoephner - Yes sir.  
863  
864 Ms. Harris - Okay. All right. Is there any other facility in Henrico  
865 County where this is being used, this 2,000-gallon above-ground tank in a  
866 residential community?  
867  
868 Mr. Hoephner - I'm not aware of any residential. Randy?  
869  
870 Mr. Moore - Not without looking.  
871  
872 Mr. Hoephner - There are a number of Verizon central offices in the  
873 city and the county. Most of them are not in residential areas for obvious  
874 reasons. And most of them are technical facilities, which means they do have  
875 fueling systems and backup generators. But it may be an underground tank as is  
876 existing at the Randall Avenue facility. It could be an underground associated  
877 with an above-ground day tank or it could be an above-ground associated with  
878 an above-ground day tank. Or possibly even a generator that sits on a sub-base  
879 tank, which is another form of above-ground tank.  
880  
881 Ms. Harris - You said for obvious reasons. That's what I'm  
882 concerned about, the obvious reasons. What are you talking about here?  
883  
884 Mr. Hoephner - Well, it's more difficult to permit a facility like this in a  
885 residential area during the new-build process. Purchasing and building from the  
886 ground up, we would be looking for something in an appropriate neighborhood  
887 that would be more for industrial use. If we were building from the ground up.  
888 This is an existing facility that was permitted there.  
889  
890 Ms. Harris - If this facility were built let's say this year, do you think  
891 it would pass all of the necessary inspections and approvals to be placed in a  
892 residential community?  
893  
894 Mr. Hoephner - Yes, I believe it would be.  
895  
896 Ms. Harris - Okay. Now I notice in condition 6, it talks about an  
897 eight-foot trash receptacle. Using that facility since 1978. I was wondering why  
898 condition 6 was singled out.  
899  
900 Mr. Blankinship - Miguel, you should probably—  
901  
902 Ms. Harris - If you've been doing that all along, I don't understand  
903 why we're going to single it out now.  
904

905 Mr. Madrigal - When I did my site inspection, I noticed that the  
906 enclosure wasn't around the trashcan, basically. So I checked the plans, and it  
907 did call out for, at that time, a five-foot-tall screen around the trashcan. I noticed it  
908 wasn't there. Our current standards are for eight feet, and they provide, as per  
909 plan, for that eight-foot height.

910  
911 Ms. Harris - Okay.

912  
913 Mr. Berman - While you're there, a quick question. For condition 1,  
914 should it include the 100-gallon day tank or not?

915  
916 Mr. Madrigal - What's triggering the use permit is really the exterior  
917 tank, removing it from underground and then putting it above ground, and then  
918 obviously increasing the size. That's a substantial increase. It's basically a 100  
919 percent increase. They're doubling, actually, the size of the tank.

920  
921 Mr. Blankinship - We could modify that to say "and other equipment  
922 related to it."

923  
924 Mr. Berman - Yes. We're doubling the size of the day tank, albeit  
925 only up to 100 gallons.

926  
927 Ms. Harris - Is this facility manned? I noticed that in condition 4 we  
928 talk about employees.

929  
930 Mr. Madrigal - It's an unmanned facility. I'm not sure if when it was  
931 built it was a manned facility, but currently it is an unmanned facility. I noticed in  
932 some of the aerials that there are some service trucks there. Speaking to the  
933 applicant, Verizon personnel do go service the facility, probably use it to service  
934 other equipment in the area. But it seems like they're using it as a location where  
935 they can do change-out of tools or probably there are bathroom facilities at the  
936 site.

937  
938 Ms. Harris - It's only for maintenance or for servicing that you have  
939 employees there?

940  
941 Mr. Berman - Since its inception, has this site had any incidents that  
942 have negatively impacted the surrounding community?

943  
944 Mr. Hoephner - I'm not aware of any. I'm not aware of any violations.

945  
946 Mr. Berman - Is there any opposition here today?

947  
948 Mr. Blankinship - I believe when you're done with them we'll call for  
949 that.

950

951 Mr. Berman - Okay.  
952  
953 Ms. Harris - So there's nowhere else in Henrico County where you  
954 could relocate this except for a residential area? I was thinking that property  
955 looks pretty good. You could probably sell it for a residence or residences. I was  
956 wondering is there any place else that it could be relocated other than a  
957 residential area.  
958  
959 Mr. Hoephner - Not without undertaking a very significant expense of  
960 purchasing property, building from the ground up, and installing fiber optic  
961 communications cables from one point to another.  
962  
963 Ms. Harris - But you have to do that anyway, right?  
964  
965 Mr. Hoephner - No ma'am, not in this case.  
966  
967 Mr. Berman - You mean to relocate the circuits that go through  
968 there right now.  
969  
970 Mr. Hoephner - Yes sir.  
971  
972 Ms. Harris - I believe those are my questions. Thank you.  
973  
974 Mr. Bell - Any other questions? Thank you.  
975  
976 Mr. Hoephner - Thank you all.  
977  
978 Mr. Bell - Is there anyone else here who would like to speak to  
979 this issue? Then we'll go on to the next case.  
980  
981 **[After the conclusion of the public hearings, the Board discussed the case**  
982 **and made its decision. This portion of the transcript is included here for**  
983 **convenience of reference.]**  
984  
985 Mr. Bell - Do I hear a motion on this case?  
986  
987 Mr. Romers - Yes, I'd like to make a motion for CUP2015-00035. I  
988 make a motion to approve it based on the nine conditions as stated.  
989  
990 Mr. Bell - Do I hear a second on the motion?  
991  
992 Mr. Baka - Second.  
993  
994 Mr. Bell - Is there any discussion?  
995

996 Mr. Berman - Yes. I would like to consider amending condition #1 to  
997 include any other related equipment. And would it be appropriate to add condition  
998 #10 to handle asbestos abatement if found during the course of this  
999 modification? Or is that not within the boundaries of our—

1000

1001 Mr. Blankinship - There's no reason that it couldn't be added, but it's  
1002 already a matter of law.

1003

1004 Mr. Berman - If it's already codified then—

1005

1006 Mr. Blankinship - Yes sir. Yes, they have to comply.

1007

1008 Mr. Romers - I'm fine with that.

1009

1010 Mr. Blankinship - Do you accept the other amendment to the condition?

1011

1012 Mr. Romers - Yes, I accept the change to condition 1.

1013

1014 Mr. Bell - So then the case is going to be amended as part of  
1015 the approval process. All right. Is there anymore discussion? Hearing none, all in  
1016 favor of the motion say aye. All those opposed to the motion say nay.

1017

1018 Ms. Harris - Nay. And I do have an explanation. I'm just generally  
1019 opposed to facilities like this being in the middle of a residential community.  
1020 That's my objection.

1021

1022 Mr. Bell - The ayes have it, the motion passes.

1023

1024 After an advertised public hearing and on a motion by Mr. Romers, seconded by  
1025 Mr. Baka, the Board **approved** application **CUP2015-00035, ANALYTICAL**  
1026 **SERVICES, INC** request for a conditional use permit pursuant to Section 24-  
1027 12(c) of the County Code to expand a telecommunications facility at 5101  
1028 Randall Avenue (Parcel 805-713-6858), zoned One-Family Residence District  
1029 (R-4). The Board approved the conditional use permit subject to the following  
1030 conditions:

1031

1032 1. This conditional use permit applies only to the replacement of an existing  
1033 fueling system (which includes a 2000 gallon above-ground fuel tank) for an  
1034 emergency generator at an existing telecommunications facility. All other  
1035 applicable regulations of the County Code shall remain in force.

1036

1037 2. Only the improvements shown on the plot plan filed with the application may  
1038 be constructed pursuant to this approval. Any additional improvements shall  
1039 comply with the applicable regulations of the County Code. Any substantial  
1040 changes or additions to the design or location of the improvements shall require  
1041 a new conditional use permit.

- 1042  
 1043 3. Exterior electrical wiring and fuel pipe routing along the side of the building  
 1044 shall be painted to match the exterior color of the building.  
 1045  
 1046 4. The security gate shall be kept locked at all times when employees are not on  
 1047 site.  
 1048  
 1049 5. Fire lanes shall be marked and maintained in accordance with the Fire  
 1050 Prevention Code.  
 1051  
 1052 6. An 8-foot-tall trash enclosure shall be provided on-site as indicated on the site  
 1053 plan for the 1978 addition (UP-36-78).  
 1054  
 1055 7. All landscaping shall be maintained in a healthy condition at all times. Dead  
 1056 plant materials shall be removed within a reasonable time and replaced during  
 1057 the normal planting season.  
 1058  
 1059 8. Existing shrubs and trees on the property shall be pruned to control  
 1060 overgrowth, sustain site aesthetics, and maintain lines of sight to and around the  
 1061 building for security purposes.  
 1062  
 1063 9. Any trees damaged or removed as a result of retrofitting the generator fuel  
 1064 system shall be replaced.  
 1065  
 1066  
 1067 Affirmative: Baka, Bell, Berman, Romers 4  
 1068 Negative: Harris 1  
 1069 Absent: 0

1070  
 1071  
 1072 **[At this point, the transcript continues with the public hearing on the next**  
 1073 **case.]**  
 1074

1075 **VAR2015-00012**                    **KENNETH TYLER** requests a variance from Section  
 1076 24-95(b)(5) of the County Code to build a one-family dwelling at 8820 Midway  
 1077 Road (WESTHAMPTON SETTLEMENT) (Parcel 751-740-0207), zoned One-  
 1078 Family Residence District (R-3) (Tuckahoe). The lot width requirement is not met.  
 1079 The applicant proposes 50 feet lot width, where the Code requires 65 feet lot  
 1080 width. The applicant requests a variance of 15 feet lot width.  
 1081

1082 Mr. Blankinship -                    Would everyone who intends to speak to this case  
 1083 please stand and be sworn in? Raise your right hand, please. Do you swear the  
 1084 testimony you're about to give is the truth, the whole truth, and nothing but the  
 1085 truth so help you God?  
 1086

1087 Mr. Tyler -                            I do.

1088

1089 Mr. Blankinship - Thank you. You may be seated, sir. Mr. Gidley, you  
1090 may begin.

1091

1092 Mr. Gidley - Thank you, Mr. Secretary. Mr. Chairman, members of  
1093 the Board of Zoning Appeals, good morning.

1094

1095 This is a request for a lot width variance to allow a one-family dwelling to be  
1096 constructed at 8820 Midway Road. A similar request was made in 2005, but it  
1097 was denied by the Board. The property is currently zoned R-3, One-Family  
1098 Residence District. It has a fifty-foot-wide lot. Under the exception standards of  
1099 code, it requires a minimum lot width of sixty-five feet.

1100

1101 As you can see here, there is actually a total of two fifty-foot-wide lots that are  
1102 side by side, each undeveloped. Both of these lots are wooded and slope slightly  
1103 from front to rear.

1104

1105 The applicant is proposing to build a one-family dwelling on the property. This is  
1106 the proposed plot plan. He would meet the setbacks on all sides with this  
1107 proposal. These are the elevations of the home that he is proposing to construct.

1108

1109 The standard for a variance, there are two key questions, one of which they need  
1110 to meet. One is does the ordinance unreasonably restrict the use of the property  
1111 or second, is there a hardship due to a physical condition related to the property  
1112 or its improvements at the time of the effective date of the ordinance. In this  
1113 case, both options would appear to be met. Since he has fifty-foot lot width and  
1114 the code requires sixty-five feet of lot width, he cannot build on the property  
1115 absent a variance. Secondly, the subdivision plat was dated May 1945, so the  
1116 hardship existed at the time of the effective date of the ordinance, which is 1960.  
1117 So he appears to meet both of the key tests for a variance.

1118

1119 There are five following subtests, each of which also must be met. These include  
1120 was the property acquired in good faith and any hardship not created by the  
1121 applicant. The owner purchased the property in 1973. Since this time, he has not  
1122 owned any adjacent lot which he has subsequently sold off or anything like that.  
1123 The property has been maintained in its current state. So the property was  
1124 purchased in good faith and there is no self-created hardship in this case.

1125

1126 Secondly, will the granting of the variance have a substantial detrimental impact  
1127 on adjacent or nearby property. If there is a concern with this application, it  
1128 revolves around the second test. A variance was granted in 1999 for the fifty-  
1129 foot-wide lot to the west, shown here. And I can actually zoom in a little bit. This  
1130 home had a variance in 1999. However, as noted, there is a lot to the east that is  
1131 also vacant and faces the same restrictions. If today's request were granted, the  
1132 only way for this adjacent lot to be developed would be for it to obtain a variance  
1133 as well. So it would be impacted. If both lots were combined, it would enable the

1134 creation of a buildable lot. All the lots surrounding these three lots here, which  
1135 are each fifty feet in width, all the lots surrounding them meet or exceed the lot  
1136 width requirements. So ultimately, the Board will have to weigh any impact that  
1137 may exist on these neighbors.

1138

1139 Condition three, is the situation of the property concerned not so general or  
1140 reoccurring to allow for an ordinance amendment. In this case, the Board has  
1141 adopted the exception standards for old lots that existed prior to 1960. That  
1142 addresses many but not all of the individual lots. Some of these are like twenty  
1143 feet in width. In those cases, it's best for the Board of Zoning Appeals to look at  
1144 these on a case-by-case basis rather than the Board of Supervisors attempting to  
1145 find some code change that could address all of them. That's not really practical.

1146

1147 Number four, the granting of the variance does not result in a use that is not  
1148 otherwise permitted. This is not a use variance. The property is zoned residential,  
1149 and that's the proposed use. I would note there are a number of lots further down  
1150 the street that are in combination with other fifty-foot-wide lots. If a pattern is  
1151 established where every fifty-foot-wide lot is given a variance, that would  
1152 increase the density in the subdivision beyond what would normally be permitted  
1153 under the zoning.

1154

1155 Number five, the relief or remedy sought by the variance application is not  
1156 available through a special exception or modification. Neither of these is an  
1157 option in this case.

1158

1159 And finally in conclusion, since the hardship faced by the applicant existed at the  
1160 time of the effective date of the ordinance, the main standard for a variance is  
1161 met. Of the five supplemental questions, staff believes numbers 1, 3, 4, and 5 are  
1162 met. The second standard regarding a substantial detrimental impact is less  
1163 clear. Given the existence of the vacant lot next door at 8818 Midway, staff  
1164 suggested to the applicant that he contact the neighbor to make an offer to  
1165 purchase that property. He contacted me yesterday and indicated he had sent a  
1166 certified letter to the neighbor, but had not heard back from her. I heard from her  
1167 yesterday evening, and she indicated she had not received anything by mail or  
1168 phone. So I'm not totally sure where that stands at this point. The bottom line as  
1169 far as staff is concerned, our preference would be for the two lots to be  
1170 combined; however, if that's not possible, then to allow the applicant a  
1171 reasonable use of his property we could support a variance in that case.

1172

1173 That concludes my presentation. I'll be happy to answer any questions you may  
1174 have.

1175

1176 Mr. Baka - Mr. Chairman, if I may. Yes sir. Thank you for that  
1177 presentation, sir. When you spoke with the next door property owner on the  
1178 phone—and I realize this is a conversation apart from this room—can you

1179 elaborate any further on any sentiment that she said about the possible sale of  
1180 her property to join the two lots together? Did she elaborate at all?

1181

1182 Mr. Gidley - I've had two conversations with her. In the initial one I  
1183 asked her if she would entertain a potential sale. She indicated she would think  
1184 about it, but was really noncommittal at that point. Yesterday, we didn't really get  
1185 into that. The gentleman who's the applicant had contacted me, as I said, and  
1186 indicated he sent a certified letter. I had a note to follow up with the owner next  
1187 door at the end of the day. Since I'd given the applicant her cell phone number, I  
1188 asked her did he go ahead and call you. And she said no, and she's not received  
1189 any letter yet. So I can't really answer where that is in the process at this  
1190 moment.

1191

1192 Mr. Baka - So most of the lots in the neighborhood and/or along  
1193 Midway meet the lot width requirement. A few scattered here and there are  
1194 narrower than sixty-five feet. So I wanted to go back to the question. You said the  
1195 lot was originally created in 1945, which predates the Subdivision Ordinance,  
1196 which was established in 1960. Is it likely, then, that the lot to the east was also  
1197 created in 1945?

1198

1199 Mr. Gidley - Yes, it was.

1200

1201 Mr. Baka - It was?

1202

1203 Mr. Gidley - Yes.

1204

1205 Mr. Baka - And so it was all platted together, perhaps.

1206

1207 Mr. Gidley - Yes.

1208

1209 Mr. Baka - The diagram showed a fifty-foot existing lot with a  
1210 thirty-five-foot house. Eight feet on one side is the setback, seven on the other.  
1211 So the cumulative fifteen-foot setback; that meets the minimum required setback  
1212 in an R-3 zone?

1213

1214 Mr. Gidley - An R-3 exception for a fifty-foot-wide lot, yes.

1215

1216 Mr. Baka - An exception lot. So one of the comments I had about  
1217 the house is that would mean that there is a thirty-five-foot setback from the right  
1218 of way, but also the house would appear be about thirty-five feet in width. That  
1219 house as drawn would actually be wider or even larger than some of the homes  
1220 on the street, if I recall driving past there.

1221

1222 Mr. Gidley - There is a wide variety, yes.

1223

1224 Mr. Baka - There's a wide variety. Some that are wider. And  
1225 there are some that are narrower.

1226  
1227 Mr. Gidley - Yes, there are some rather small homes.

1228  
1229 Mr. Baka - So this lot, if approved, would have a different  
1230 circumstance in that it has almost a little bit of a wider house on a narrower-than-  
1231 typical lot. The only other question I have is you mentioned exception lots. So  
1232 just to clarify that, as a matter of practice in the past, the Board has sometimes  
1233 typically approved variances when you had a narrower lot width than what was  
1234 required by the Zoning Ordinance if that lot predated the Subdivision Ordinance.  
1235 Is that the correct assessment?

1236  
1237 Mr. Gidley - Yes. That certainly helps the case when it predates  
1238 the ordinance rather than something being created after the fact.

1239  
1240 Mr. Baka - Okay. And have you received any letters of objection  
1241 or calls or comments or e-mails opposing? Any neighbors opposing the case?

1242  
1243 Mr. Gidley - No sir, I have not.

1244  
1245 Mr. Baka - Okay.

1246  
1247 Mr. Bell - Mark?

1248  
1249 Mr. Romers - A couple of questions. Can we go back to the aerial  
1250 view for a moment?

1251  
1252 Mr. Gidley - Sure.

1253  
1254 Mr. Romers - I believe that you said that the lot immediately to the  
1255 west—if you zoomed in there again, maybe get three or four homes all the way  
1256 around this. I believe you said that in 1991 the home the west side of the lot was  
1257 approved with a variance on a fifty-foot lot?

1258  
1259 Mr. Gidley - 1999, yes sir.

1260  
1261 Mr. Romers - 1999. I don't think we have a lot of choice in this. But  
1262 one area that I'm not sure I'm clear on or why it's our business to ask the  
1263 homeowner to consider buying the neighboring lot when the person that owns  
1264 the neighboring lot can ask any price in the world that person wants for it,  
1265 whether it's fair or otherwise. I really don't think that's our business to get into  
1266 that solution, frankly.

1267  
1268 Mr. Gidley - I believe in 2005 when there was an application, that  
1269 was one of the issues that came up. We addressed that—

1270  
1271 Mr. Romers - I think in general we should stay out of the suggestion  
1272 business, personally. If he or this person had done that in advance of us making  
1273 the suggestion and had found that the cost was unreasonable or he couldn't  
1274 afford to build a home if he had to bear that cost, that would be great if that had  
1275 happened in advance. But I think at the moment this case is just based on a fifty-  
1276 foot lot that predates the ordinance. And that's what we should consider going  
1277 forward.

1278  
1279 Mr. Baka - Mr. Chairman, if I may. I would just add a brief follow-  
1280 up comment. Occasionally, in past variance cases, staff and even the Board has  
1281 at least raised the question to ask whether a property owner has at least knocked  
1282 on the door or called an adjacent property owner to see whether they might be  
1283 able to obtain additional land, in which case a variance would not be needed.  
1284 And therefore, a variance would not be the case of last resort because there's  
1285 something else you could do. From time to time, we've just asked that question  
1286 just to see if there's something other than as a last resort a variance. And I think  
1287 what is compelling here is that the lot was created prior to the Subdivision  
1288 Ordinance. That is not always a typical fact we have on other cases.

1289  
1290 Ms. Harris - I have no questions for Mr. Gidley, but I have a  
1291 question for the property owner.

1292  
1293 Mr. Bell - Any other questions? Thank you.

1294  
1295 Mr. Gidley - Thank you, Mr. Chair.

1296  
1297 Mr. Berman - Thank you, Paul.

1298  
1299 Mr. Tyler - Good morning. My name is Kenneth Tyler. T-y-l-e-r. I  
1300 did apply for the variance. I did also send out a certified letter, and I do have a  
1301 copy of the receipt that I did send out to see if she was willing to sell it, but she  
1302 did not return. I did also call her yesterday after I received her number from the  
1303 gentleman; she did not answer.

1304  
1305 Mr. Bell - Any questions?

1306  
1307 Mr. Baka - With a thirty-five-foot lot width, the approximate  
1308 square footage of the home would be about what?

1309  
1310 Mr. Tyler - Around 2,000 square feet.

1311  
1312 Mr. Blankinship - Two thousand three hundred.

1313  
1314 Mr. Baka - Twenty-three hundred? That home may be larger  
1315 than some of the others in the area. Okay.

1316  
1317 Mr. Tyler - We tried to stay within the setbacks on the rear as  
1318 well as on the front that were required.  
1319  
1320 Ms. Harris - Mr. Tyler, I see you're the applicant. Will you live in  
1321 this house?  
1322  
1323 Mr. Tyler - Yes ma'am. I'm actually getting the property from my  
1324 uncle.  
1325  
1326 Mr. Berman - The property adjacent to yours, Mr. Tyler, 8822  
1327 Midway, are you aware—did they ever offer you or your family to buy your land,  
1328 so that they didn't need their variance which was eventually granted?  
1329  
1330 Mr. Tyler - No, they never did.  
1331  
1332 Mr. Berman - Okay.  
1333  
1334 Mr. Romers - This is the property to the west?  
1335  
1336 Mr. Berman - Yes sir.  
1337  
1338 Mr. Bell - Any other questions?  
1339  
1340 Mr. Baka - No other questions.  
1341  
1342 Mr. Bell - Thank you, Mr. Tyler. Is there anyone else who wants  
1343 to speak to this issue? If not, we'll go on to voting.  
1344  
1345 Mr. Berman - There are some other people that should be  
1346 recognized.  
1347  
1348 Mr. Bell - Sorry I overlooked you.  
1349  
1350 Mr. Higgins - My name is Sean Higgins. We had applied for a  
1351 variance on 1116 Oakland Road. And I was told that it would be heard today. I'm  
1352 under contract for the land, and the contract is contingent on the variance. I don't  
1353 know if you guys have it in front of you because I got it in before the deadline,  
1354 and they said it would be today.  
1355  
1356 Mr. Blankinship - No, I'm sorry. That is scheduled for the December  
1357 17th meeting. 1116 Oakland Road?  
1358  
1359 Mr. Higgins - Yes sir.  
1360

1361 Mr. Blankinship - Yes. To build a one-family dwelling, public street  
1362 frontage and lot width are not met. I don't have it in front of me right now, but it's  
1363 actually—it's been scheduled for December the 17th. It's not even the first  
1364 variance on that meeting. I don't know when you submitted the application or  
1365 when it was received. Did you mail it or drop it off?  
1366

1367 Mr. Higgins - No sir, I brought it here.  
1368

1369 Mr. Blankinship - And you were told that it would be scheduled for  
1370 today?  
1371

1372 Mr. Higgins - Yes sir. Well, I brought it November 10th, and he said  
1373 the deadline was the 12th.  
1374

1375 Mr. Blankinship - November 12th is the deadline for the December  
1376 meeting.  
1377

1378 Mr. Higgins - Okay.  
1379

1380 Mr. Blankinship - If you'd come in November 13th, it would have been  
1381 scheduled for the January meeting. The state code required us to notify the  
1382 neighbors a certain number of days in advance and to advertise it in the  
1383 newspaper a certain number of days in advance. So normally there is a five-  
1384 week schedule from the application date to the hearing date.  
1385

1386 Mr. Higgins - Okay.  
1387

1388 Mr. Blankinship - So they do overlap from month to month. And I'm  
1389 terribly sorry for the misunderstanding.  
1390

1391 Mr. Higgins - Just trying to line up a lot of stars right now. So I'll just  
1392 make sure that the seller knows that we're not going to close—yes. We'll just  
1393 push everything out.  
1394

1395 Mr. Blankinship - Yes.  
1396

1397 Mr. Higgins - Obviously, I don't want to commit to the architect until  
1398 I know the variance is granted and all that kind of stuff.  
1399

1400 Mr. Blankinship - I'm terribly sorry for the miscommunication.  
1401

1402 Mr. Higgins - That's all right. It is what it is.  
1403

1404 Mr. Bell - Thank you. Is there anybody else in here who would  
1405 like to say something? Then we'll go on with the voting.  
1406

1407 [After the conclusion of the public hearings, the Board discussed the case  
1408 and made its decision. This portion of the transcript is included here for  
1409 convenience of reference.]

1410

1411 Mr. Bell - Do I hear a motion on this case?

1412

1413 Mr. Baka - Mr. Chairman, I'll make a motion that we approve  
1414 VAR2015-00012 with the four conditions that are presented in the staff report  
1415 and based on the staff's evaluation and the Board's discussion that this variance  
1416 meets the five-part variance test as set out in the state code.

1417

1418 Mr. Bell - Do I hear a second on the motion?

1419

1420 Mr. Berman - I second the motion.

1421

1422 Mr. Bell - Is there any discussion?

1423

1424 Ms. Harris - Yes, I have a couple of questions. We know that this  
1425 is one of the original fifty-foot-wide lots in that area. But did they not say that this  
1426 lot is fifty-five feet?

1427

1428 Mr. Blankinship - I believe it's fifty, yes ma'am.

1429

1430 Ms. Harris - It is fifty. Okay.

1431

1432 Mr. Blankinship - Sixty-five is the requirement.

1433

1434 Ms. Harris - Okay. I think that was my only question.

1435

1436 Mr. Bell - Is there any more discussion? Hearing none, all those  
1437 in favor of the motion say aye. All those opposed to the motion say nay. The  
1438 ayes have it; the motion passes.

1439

1440 After an advertised public hearing and on a motion by Mr. Baka, seconded by  
1441 Mr. Berman, the Board **approved** application **VAR2015-00012, KENNETH**  
1442 **TYLER's** requests for a variance from Section 24-95(b)(5) of the County Code to  
1443 build a one-family dwelling at 8820 Midway Road (WESTHAMPTON  
1444 SETTLEMENT) (Parcel 751-740-0207), zoned One-Family Residence District (R-  
1445 3). The Board approved the variance subject to the following conditions:

1446

1447 1. This variance applies only to the lot width requirement for one dwelling only.  
1448 All other applicable regulations of the County Code shall remain in force.

1449

1450 2. Only the improvements shown on the revised plot plan dated September 21,  
1451 2015 and building design filed with the application may be constructed pursuant  
1452 to this approval. Any additional improvements shall comply with the applicable

1453 regulations of the County Code. Any substantial changes or additions to the  
1454 design or location of the improvements will require a new variance. However, the  
1455 dwelling shall be constructed on a crawl space with a brick foundation on all four  
1456 sides.

1457

1458 3. The dwelling shall be set back at least 35 feet, but not more than 60 feet, from  
1459 the right-of-way line of Midway Road.

1460

1461 4. Any dwelling on the property shall be served by public water and sewer.

1462

1463

1464 Affirmative: Baka, Bell, Berman, Harris, Romers 5

1465 Negative: 0

1466 Absent: 0

1467

1468

1469 Mr. Bell - We'll go on to the approval of the minutes for the  
1470 October 22, 2015 meeting. Do I hear a motion?

1471

1472 Mr. Berman - I'd like to move that we waive the reading of the  
1473 minutes and accept them as-is into record.

1474

1475 Mr. Baka - Second.

1476

1477 Mr. Bell - All those in favor say aye. All those opposed? The  
1478 ayes have it; the motion carries.

1479

1480 On a motion by Mr. Berman, seconded by Mr. Baka, the Board **approved as**  
1481 **submitted the Minutes of the October 22, 2015**, Henrico County Board of  
1482 Zoning Appeals meeting.

1483

1484

1485 Affirmative: Baka, Bell, Berman, Harris, Romers 5

1486 Negative: 0

1487 Absent: 0

1488

1489

1490 Mr. Bell - Is there any other new or old business we'd like to  
1491 discuss? Vote to adjourn. Do I hear a motion that we adjourn?

1492

1493 Mr. Romers - Motion.

1494

1495 Mr. Bell - Second?

1496

1497 Ms. Harris - Second.

1498

1499 Mr. Bell - All those in favor say aye. All those opposed say nay.

1500

1501

1502 Affirmative: Baka, Bell, Berman, Harris, Romers 5

1503 Negative: 0

1504 Absent: 0

1505

1506 Mr. Bell - The ayes have it. We are adjourned.

1507

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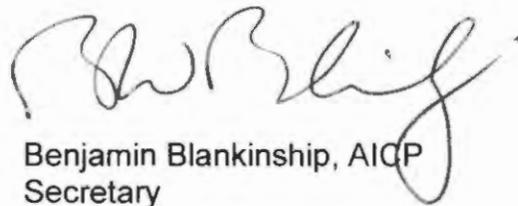
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Gentry Bell  
Chairman



Benjamin Blankinship, AICP  
Secretary