

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**  
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION**  
3 **BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY**  
4 **SPRING ROADS, ON THURSDAY, OCTOBER 20, 2011 AT 9:00 A.M., NOTICE**  
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**  
6 **OCTOBER 3, 2011 AND OCTOBER 10, 2011.**  
7

Members Present: Helen E. Harris, Chairman  
Robert Witte, Vice Chairman  
Greg Baka  
James W. Nunnally  
R. A. Wright

Also Present: David D. O'Kelly, Jr., Assistant Director of Planning  
Benjamin Blankinship, Secretary  
Paul Gidley, County Planner  
R. Miguel Madrigal, County Planner

8  
9 Ms. Harris - Welcome to the October 20, 2011 meeting of the  
10 Board of Zoning Appeals for Henrico County. Please stand and recite the  
11 **Pledge of Allegiance.**  
12

13 Good morning, Mr. Blankinship. Would you please give us the rules that govern  
14 this meeting and let us know if there are any deferrals.  
15

16 Mr. Blankinship - Good morning, Madam Chairman, members of the  
17 Board, ladies and gentlemen. The rules for this meeting are as follows. Acting as  
18 secretary, I will call each case. As I'm speaking, the applicant is welcome to  
19 come down to the podium. We will then ask everyone who intends to speak to  
20 stand and be sworn in; you only need to be sworn in if you intend to speak. The  
21 applicant will present their testimony, and then if there is anyone else who  
22 wishes to speak, they will be given the opportunity. After everyone has had a  
23 chance to speak, the applicant and only the applicant will have an opportunity for  
24 rebuttal. At the end of each item, the Board will then take the matter under  
25 advisement and go on to the next item on the agenda. They will render all of their  
26 decisions at the end of the meeting. So if you wish to know their decision on a  
27 specific case, you can either stay until the end of the meeting, or you can check  
28 the Planning Department website this afternoon—we usually get it updated  
29 within about half an hour of the end of the meeting—or you can call the Planning  
30 Department this afternoon.  
31

32 This meeting is being recorded, so we'll ask everyone who speaks to speak  
33 directly into the microphone on the podium, state your name, and please spell  
34 your last name so we get it correctly in the record.  
35

36 And finally, out in the foyer there is a binder containing the staff report for each  
37 case, including conditions that have been recommended by the staff. It's  
38 important that the applicants be familiar with those conditions.

39  
40 Madam Chairman, there is one request for deferral this morning. Mr. Rempe e-  
41 mailed me yesterday that he would like to defer for a month. I see Mr. Rempe is  
42 here if you have any questions for him.

43  
44 **VAR2011-00004 EMERALD LAND DEVELOPMENT** requests a  
45 variance from Section 24-95(b)(5) of the County Code to build a one-family  
46 dwelling at 21 Evergreen Avenue (Bungalow City) (Parcel 817-727-6100), zoned  
47 R-3, One-family Residence District (Varina). The lot width requirement is not  
48 met. The applicant has 50 feet lot width where the Code requires 65 feet lot  
49 width. The applicant requests a variance of 15 feet lot width.

50  
51 Ms. Harris - What is the pleasure of the Board regarding this  
52 deferral request?

53  
54 Mr. Nunnally - I move we defer it until the November 17<sup>th</sup> meeting.

55  
56 Mr. Wright - Second.

57  
58 Ms. Harris - It's been moved and properly seconded that we will  
59 defer VAR2011-00004, Emerald Land Development until November 17<sup>th</sup>. Are  
60 there any questions on the motion? All in favor say aye. All opposed say no. It's  
61 a unanimous vote, the motion passes.

62  
63 After an advertised public hearing, VAR2011-0004, Emerald Land Development,  
64 has been deferred until the November 17, 2011 meeting.

65  
66  
67 Affirmative: Harris, Witte, Baka, Nunnally, Wright 5  
68 Negative: 0  
69 Absent: 0

70  
71  
72 Ms. Harris - Call the first case.

73  
74 **APL2011-00004 SUSAN W. MILLS** appeals a decision of the director  
75 of planning pursuant to Section 24-116(a) of the County Code regarding the  
76 property at 9738 Laurel Pine Drive (Laurel Pines) (Parcel 771-760-0658), zoned  
77 R-4, One-family Residence District (Brookland).

78  
79 Ms. Harris - All persons who wish to speak to this case please  
80 stand at this time so you may be sworn in.

81

82 Mr. Blankinship - Raise your right hand, please. Do you swear the  
83 testimony you're about to give is the truth and nothing but the truth so help you  
84 God?

85  
86 Ms. Harris - Will the applicant please state your case. Please give  
87 us your name, spelling your last name. We do want to say here that we ask that  
88 you not repeat anything that has been said. We have a lot of speakers, and I  
89 think it's fair to determine from the very outset that we do not repeat anything  
90 that has been said.

91  
92 Ms. Mills - Yes. My name is Susan Mills. That's M-i-l-l-s.  
93 Chairwoman Harris, Vice Chairman Witte, and members of the Board of Zoning  
94 Appeals, I am Susan Mills, and I thank you for the opportunity to speak to you  
95 today regarding my appeal of the County's latest attempt to prevent me from  
96 feeding or otherwise caring for a small colony of feral cats on my property  
97 through the issuance of a notice claiming that I am violating County Zoning Code  
98 24-6. As I stated in my Notice of Appeal, I am dismayed by the County's actions.  
99 It's clear to me that I am being maliciously targeted by the Department of  
100 Community Revitalization, which has now, for the second time, tried to find a way  
101 to prohibit me from completing an act as simple and as customary as putting out  
102 food on my property for a small colony of feral cats. In targeting me, I believe  
103 strongly they wish to prevent anyone in the County from feeding or otherwise  
104 caring for feral cats. I find this both offensive and excessive. Feeding or caring  
105 for companion animals, including feral cats, is customarily incidental to a  
106 dwelling. For the County to suggest and argue otherwise is absurd.

107  
108 As I started during your May 26 meeting, I have been providing responsible care  
109 to a very small colony of feral cats from home for many years through trap,  
110 neuter, return, a program through which I humanely trap the feral cats and take  
111 them to the Richmond SPCA so that they can be spayed or neutered, vaccinated  
112 against rabies, and provided with routine veterinary care. I have proactively  
113 limited the colony's growth and maintained the cats' health. I have done this for  
114 the protection of the cats, and my neighbors and their personally-owned pets  
115 who spend time outdoors.

116  
117 My feeding this small colony of cats from my back porch does not adversely  
118 affect the health, safety, or welfare of my neighbors. I do not want to see these  
119 cats harmed in any way. And the vast majority of my neighbors feel the same  
120 way. My heart would break if these cats were removed and killed, which is the  
121 only outcome remaining if my appeal to you today is denied.

122  
123 I also want to mention that I was never sent by Attorney Tokarz, or anyone from  
124 the County Attorney's office, the legal briefs prepared and provided to you and  
125 the Richmond SPCA. I would have expected as the appellant to be in receipt of  
126 these documents, and I think it very unfair that I was not. Because I was not

127 provided these documents, I'm going to ask that Robin Starr from the SPCA  
128 speak on my behalf.

129  
130 I am grateful for your consideration of my appeal, and thank you for your time.  
131 And please, make the right decision. Thank you.

132  
133 Ms. Harris - Before you leave, Ms. Mills, do we have any  
134 questions from Board members now? Thank you.

135  
136 Ms. Mills - Thank you, ma'am.

137  
138 Ms. Starr - I am Robin Starr—S-t-a-r-r. I'm the Chief Executive  
139 Officer of the Richmond SPCA. Chairwoman Harris, Vice Chairman Witte, and  
140 members of the Board of Zoning Appeals, as Susan just mentioned, she asked  
141 that I speak on her behalf and that of the animals that she cares for today. There  
142 are many people here in support of Ms. Mills, and most of them are wearing  
143 badges so that you can tell how many of them there are in this audience.

144  
145 This is the second time that Ms. Mills has been put through the stress of  
146 defending her freedom to care for a small group of cats at home on her own  
147 property. The previous time the Department of Community Revitalization  
148 demanded that she seek a conditional use permit because they claimed that she  
149 was keeping more than three pets. This Board correctly determined that she was  
150 not *keeping* these feral, since feral cats cannot be kept in the manner that is  
151 contemplated by the Zoning Ordinance. And accordingly, you determined that  
152 she should not have been required to seek a conditional use permit.

153  
154 When that previous hearing ended on June 23<sup>rd</sup>, as I was leaving a member of  
155 the Department sought me out specifically for the purpose of telling me that they  
156 had not gotten the result that they wanted, and so they would be trying another  
157 route to get the outcome that they wanted against Ms. Mills. This is now their  
158 new route to target her.

159  
160 The Department's new claim is that the R-4 zoning where Ms. Mills lives does  
161 not permit her to continue to care for these cats that she has been caring for for  
162 many years. In fact, the vast majority of Ms. Mills' neighbors have been perfectly  
163 happy with her caring for these cats, and they have signed a petition to that  
164 effect. She has done everything the County could possibly wish. She has had  
165 them spayed and neutered so they do not reproduce. She has gotten them  
166 rabies vaccinated, and she has kept those rabies vaccinations up to date. She  
167 has meticulously recorded their veterinary care and when they are due for  
168 boosters. Nonetheless, now after Ms. Mills had cared for a small number of feral  
169 cats without any problems for more than thirty years, they want to force her to  
170 stop feeding them and caring for them because they now claim that the zoning  
171 prohibits it, although that is not what they claimed the first time.

172

173 The issue before you today, in my opinion, is really very straightforward. Is it  
174 customarily incidental to a citizen's use of his or her own residence to care for  
175 companion animals. The Department and the County Attorney are trying to turn  
176 this into a question of whether a citizen may care for and feed feral cats in R-4  
177 zoning. But this overlooks an important fact. Under Virginia State Statute, as well  
178 as the Henrico County Code, feral cats are among the various animals that are  
179 classified as a group as companion animals. This issue is settled by both State  
180 and County statutory law. Feral cats are not distinguishable from other  
181 companion animals under the law, nor are they in practical terms. No one can  
182 possibly look at a cat and tell whether or not that cat is feral. And in Henrico  
183 County, there is absolutely nothing that prohibits people from allowing their pet  
184 cats to roam free outdoors.

185  
186 Consequently, the question must be whether it is customarily incidental to an R-4  
187 zoning residence to care for companion animals. Certainly it is. No one would  
188 ever suggest that it is not customarily incidental to a residence to care for and  
189 feed your pet dog, or your neighbor's cat when he's away. The situation before  
190 you cannot be legally distinguished from that.

191  
192 You received a letter from Mr. Tokarz laying out the County's case in this matter,  
193 and that was followed by another letter that was all about trap-neuter-return  
194 programs. I sent you a response to his letters, and I hope that you received that  
195 response. Mr. Tokarz then sent a replay to my letter. In his reply, which was his  
196 third letter, he recognizes that feral cats are companion animals, but he misses  
197 the point, I believe, of this issue in several ways. First, he suggests that because  
198 non-human primates and reptiles are also classified as companion animals, that  
199 Ms. Mills must be arguing that the feeding of these animals in someone's yard is  
200 a customary use. This is not what we are saying. The issue is whether the  
201 feeding of companion animals *collectively*, as the law views them, is customarily  
202 incidental to a residence. Since companion animals include dogs and cats, and  
203 since more than sixty-three percent of households have them as pets, clearly  
204 feeding and caring for companion animals, as a category, is customarily  
205 incidental to a residence.

206  
207 Mr. Tokarz is also mistakenly saying that we are saying that feral cats are  
208 indistinguishable from other cats and that somehow provides support for the  
209 supposed fears of her neighbors about rabid cats. This argument is a real head-  
210 scratcher to me. By telling Ms. Mills that she may no longer care for these cats,  
211 the County will ensure that they no longer receive rabies vaccinations. And  
212 consequently the rabies risk will be heightened, not reduced. The County should  
213 be delighted by her care, and should support trap-neuter-return programs  
214 generally.

215  
216 In his first letter, and in his follow-up letter to that first letter, Mr. Tokarz raised the  
217 issue of trap-neuter-return programs, and he went on at great length questioning  
218 their effectiveness, and citing various sources. Then oddly in his most recent

219 letter he now says that TNR programs are not relevant to this matter. Because  
220 he raised this issue in the first place, there are a number of people here today to  
221 respond to him. I think that they will state very clearly and very impressively why  
222 trap-neuter-return programs are very effective, and his suggestions that they are  
223 not are simply mistaken.  
224

225 The mainstream of national humane organizations in this country support trap-  
226 neuter-return and non-lethal methods for managing feral cats. You are going to  
227 hear shortly from other people, including a veterinarian, Carol Dugan, with a  
228 great deal of practical experience in the effectiveness of trap-neuter-return. You  
229 will also hear from a representative from the Humane Society of the United  
230 States, the world's largest animal protection organization that TNR is highly  
231 effective, and that feeding bans—which is what this really is—are not effective.  
232 You are also going to hear from Katie Harris, who is a local student and Girl  
233 Scout who has taken this on as an effort to see that you, this Board, is convinced  
234 that kindness and compassion for feral cats is the right way to behave. You have  
235 also received a letter from the American Society for the Prevention of Cruelty to  
236 Animals making exactly the same points.  
237

238 The Richmond SPCA wholeheartedly endorses trap-neuter-return as the only  
239 acceptable management approach for feral cats, and we provide free spaying  
240 and neutering, and rabies inoculations for all feral cats in this community.  
241

242 But the issue before you today is really whether a resident of Henrico may have  
243 the freedom to go out her backdoor and feed and provide other care for a small  
244 group of feral cats on her own property. She has had them spayed and neutered;  
245 she has ensured that they present no health risk by having them vaccinated for  
246 rabies. The County should be grateful that it has citizens like Ms. Mills who are  
247 kind, compassionate, and responsible. Ms. Mills is not violating any provision of  
248 the County Code. In fact, she's a hero. And I respectfully request your support of  
249 her. Thank you.  
250

251 Ms. Harris - Are there any questions of Ms. Starr? Thank you.  
252

253 Ms. Donahue - Good morning. My name is Laura Donahue. That's D-  
254 o-n-a-h-u-e. And I'm the Virginia State Director for the Humane Society of the  
255 United States. We are indeed the nation's largest animal protection organization  
256 with more than eleven million members and supporters nationwide; more than  
257 300,000 in Virginia; and I'm please to say more than 3,500 in the Henrico area.  
258

259 On behalf of HSUS and our members and supporters, I urge you to vote down  
260 such a feeding ban on feral cats. The logic behind bans against feeding feral  
261 cats is that if there is no food available the cats will go away. This is simply not  
262 true. As there is typically more than one feeder, feeders will resist. Enforcement  
263 is difficult and unpopular with caring citizens, as you can see here today. And  
264 there are other sources of food including dumpsters, garbage cans, and wildlife.

265 Feral cats are territorial animals who can survive for weeks without food and will  
266 not easily or quickly leave their territory to search for new food sources. Instead,  
267 they tend to move closer to homes and businesses as they grow hungrier and  
268 more desperate. Their malnourished condition will make them more susceptible  
269 to parasites such as fleas, which they will then spread into workplaces, garages,  
270 and homes within their territory. The cats will also continue to reproduce, despite  
271 the effort to starve them out, resulting in the visible death of many kittens.

272  
273 A second reason why feeding bans are rarely effective is that they are nearly  
274 impossible to enforce. Repeated experience has shown that people who care  
275 about the cats' welfare will go to great lengths, risking their homes, jobs, and  
276 even their liberty, to feed starving animals. Someone determined to feed the cats  
277 will usually succeed without being detected no matter the threatened penalties.  
278 As a result, feeding bans, if enforced, tend to make the situation much, much  
279 worse instead of improving it. Decades of such measures have failed to reduce  
280 the number of feral cats or improve the live of cats and citizens.

281  
282 The Human Society of the United States instead advocates community-based  
283 trap-neuter-return programs—also known as TNR—with ongoing responsible  
284 management as the most viable long-term approach available at this time to  
285 reduce feral cat populations. When feral cats are trapped, neutered, and  
286 returned to their territory, they no longer reproduce. TNR is effective because it is  
287 feasible, it saves municipal funds associated with trapping, holding, and  
288 euthanizing feral cats. It creates an immediate reduction in population because  
289 teens, adults and kittens are removed from the group for adoption. It reduces or  
290 eliminates continued reproduction; decreases nuisance complaints about fighting  
291 noise and urine odor. It includes vaccinating cats against rabies and other  
292 diseases, and a number of other reasons.

293  
294 The HSUS supports TNR, as do other national organizations, including the  
295 American Association of Feline Practitioners, the American Society for the  
296 Prevention of Cruelty to Animals, Best Friends Animal Society, Humane Society  
297 Veterinary Medical Association, National Animal Control Association, Petco  
298 Foundation, PetSmart Charities, and Spay USA.

299  
300 I know there are others that are going to speak to TNR so I'll stop here. Thank  
301 you so much for your time.

302  
303 Ms. Harris - Thank you, Ms. Donohue. Are there any questions?  
304 Next speaker.

305  
306 Ms. McAfee - My name is Eileen McAfee—M-c-A-f-e-e. And I'm  
307 resident of Henrico County. My husband and I moved here from out of state  
308 twenty years ago and specifically chose Henrico because of low taxes, good  
309 management practices, quality schools, and an excellent reputation. It's been a

310 very good investment for us all around. But I'm getting a little concerned about  
311 our reputation in regard to the humane treatment of animals.

312

313 You may remember that just a couple years ago there was a lot of negative  
314 media publicity when Fox News bulldozed a small piece of land on which feral  
315 cats were living. Then they hired Critter Control to kill some of them. This was  
316 followed by even more negative publicity when the employee who killed the cats  
317 was tried and convicted here in Henrico of animal cruelty.

318

319 More recently we heard of the effort of some residents down on Pump Road  
320 where the geese were on the lake, where their property abutted. They didn't  
321 want the geese there anymore; they wanted them removed. They got the Game  
322 Department lined up to remove them. Now the Game Department wasn't going  
323 to kill them; they were simply going to transfer them to a food processor in  
324 Virginia who was going to kill them. It's one thing to not want animals around, but  
325 it's a whole other issue to actually be present and see them being killed. But I'm  
326 afraid that's a step of the equation that we just don't want to think about. Our  
327 thinking stops at out-of-sight, out-of-mind.

328

329 In closing, let me say that there are better solutions than the violence of killing  
330 animals to be rid of them. It may seem like the quickest solution, but I believe  
331 there will come a time when we're better educated and more compassionate,  
332 and we'll look back at these times and think how could we have even thought of  
333 doing something like this.

334

335 I don't know about you, but I don't ever want to look back with regret that I took  
336 the easy way out of something. So I ask you to please do no harm to the  
337 animals. You have the choice. Thank you for listening.

338

339 Ms. Harris - Ms. McAfee, you said there are better solutions.  
340 Other than the TNR, would you care to cite the solutions you have in mind?

341

342 Ms. McAfee - TNR is the solution, and it's an excellent solution. It's  
343 something to be proud of, not something that we'll have to hide the shame of  
344 having killed innocent animals. And many of you probably also have pets that  
345 you cherish. I know that you're compassionate and you want to do the right thing.  
346 But we have to take care of these animals.

347

348 Ms. Harris - Thank you.

349

350 Ms. McAfee - Thank you.

351

352 Ms. Harris - The next speaker?

353

354 Dr. Dugan - Madam Chairwoman, Vice Chairman, and members  
355 of the Board, my name is Dr. Carol Dugan—D-u-g-a-n. I am a veterinarian and a



356 Henrico County resident. For twenty-eight years—from 1983 until this past  
357 spring—I co-owned Gayton Animals Hospital, which is in Gayton Crossing  
358 Shopping Center in Western Henrico. This past spring I retired from Gayton and  
359 now I'm doing a limited house-call practice.

360  
361 For twelve years—since 1999—I have been very actively involved with feral cat  
362 rescue. I feed a small feral cat colony at my home, and I help with trap-neuter-  
363 return for four other colonies in Henrico County. This past May my next door  
364 neighbor had an indoor cat that accidentally escaped outside and went missing. I  
365 helped her with the door-to-door search. And in our small neighborhood we  
366 found nine families who told us that they routinely feed feral cats and strays in  
367 their yards, and they would help keep an eye out for her cat. That's a huge  
368 percentage of our neighborhood; we were very happy to find that out.

369  
370 Over these twelve years I have rescued at least 120 kittens from feral colonies  
371 and placed them in excellent homes. I have personally trapped more than a  
372 hundred feral adult cats, had them neutered and vaccinated, and returned them  
373 to their colonies. When I say I return them, what I mean by that is that I took  
374 them back to the exact same place where I trapped them, which in every case  
375 has dedicated caregivers, and often there's a team of caregivers. I just want you  
376 to remember that it sounds like I'm repeating things, but I'm telling you this as a  
377 veterinarian. This is my opinion as a doctor of veterinary medicine. It's a slightly  
378 different point of view.

379  
380 We caregivers—and I include myself—make sure that 365 days a year—it  
381 doesn't matter what the weather is, whether it's a beautiful summer morning or  
382 whether it's in the middle of snowstorm, we go out and we make sure that the  
383 cats get fresh food and water every single day. Feral cats are not a different type  
384 of cat from the ones that are at home on my couch right now. They're just  
385 terrified of humans either because they were born to a very scared momma cat  
386 who was out there on her own and she taught her kittens to be afraid, or  
387 because they themselves were abandoned and mistreated at a very young age.  
388 Genetically and in every way, feral cats are domestic animals. But just as it's  
389 quite possible to make a dog terrified of humans through cruel treatment, feral  
390 cats have been made to be afraid of humans. That's the only difference between  
391 them and our pet cats. They do not carry any weird diseases or parasites, just  
392 the normal things that our pet cats get. There is no concern over that; feral cats  
393 are the same as our pets, except that they're afraid.

394  
395 Because I am a veterinarian, my friends at church and my neighbors and my  
396 former clients at Gayton all know that they can call me if they find kittens or if  
397 they see feral cats that need to be rescued. I always instruct them to catch the  
398 kittens as fast as they can, and to immediately start feeding the adults plenty of  
399 food every day. That way the adult cats will stay around, and we can get out of  
400 the vicious cycle of starving and hunting and having kittens through the trap-  
401 neuter-return program.

402

403 When we provide the adult feral cats with a daily consistent food source, several  
404 things happen immediately. They stop going to all the other neighbors' houses  
405 scrounging for food. They decrease their hunting and killing of birds and small  
406 wildlife. And they stop roaming in general, so we have fewer of them being hit by  
407 cars. And of course we eliminate the chance for them to reproduce or get rabies  
408 through the trap-neuter-return program, as you have already heard.

409

410 My experience as a veterinarian is that most people want to be kind to animals.  
411 Little children instinctively want to pat the kitty and the doggie until someone  
412 teaches them that there are certain things to be afraid of. Humans want to be  
413 kind to animals. It's human nature to feel sympathy when we see an animal  
414 that's struggling to survive. That's why so many people feed the strays, and  
415 that's why we're so fortunate here in Richmond to have a wonderful SPCA with  
416 this free trap-neuter-return program that they will do for us.

417

418 Feral cats are not like the thing you tell people, that's a wild animal, it came from  
419 the woods, it needs to be left alone. That is not true of feral cats. They're not wild  
420 animals; they didn't come from the woods. They came from humans who were  
421 irresponsible and didn't care for them properly. So now it's up to us humans to  
422 care for them in the most compassionate way that we can.

423

424 If we tell people that they can no longer help homeless animals, what are we  
425 doing? Feeling sorry for those who are less fortunate than we are, and doing  
426 everything we can to help them, is an admirable character trait. It makes us  
427 better people, and it makes this a better world. I sincerely ask you please don't  
428 make us stop helping the homeless cats. Thank you.

429

430 Ms. Harris - Dr. Dugan, how many cats do you have in your  
431 colony, your feral colony?

432

433 Dr. Dugan - It varies between three and six. Some of them are  
434 probably eating at some of those other nine neighbors' homes, so I see them  
435 some days and other days I don't see them.

436

437 Ms. Harris - How many do you have as pets?

438

439 Dr. Dugan - As my own personal pets? I have five cats.

440

441 Ms. Harris - And you live in Henrico County.

442

443 Dr. Dugan - I know; I understand. I do at times have more than  
444 that in my homes because of being a rescuer. When we do the trap-neuter-  
445 return program, we bring them in and we keep them overnight the night before  
446 surgery so that they're fasted and ready for the surgery. And then we keep them  
447 the night after the surgery. And of course I've already told you how involved I am

448 in rescue and placing for adoption. So I frequently have a litter of kittens in my  
449 home looking for adoption. So yes, the number varies. But I'm not trying to  
450 hoard, I'm just trying to relocate them into great homes.

451

452 Ms. Harris - Do you have any complaints from your neighbors as  
453 to—

454

455 Dr. Dugan - Oh no. As I said, there are nine families within a very  
456 small radius of my home that I didn't even know that have said oh yes, we feed  
457 the cats all the time. We love the cats. We'll watch out for your neighbor's lost  
458 cat. My neighbors are a hundred percent in support of this.

459

460 Mr. Blankinship - Madam Chairman, may I ask one question? Dr.  
461 Dugan, we hear a lot about trap-neuter-return involving rabies vaccination.

462

463 Dr. Dugan - Yes.

464

465 Mr. Blankinship - Part of the information we've received in the last  
466 couple of weeks was about out diseases that cats carry. When you trap and  
467 neuter these animals, do you also vaccinate them for those other common feline  
468 diseases?

469

470 Dr. Dugan - I would have to defer to the SPCA on what  
471 percentage of people do that. The SPCA provides the rabies vaccine for free  
472 because that is the only disease that the cats are carrying that can be lethal to  
473 humans. As you know yourself, the law does not require cat owners to vaccinate  
474 against any of those things that would just kill a cat. However, because feral  
475 caregivers do tend to be so cat-friendly, I think you would find if you sat in the  
476 SPCA's office in the mornings when the feral caregivers are coming in with their  
477 cats that a lot of them are paying the extra money to have them tested for feline  
478 leukemia and FIV, to have them vaccinated against distemper and leukemia. But  
479 of course the law doesn't require any of that because those are not dangerous to  
480 humans or dogs. So I think a lot of us do that, yes.

481

482 Mr. Blankinship - Thank you.

483

484 Ms. Harris - Are there any more questions from Board members?  
485 Thank you so very much.

486

487 Dr. Dugan - Thank you.

488

489 Ms. Harris - Will the next speaker come forward.

490

491 Ms. Holdren - Good morning. My name is Lee Ann Holdren. That's  
492 H-o-l-d-r-e-n. I'm a proud resident of Henrico County for nearly thirty years. I am

493 strongly in favor of repealing the Notice of Violation issued to Ms. Mills on both  
494 practical and humanitarian grounds.

495  
496 The impracticality of using the permitted use clause as a means of stopping her  
497 from feeding a small number of non-pets on her own property to me is stark and  
498 its potential for unintended consequences is of great concern to me. It is clear  
499 that there are host of activities we engage in on our own property that are not  
500 expressly spelled out in the County Zoning Code. Feeding or otherwise caring for  
501 a cat is just one example. As another example, I have a few birdfeeders in my  
502 backyard. Sometimes they attract squirrels, chipmunks, and even a rabbit or two.  
503 I do not relish the potential for this ordinance being exploited by a neighbor who  
504 may not like birds, or may not like me. While this may seem farfetched, anyone  
505 who has lived in a neighborhood with a homeowners' association know that both  
506 of these situations is a distinct possibility. I'll leave the actual legal arguments to  
507 the attorneys, but this does not seem to me to be a desirable or workable  
508 solution to what is essentially a dispute between neighbors.

509  
510 I also object on humanitarian grounds. Our Richmond SPCA is a national leader  
511 in animal welfare. Our area is also home to many other humane societies for  
512 which hundreds of volunteers expend thousands of hours to improve the lives of  
513 the animals in our community. I do not want my county to fashion an unrelated  
514 ordinance into a sledgehammer aimed at a sole resident who is performing an  
515 act of kindness on her property.

516  
517 The Centers for Disease Control website will make it obvious to anyone who's  
518 interested that you have a better chance of being hit by a falling satellite than you  
519 have of contracting a disease from a stray cat in the United States. Considering  
520 that Ms. Mills has responsibly ensured that this small group of cats is vaccinated  
521 against rabies, the chance is non-existent in this case.

522  
523 In summary, I am respectfully asking the Board to vote down this measure as  
524 being inconsistent with personal property rights, unnecessarily cruel, and  
525 ultimately unenforceable. Thank you very much.

526  
527 Ms. Harris - Before you leave, you stated that the ordinance was  
528 unrelated. How is this ordinance unrelated to this issue?

529  
530 Ms. Holdren - It's not expressly spelled as a non-permitted us. And  
531 so to me it's not a related ordinance. It's a stretch, in my opinion, to use this to  
532 shoehorn in an application in this manner.

533  
534 Ms. Harris - Questions from Board members?

535  
536 Ms. Holdren - Thank you.

537

538 Ms. Rhode - Madam Chairwoman, members of the Board, my  
539 name is Lynn Rhode—R-h-o-d-e. I'm a Board member of the Henrico Humane  
540 Society. Henrico Humane Society is a Henrico County-based longstanding non-  
541 profit organization; we've been here for more than twenty years and dedicated to  
542 companion animal welfare, adoption, and education in Henrico County. We have  
543 hundreds of members and supporters throughout the County. Henrico Humane  
544 Society strongly supports Ms. Mills and strong urges you to not impose this  
545 violation on Ms. Mills. We are following the issue very closely; we have a lot of  
546 members—some of whom are here today—who are very interested in this issue.

547  
548 Henrico Humane Society is concerned about the precedent this enforcement  
549 action might set. We feel that the Henrico County Attorney's Office has really  
550 stretched to try to say that this is not a customarily incidental use of a person's  
551 property. A lot of Henrico Humane Society members feed homeless animals,  
552 cats and dogs. The Henrico County Attorney's Office, I think it's fair to say, has  
553 no idea how many people in the County are engaging in this practice. For that  
554 matter, they have no idea how many people actually feed birds, or feed squirrels,  
555 or do gardening in their yard, which might attract raccoons—any of those uses  
556 that are not specifically spelled out within the Code. Anything could fall under this  
557 argument. Anything at least that's done by a minority of the people in Henrico  
558 County could fall under the argument that not enough people are doing this to  
559 make it a quote, customarily incidental use. We think that is a dangerous  
560 precedent to set, and it hints of selective enforcement, which concerns us very  
561 much.

562  
563 Secondly, I'd like to say that we know for a fact, based on over twenty years of  
564 trying to help animals in Henrico County, that Henrico County Animal Control is  
565 overburdened and is already dealing with a sixty-seven percent kill rate at their  
566 pound of cats. To enforce this issue will not only be a huge expense to Henrico  
567 County taxpayers in terms of having Animal Control deal with all of these animals  
568 instead of private citizens who currently are paying for rabies vaccinations,  
569 neuter, and feeding. But it's also going to result in an even higher euthanasia  
570 rate of cats by the County. Henrico County already has a higher euthanasia rate  
571 than almost every other County in this region, and the statewide average.

572  
573 So I'd ask you to consider all of these repercussions of your decision today. And  
574 again, Henrico Humane Society strongly urges you to support Ms. Mills and not  
575 impose this violation on her. Thank you very much.

576  
577 Ms. Harris - Ms. Rhode, somewhere in our literature we had the  
578 number 300 feral colonies in Henrico County. Does that sound realistic to you?

579  
580 Ms. Rhode - I really don't know; I wish I could answer that. I don't  
581 know. I know that many of Henrico Humane Society's members feed homeless  
582 cats and homeless dogs. Whether that would be called a consistent colony that

583 they actually care for? I know that they trap as many as they can, and they get  
584 them neutered and vaccinated. I couldn't give you a number, though, ma'am.  
585  
586 Ms. Harris - Can we have the members of Henrico Humane  
587 Society to stand. Yes.  
588  
589 Ms. Rhode - Anyone in the audience who is a member of Henrico  
590 Humane Society?  
591  
592 Ms. Harris - Thank you.  
593  
594 Ms. Rhode - I can tell you that the Board of Henrico Humane  
595 unanimously supports Ms. Mills.  
596  
597 Mr. Witte - Ms. Rhode?  
598  
599 Ms. Rhode - Yes sir.  
600  
601 Mr. Witte - You stated that this is selective enforcement?  
602  
603 Ms. Rhode - I believe I said it hints that and that we are concerned  
604 that it might be.  
605  
606 Mr. Witte - Oh, okay. I just wondered what premise you had for  
607 selective enforcement. My understanding is they enforce on a complaint basis.  
608  
609 Ms. Rhode - Yes sir. Well, I feel like there are many, many types of  
610 uses that are not specifically allowed as permitted uses under the County Code.  
611 And other uses that have not necessarily been targeted and were not brought  
612 before the Board besides this feeding of feral cats might suggest that there is an  
613 agenda to try to get rid of the feeding of feral cats in the County.  
614  
615 Mr. Witte - So you weren't expressing concern that Ms. Mills was  
616 singled out.  
617  
618 Ms. Rhode - As an individual, no sir. I'm saying that the idea that  
619 feeding of feral cats is somehow different from any other not-explicitly-laid-out  
620 permitted use is concerning to Henrico Humane Society, we don't want that  
621 particular issue because it's cat-related or animal-related.  
622  
623 Mr. Witte - I thought maybe you had information that we didn't  
624 have.  
625  
626 Ms. Rhode - No sir. I did not mean to give that impression.  
627  
628 Mr. Witte - Thank you.

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Ms. Harris - Are there other questions from Board members?

Mr. Baka - Yes, Ms. Harris. One question, Ms. Rhode.

Ms. Rhode - Yes sir.

Mr. Baka - The staff report points out that in order for feral cats to be lawfully occurring in R-4, it must be customarily incidental. Could you restate or rephrase what you said earlier about why you believe that the use would be necessarily customarily incidental?

Ms. Rhode - I think it would be customarily incidental, if that can be defined. There are two issues I have. One is I don't know—and I don't think anyone knows—what customarily incidental is. And to say that because just not enough people are doing something it's not customarily incidental is not a good argument. I believe it is customarily incidental because companion animals, which is what cats are defined as in Henrico County Code—many, many people in the County, the majority have companion animals in the County. To say that the feeding of one companion animals because it's a certain species, or because it might be wild or homeless, just for that reason, there's no difference between feeding a feral cat or a stray dog or your own cat or dog. So I don't see a distinction there.

Mr. Baka - Thank you.

Ms. Harris - Thank you so very much. Anyone else who wishes to speak to this case please step forward and give us your name.

Miss Katie Harris - Good morning, my name is Katie Harris. That's H-a-r-r-i-s. I just turned fourteen and I'm an eighth grader at St. Michael's School. As I walked up to the podium some of you may have thought here's a kid coming to talk about how cute cats and kittens are, and how sad it would be if somebody is not permitted to take care of them. That reaction only scratches the surface or who I am and why I'm here.

You see, I'm allergic to cats and can't touch them without immediately washing my hands. My first experience with felines was a rescued cat my parents got before I was born. They got her from the Richmond Animal League. Despite my inability to touch this cat, Lillyboo, I longed to stroke her black fur. But to Lillyboo, I was a stranger, indeed a terror as I pursued her through the house just to touch her softly with a long wooden spoon. I can say that in hindsight, Lillyboo might as well have been a feral cat to me. But Lillyboo lived a good life of thirteen years. Her death affected my family profoundly.

674 No one was interested in trying to replace Lillyboo, but finally, with some grieving  
675 behind us, we decided to look for a dog. We got a shelter dog, Chloe, who I like  
676 to think can peer into my heart and mind. We have a pillow in our den stitched  
677 with the words that should apply to every caring owner: I want to be the kind of  
678 person my dog thinks I am. And that saying leads me to cats, character,  
679 compassion, and Susan Mills.

680  
681 I volunteer at the Richmond SPCA. I've walked hundreds of dogs, young and old,  
682 longing for a few minutes of contact. I've handled kittens and cats who coexist  
683 with each other remarkably well in the SPCA's den. I've washed loads of laundry  
684 at the SPCA. I've shaved the bellies of sedated kittens and cats, both feral and  
685 domesticated before they are spayed or neutered. And I've helped give these  
686 same cats the vaccinations that the kittens born in family garages or utility rooms  
687 may not get. But wasn't that litter so cute for the kids to see before they became  
688 a burden and ended up on the side of a country road as someone else's  
689 responsibility? Cast off like a piece of litter? And I've observed the tireless work  
690 of the unsung heroes at the Richmond SPCA, who make sure the cats they  
691 shelter go on to live healthy—but thankfully non-reproductive—lives.

692  
693 I'm not going to elaborate on the trap-neuter-return programs that are sweeping  
694 across the country. Let's just say that a feral cat colony of the trap-neuter-return  
695 program is at the end of its reproductive life. But it is a healthier colony because  
696 of the kindness of strangers. A TNR colony will not be breeding unwanted cats.  
697 Trap-neuter-return is a win-win outcome for everyone. What would this County  
698 prefer, a colony of feral, sterile, and vaccinated cats, cared for free of County  
699 expense, or roaming strays that end up as road kill for a maintenance worker to  
700 shovel off the road? Or a euthanized cat killed at the community's expense?

701  
702 No less importantly, what signal do you want to send to the children—a message  
703 that if an animal is not yours you bear no responsibility, are messages that will  
704 resonate with them for years. First, true character is measured by what one does  
705 for others who can do nothing for them in return. Second, character is doing the  
706 right thing when on one is looking. Don't our parents and teachers teach us  
707 these principles every day? Why is this setting and this circumstance any  
708 different?

709  
710 Some of the world's greatest minds made the most profound remarks, not only  
711 about man's need for humanity to fellow man, but also about man's relationship  
712 to other creatures. Gandhi said, "The greatest of a nation and its moral progress  
713 can be judged by the way its animals are treated."

714  
715 Abraham Lincoln stated, "I'm in favor of animal rights as well as human rights.  
716 That is the way of a whole human being. I care not much a man's religion whose  
717 dog and cat are not the better for that religion."

718



719 I want to end my appeal with you with a brief poem that I didn't write, but that  
720 captures the bond between the Susan Mills of the world and the creatures those  
721 persons care for. It is written through the silent voice of a feral cat:

722  
723 I sit beneath the bushes as she fills my dish each day,  
724 I only venture out to eat when she has gone away,  
725 I know it will upset her when I turn away and hide,  
726 As every day she tries her best to get me by her side.  
727 I wish that I could let her know that I don't want to run,  
728 And hope that she will understand it's nothing that she has done.  
729 I'd like to have her stroke me and pat my weary head,  
730 But fear will overcome and I'll run and hide instead.  
731 For all the kindly people who feed the strays each day,  
732 I pray the Lord will care for them as they have cared for me.

733  
734 I will leave you with one question as you decide whether Ms. Mills deserves any  
735 criticism, a question that ties into the debate today. Is compassion for creatures  
736 a customarily incidental act? Abraham Lincoln would say so.

737  
738 Regardless of where we live, whether in the country or a suburb, compassion  
739 makes us fully human. Protect those creatures who cannot protect themselves is  
740 the decent act of compassion we can display.

741  
742 On behalf of Ms. Mills, concerned citizens like her, and the many creatures not  
743 born into a caring home, I beg you to do what your conscience is already telling  
744 you to do: Show your full humanity. We'll be a better people for it. Thank you for  
745 hearing my plea this morning.

746  
747 Ms. Harris - Katie, are you still allergic to cats?

748  
749 Miss Katie Harris - Yes ma'am.

750  
751 Ms. Harris - I know you said you worked for the SPCA and all  
752 these things you do for cats. I was just wondering. You take your shots, right?

753  
754 Miss Katie Harris - Yes ma'am.

755  
756 Ms. Harris - Oh good. Are there other questions from Board  
757 members? Thank you.

758  
759 Ms. Loehr - I'm Suzanne Loehr—L-o-e-h-r. And Katie, I'm glad to  
760 know I'm not the only Southsider here. I actually crossed the river to be here.

761  
762 Everything that everyone has said I certainly agree with and there's no point in  
763 my going into the TNR anymore. I didn't ask for the cats that I ended up with; I  
764 just simply moved my office from the Fan to Hull Street Road, and I ended up

765 personally trapping, neutering, and—well I didn't release them. I adopted out all  
766 the kittens. And since nobody wanted the adults, and I didn't want them on Hull  
767 Street Road smashed in front of my office, I took my retirement and I built a  
768 sanctuary. But I'm at my limit. I don't care to find anymore; however, it seems like  
769 they all seem to find me. But together I've taken care of probably about thirty-  
770 five.

771  
772 The thing about Ms. Mills and people that are out there feeding these animals,  
773 they're not taking money from anybody. They're doing this strictly on their own,  
774 their own funds. My veterinarian, Dr. Fielding O'Niell, who I think the world of,  
775 when I started bringing my animals in, first of all he said, you can't save them all.  
776 You can only save the ones that come to you. And he said their only chance of  
777 life is human intervention, and that's exactly what Ms. Mills has done. She's been  
778 in her house for thirty-seven years. She has one small colony. It's only about  
779 what, approximately seven cats; that's what she has right now. Some others may  
780 come, but she's responsible, she will have them fixed, she will have them  
781 neutered, she will arrest that group. That group is arrested.

782  
783 The statistics are, I believe, one male cat, one female cat times seven years  
784 without any intervention as far as being neutered, ends up being about 425,000  
785 cats. So I think by the fact that she's been there thirty-seven years, she has  
786 seven cats that are completely controlled that I guarantee you are not going to  
787 come out and visit anybody probably other than her and the people that they  
788 know that they can trust, I think she's doing a really good thing. And she's kept  
789 her neighborhood probably very well controlled from these feral cats.

790  
791 But to me, *feral* is just a term. I have two lying on my bed at home right now. The  
792 ones in my building in their little catios that wouldn't even come in the same  
793 parking lot with me a few years ago, and now not only will they get in my lap, but  
794 they also will not run every time they see a person. They're a life and they  
795 deserve to be here. They didn't ask to be dumped; they didn't ask to be  
796 forgotten. And thank goodness there are people out there that care enough to at  
797 least make them as comfortable for the few amount of years that they have.  
798 Thank you.

799  
800 Ms. Harris - Any questions from Board members?

801  
802 Mr. Witte - You stated that you have actually domesticated these  
803 feral cats.

804  
805 Ms. Loehr - Would you like to come see them?

806  
807 Mr. Witte - I was under the impression that you couldn't.

808  
809 Ms. Loehr - Oh no. They are the biggest love bugs. Now I have  
810 Girlfriend. Girlfriend is the matriarch of my gang, the Hull Street Gang. She's

811 probably the mother, the grandmother, the great-grandmother, and on, of the  
812 rest of the cats that I have. I just finally moved her from the building out at Hull  
813 Street several months ago. She lies on the cot; she lies on her bed. She comes  
814 in the room now when I'm feeding them, because I have a little house that I built  
815 with an attached patio. They think they're outside; they're not. Nothing is going to  
816 get to my animals except me and people that I allow to visit them.

817

818 There are a few I can't touch, but to me, just by the fact that she comes in the  
819 same room when I'm feeding them and I literally slide her food over to her when  
820 all the others are eating at night, like a little prisoner, she goes over there—I  
821 mean she's a life. She can't see very well, and I'm sure it comes from years of  
822 probably just fending on her own for food and whatever she could get. But she's  
823 a life. My sister calls her Guttersnipe. She's probably the poster child for what  
824 "rode hard and put up wet?" She would win the prize. But Girlfriend is a survivor  
825 and on her own raised some pretty nice cats.

826

827 The cycle's been broken. The cycle's been broken at the Salvage Barn. That's  
828 where I work, right next to the Salvage Barn. And the cycle's been broken by Ms.  
829 Mills. And the cycle's being broken all over the place. And I've adopted out a lot  
830 of my ferals. I have a problem with that definition because anything with a little  
831 love and compassion—it's amazing. I had one on a shelf for ten months; she  
832 stayed on the shelf. It took her ten months, but she's now with the other cats and  
833 she lets me touch her. To me that was a big—call me crazy; everybody else  
834 does.

835

836 But you know what? I like that crazy, I like that challenge. The whole thing is their  
837 life. And they don't deserve to starve; they don't deserve to be cold; they don't  
838 deserve to be kicked; they don't deserve to be shot at. I had one that was shot,  
839 literally. It was a little kitten that probably belonged to one of them that I trapped.  
840 I was going over to my office every single day. I had them all confined; I wasn't  
841 that stupid. They were all in buildings. And let's not even talk about how much  
842 money I've spent. I'll never retire and I'll probably be moving in my cat house  
843 before it's all over with. But I came to the back of my office one day to check on  
844 my ones that I had in the back area, and there was a little kitten. He was shot,  
845 just like somebody just aimed right at his head. Went straight through on both  
846 sides. Now what's the point of that?

847

848 Mr. Witte - Excuse me. Can we relate to the case?

849

850 Ms. Loehr - Oh, I'm sorry, I'm sorry. I better sit down.

851

852 Ms. Harris - Ms. Loehr, I think this question requires a short  
853 answer. When you said you built a sanctuary near your office, you did not build  
854 the sanctuary for the cats in your residential neighborhood?

855

856 Ms. Loehr - I built the sanctuary at my house because if I hadn't I  
857 would have absolutely no life.

858  
859 Ms. Harris - Thank you.

860  
861 Mr. Blankinship - Let's just reiterate. We need to stay on the subject  
862 and information that has not been provided previously, please.

863  
864 Ms. Holtz - Hello, my name is Elizabeth Holtz—H-o-l-t-z. I'm  
865 speaking on behalf of Alley Cat Allies, a national organization in Washington,  
866 DC, that's dedicated to the protection of cats. I will be brief. I'm going to speak  
867 briefly on why trap-neuter-return is scientifically proven to me the best.

868  
869 Mr. Blankinship - We've already heard that many times.

870  
871 Ms. Harris - Yes.

872  
873 Mr. Blankinship - We only need anything that has not been said so far.

874  
875 Ms. Holtz - Okay. I'm also here to speak on the question of birds.

876  
877 So first, I just want to say that attempts to permanently remove the cats will  
878 always fail because of the scientifically documented phenomenon known as the  
879 *vacuum effect*. So regardless of what you decide today, there will be cats there  
880 next year regardless of what Ms Mills does. If there weren't so many feral cats I  
881 wouldn't have a job and this wouldn't be a national policy issue.

882  
883 As to the birds, I know you've received documents from the American Bird  
884 Conservancy and other groups. I first want to say that Alley Cat Allies is an  
885 *animal* advocacy organization. We want birds to live just as much as cats. The  
886 reason we believe they can coexist peacefully is because they've done so for  
887 thousands of years. Outdoor cats have been outdoors for about 10,000 years. It  
888 wasn't until the 1940s that we even had the notion of indoor cats because  
889 someone invented kitty litter.

890  
891 I also want to say that it's a myth that removing or killing cats will save declining  
892 bird populations. One, because as I already said, new cats will move in and  
893 breed to capacity. And second, the real threat to birds is habitat destruction. And  
894 our federal environmental laws reflect this. Humans are responsible for the major  
895 threats to bird life. The arguments made by the American Bird Conservancy and  
896 other groups are grossly misleading and use sort of pseudoscience to get people  
897 angry.

898  
899 So in light of these realities, I urge you not to prohibit Ms. Mills from engaging in  
900 TNR and providing a much needed service to her community.

901

902 Ms. Harris - Thank you. Are there any questions for Ms. Holtz?  
903  
904 Ms. Hochstein - Good morning, my name is Linda Hochstein—H-o-c-  
905 h-s-t-e-i-n. If I may, I'd like to thank Katie very much for coming. Her parents  
906 have done a great job. I've taught my children to be kind, be kind to animals.  
907  
908 And because of that, when my daughter bought a house in 1999—  
909  
910 Mr. Blankinship - Ma'am, we need to stay focused on this issue. We  
911 need move on; it's been an hour now and we haven't heard from the County  
912 Attorney's office yet. I'm sorry. I wish we had all day, but we really don't.  
913  
914 Ms. Hochstein - Okay. Then let me say thank you for letting us say the  
915 Pledge of Allegiance, one nation under God. I believe the cats, the dogs, the  
916 animals, and us were put on this earth because of God. Every Christmas on my  
917 table are pictures of soldiers. These soldiers feed feral animals and are  
918 comforted by these animals. And nobody should tell us whether we can feed  
919 something, some animals, someone who's in pain, someone who is hungry. We  
920 shouldn't be told that we can't feed them. That's saying the wrong thing to our  
921 children, which means one day there won't be somebody like Katie standing up  
922 here and speaking with compassion and caring. Thank you.  
923  
924 Ms. Harris - Thank you.  
925  
926 Mr. Pugh - My name is Robert Pugh—P-u-g-h. I've been a  
927 resident of the Richmond area for about the past thirty years. What I have to say  
928 will take about one minute.  
929  
930 Mr. Wright - Where do you live, sir?  
931  
932 Mr. Pugh - Chesterfield County. I'm here to represent the frogs,  
933 the toads, the lizards, the birds that cats kill. Cats kill anything small that moves.  
934 The Richmond area has many feral cat colonies where cat food and water are  
935 left on a daily basis. They're at residential houses, as in today's case. They are  
936 on commercial business grounds. And they are in many of our county parks. For  
937 example, about six months ago in one county park where I have personal  
938 experience, there were between twenty-five and thirty cats fed and watered daily  
939 at about four different feeding stations.  
940  
941 Removing these cat colonies will save a lot of our native wildlife. Cats that are  
942 pets should be loved and kept indoors. Cats that are no longer pets should not  
943 be pushed into what little remaining wildlife there is. It is sad that we have all of  
944 these unwanted cats due to irresponsible prior pet owners. But our wildlife is  
945 more important than these discarded pets. Our wildlife is more important.  
946 Please deny this variance. Thank you.  
947

948 Ms. Harris - We thought you were speaking in support of Ms.  
949 Mills.  
950  
951 Mr. Pugh - No. I thought you were calling for—  
952  
953 Ms. Harris - You're ahead of your time. I think we have everyone  
954 who wishes to speak in support of Ms. Mills.  
955  
956 Mr. Baka - Ms. Harris, I do have a question. Will we have the  
957 opportunity to go back and ask questions of people who have spoken previously,  
958 or is now the more appropriate time to do that?  
959  
960 Ms. Harris - We want to move on at this point. In opposition to this  
961 application.  
962  
963 Mr. Tokarz - Members of the Board, my name is Tom Tokarz. I  
964 represent the Director of Planning in this appeal by Ms. Mills of the Notice of  
965 Violation sent to her concerning the feral cat feeding at her residence.  
966  
967 I'll begin by saying it is true that I did not send documents to Ms. Mills. As  
968 ethically required as an attorney I sent them to her representative. Ms. Starr had  
969 acknowledged in her opening remarks that she did receive all three of the  
970 submissions that I sent to the Board. So that information has been shared with  
971 the representative.  
972  
973 Certainly there have been a number of emotional appeals, and I'm not here to  
974 debate the emotion or the wisdom of TNR programs, or whether the ordinance  
975 should do this or that. Really there is a much narrower question that's before the  
976 Board. And ultimately the wisdom of how the ordinance should provide for this  
977 issue lies with the Board of Supervisors. I'll explain that as I go through the  
978 analysis.  
979  
980 There has, however, been a lot of discussion about scientifically-proven claims  
981 about TNR, and I'd like to just read a very short excerpt about that in opposition  
982 to that. This comes from a 2009 article of *Conservation Biology*, published in  
983 February 2009. It's called "Critical Assessment of Claims Regarding  
984 Management of Feral Cats by Trap-Neuter-Return." The abstract that precedes  
985 this extensive article says:  
986  
987 We compared the arguments put forth in support of TNR by many  
988 feral cat advocates with the scientific literature. Advocates  
989 promoting TNR often claim that feral cats...are insignificant vectors  
990 or reservoirs of disease. Advocates also frequently make claims  
991 about the effectiveness of TNR, including claims that colonies of  
992 feral cats are eventually eliminated by TNR and that managed

993 colonies resist invasion by other cats. The scientific literature  
994 contradicts each of these claims.  
995  
996 I'm not going to get into a debate today, but that is the conclusion of a study of  
997 the scientific literature with respect to TNR.  
998  
999 There is another fact that hasn't been mentioned and can explain one of the  
1000 reasons we're here today. The Board of Zoning Appeals had two hearings on  
1001 this conditional use permit application of Ms. Mills earlier this year. In that  
1002 hearing you had testimony from several neighbors, one of whom told you that  
1003 she had been bitten by a rabid cat in Ms. Mills' neighborhood in 2009 and had to  
1004 undergo a series of rabies treatment. So we're not talking about a simple matter  
1005 of compassionate taking care of cats; we're talking about other issues that are  
1006 much broader than this. And for that reason, I would submit to the Board of  
1007 Zoning Appeals that this is a matter that really is properly resolved by the Board  
1008 of Supervisors in amending the Zoning Ordinance.  
1009  
1010 So let me talk about the legal reasons why the Director of Planning contends that  
1011 this is a proper notice of zoning violation. Ms. Starr has given you her analysis of  
1012 the ordinance, and I'd like to walk you through in a very simple analysis the  
1013 reasons why the Notice of Violation was correct.  
1014  
1015 The analysis starts with Section 24-6. That is the section of the Code that  
1016 basically says any use not permitted by the Zoning Ordinance is prohibited. Any  
1017 use not permitted is prohibited. That's 24-6. This is a residential district that Ms.  
1018 Mills lives in, and so we turn to the list of uses that are permitted in the  
1019 residential districts. Section 24-11 says that the principal uses permitted—and it  
1020 gives a listing of those and there's about twelve of them, none of which includes  
1021 the feeding of feral cats or even the caring of companion animals. If you next  
1022 turn to Section 24-12, the conditional uses that are permitted by special  
1023 exception. Once again, there is nothing in the ordinance that permits the caring  
1024 for companion animals as they are defined.  
1025  
1026 There is one section I do want to draw your attention to, though, in 24-12,  
1027 because the next case that's on your agenda today actually addresses an  
1028 application under this section, and that's Section 24-12(e). What that section  
1029 says is, it is permitted to have a non-commercial kennel for the keeping of  
1030 animals by the occupant of the property. And "kennel" is defined under Section  
1031 24-3 of the County Code as a place for the keeping of more than three animals.  
1032 That would include dogs, that would include cats, that would include other  
1033 animals. If you want to have more than three, you are required by the ordinance  
1034 to come to the Board of Zoning Appeals and receive a conditional use permit.  
1035 That's a important consideration because one of the issues before you is this,  
1036 the argument that Ms. Mills seeks to make to you today is that even though the  
1037 Zoning Ordinance says you must get a permit to keep more than three animals  
1038 on your property, she should be allowed to feed an unlimited number of cats who

1039 come onto the property. I would suggest to you that is totally contrary to the  
1040 purpose of the non-commercial kennel special exception provision of the  
1041 ordinance.

1042

1043 Finally, the next-to-last provision, Section 24-12.1, Provisional Uses. This is a  
1044 section that allows uses permitted by a special use permit granted by the Board  
1045 of Supervisors, and there are four of those. None of those four uses would allow  
1046 for the caring of companion animals on the property.

1047

1048 That leaves only one other possible category for the permitted use of caring for  
1049 companion animals, and that is Section 24-13. I think that if you listened to Ms.  
1050 Starr's argument, we agree that this is the operable section here. What this  
1051 section says is that, "Accessory uses customarily incidental to a permitted  
1052 principal or conditional use on the same lot therewith, including among others,"  
1053 and it gives a whole listing. None of the listing includes caring for companion  
1054 animals. And so the only possible way that the caring of companion animals can  
1055 be permitted under the ordinance as written by the Board of Supervisors is if the  
1056 use is customarily incidental to a permitted principal or conditional use. I think  
1057 Ms. Starr and I agree on that.

1058

1059 Now the principal use on Ms. Mills' property is a residential dwelling. And so the  
1060 question then reduces itself to this: What is customarily done in residential  
1061 properties in Henrico County? Now there is no dispute by the Director of  
1062 Planning that keeping of dogs, domestic dogs, and housecats is a customarily  
1063 incidental use. Nor is there any dispute by the Director of Planning that the  
1064 feeding of birds with birdfeeders is an accessory use permitted by the Zoning  
1065 Ordinance. Where we disagree is that the feeding of feral cats is customarily  
1066 incidental. And if you agree that it's not customarily incidental, it is not permitted  
1067 and the Notice of Violation is correct in this case.

1068

1069 Now we've had a lot of discussion by people who have told you by anecdotal  
1070 evidence that there are people who feed feral cats in Henrico County. I would  
1071 submit to you that the evidence already submitted to you and previous  
1072 admissions to the BZA indicates that this is not customarily incidental in Henrico  
1073 County. The Director of Real Estate Assessment has provided a letter, which has  
1074 been submitted to the Board, that says there are over 129,000 residential units in  
1075 Henrico County. You have had no evidence before you that there is any  
1076 significant number of residential units where the feeding of feral cats occurs.  
1077 You've heard about some people here and some people there. But I would  
1078 submit to the Board of Zoning Appeals that the Director of Planning is correct  
1079 based on the record before you and your own common sense that the feeding of  
1080 feral cats is not what most people do. The definition of *customary* is it's a usual  
1081 or habitual use. This is not the norm.

1082

1083 And it's not a matter of saying we're just singling out feeding of feral cats. What  
1084 we're really saying is that we will permit, and the Zoning Ordinance



1085 contemplates, that those things that are normally done by residents in their  
1086 residential property are permitted without the need for a permit, without the need  
1087 to come back to the County and get permission. But the feeding of feral cats,  
1088 which based on the testimony that has been made part of the record from the  
1089 May 26, 2011 hearing, which I submitted to the Board in my letter of October  
1090 18<sup>th</sup>; testimony from the neighbors indicating concerns about disease; the lady  
1091 who has been bitten by a rabid cat in the neighborhood; the property damage  
1092 that's being caused by the cats; the nuisances of these cats—this is not a  
1093 situation where Ms. Mills can tell you there is no impact on the neighbors. Four  
1094 neighbors have complained to you, have come to you in this meeting in May and  
1095 told you exactly the opposite.

1096  
1097 Once again, the final analysis is not for me to stand up today and tell you what is  
1098 the wise thing, the compassionate thing, what you ought to do. That's really not  
1099 the call before you. I'm not going to try to persuade you that these folks who are  
1100 very sincere, very well-intentioned, and very compassionate are wrong. I'm  
1101 simply saying to you that in terms of the Zoning Ordinance, as it exists today,  
1102 simply does not permit the feeding of feral cats as is currently constituted, and  
1103 this issue is properly one for the Board of Supervisors to consider in amending  
1104 the ordinance to allow it to do so. For that reason I would ask the Board of  
1105 Zoning Appeals to affirm the decision of the Director of Planning and to reject the  
1106 appeal of Ms. Mills.

1107  
1108 I'll be happy to answer any questions.

1109  
1110 Ms. Harris - Any questions?

1111  
1112 Mr. Wright - I have one question.

1113  
1114 Mr. Tokarz - Yes sir.

1115  
1116 Mr. Wright - Are you really personally familiar with feral cats?  
1117 Have you had any experience with them?

1118  
1119 Mr. Tokarz - I can't say that I have, no sir.

1120  
1121 Mr. Wright - I have. I've personally had experience with them.  
1122 Think about this; use some common sense. If Ms. Mills is denied the right to feed  
1123 these cats, what's going to happen to them? There has been testimony here that  
1124 they won't go away. By experts. What's going to happen to the neighborhood?  
1125 These neighbors who are fussing about her feeding these cats, they're going to  
1126 have them over at their house; they're going to have them in their trashcans;  
1127 they're going to have them foraging throughout that community looking for food.  
1128 So what have we cured here by denying Ms. Mills the right to feed the cats?

1129

1130 Mr. Tokarz - I have two answers for you, Mr. Wright. The first  
1131 answer is the Animal Protection Officer is fully prepared to collect the cats and to  
1132 deliver them to the SPCA for the SPCA to care for. We've heard testimony  
1133 already that feral cats are adoptable. So that is something that—  
1134

1135 Mr. Wright - I deny that. You listened to one person; I've had  
1136 experience. You cannot get within fifteen feet of a feral cat. I had that  
1137 experience. They're wild. Look in the dictionary and what the definition of a feral  
1138 cat is—a wild animal. Maybe there are exceptions, but I would say the rule would  
1139 be these cats are not approachable.  
1140

1141 Mr. Tokarz - Mr. Wright, I will defer to your experience about them  
1142 being wild animals; I will not disagree with that. But that leads me to my second  
1143 point. The implication of the case that is before you is this. You're being asked to  
1144 decide that the feeding of feral cats is a customary incidental use in a residential  
1145 neighborhood. There is no distinction in this appeal as to whether the cats have  
1146 been vaccinated or neutered. And for the Board of Zoning Appeals to decide  
1147 today that the feeding of feral cats is a customary incidental use permitted in a  
1148 residential neighborhood will lead to two consequences. One consequence will  
1149 be that people will be allowed to continue to feed feral cats even if they've not  
1150 been vaccinated and even if they've not been spayed and neutered, which will  
1151 increase the feral cat problem, not diminish it. And the second issue is going to  
1152 be that we will have the permission for an unlimited number of feral cats to be  
1153 fed in Henrico County without any control whatsoever. So I will defer to your  
1154 experience as to feral cats being wild animals, but I suggest to you that granting  
1155 the appeal would lead a worse consequence than not granting the appeal.  
1156

1157 Mr. Wright - There are two points you miss. One is that we've had  
1158 testimony here from experts today that most of these people who feed these  
1159 feral cats are involved in the spaying, neutering, and immunization of these cats.  
1160 You gave an example of this neighbor who was bitten by a rabid cat. These cats  
1161 that Ms. Mills is feeding are not rabid. They've been inoculated and the testimony  
1162 is that she keeps that up. It lasts for three years, I understand. And she takes  
1163 them back.  
1164

1165 Also, if you'll go back in the testimony in that hearing, there was testimony that  
1166 there are a lot of cats running loose in that neighborhood, not just these feral  
1167 cats. You would understand this. There is nothing in the County Code that  
1168 requires you to get a license for a cat, or to keep the cat on your property; they  
1169 all roam. To make this statement when we've had testimony here today that  
1170 rebuts that, in my opinion. I don't think that holds water.  
1171

1172 Mr. Tokarz - Mr. Wright, I certainly am not here to contradict the  
1173 testimony that you've heard from the people who have said yes, we care for the  
1174 feral cats. They know better than I do what the situation is. But you also have  
1175 evidence in the record from Ms. Starr's letter of October 6, in which she told the

1176 BZA that many people take the cats to veterinarians, but many others do not. So  
1177 the evidence before you already is that there are people who are feral cat  
1178 caretakers—and presumably they're not all here—who are not taking them to be  
1179 spayed and neutered. It's those feral cats that you would be permitting to  
1180 continue feeding even though they've not been vaccinated, even though they've  
1181 not been neutered. That's a consideration because that is a necessary  
1182 consequence of a decision in granting Ms. Mills' appeal today.

1183  
1184 Mr. Wright - Okay. You know I'm an attorney.

1185  
1186 Mr. Tokarz - Yes sir.

1187  
1188 Mr. Wright - You as an attorney, what is the charge here?

1189  
1190 Mr. Tokarz - The charge is caring for feral cats—

1191  
1192 Mr. Wright - Wait minute. Against whom?

1193  
1194 Mr. Tokarz - Ms. Mills.

1195  
1196 Mr. Wright - So it's a particular charge; it's not a charge for the  
1197 whole County. A particular charge. And if it's a particular charge it affects these  
1198 seven feral cats, not all the cats in the world. Right?

1199  
1200 Mr. Tokarz - That would be true in a criminal case—

1201  
1202 Mr. Wright - Okay. So you've tried to extend that to apply to all the  
1203 feral cats in Henrico County. This is one particular charge against one property  
1204 owner who wants to exercise her rights as a property owner.

1205  
1206 Mr. Tokarz - The reason Mr. Wright I've done that, is because the  
1207 charge that caring for feral cats is not a customarily incidental use of residential  
1208 property, that by definition in the Zoning Ordinance applies to *all* people caring  
1209 for feral cats in the County, not just Ms. Mills. The question is what is permitted  
1210 under 24-13 when it says, "accessory uses customarily incidental to residential  
1211 uses." That means in the County. Not just at Ms. Mills' home, but to all homes in  
1212 the County. That's why your decision here today is not just limited to Ms. Mills. It  
1213 certainly affects her Notice of Violation, but it also affects everybody else who  
1214 feeds feral cats in the County.

1215  
1216 Mr. Wright - That's a good point; I'm glad you mentioned that. As  
1217 you've readily admitted, there is no specific statement in the Henrico Code for  
1218 keeping animals, except if you're going to have more than four, but you can have  
1219 two or three. There is no specific provision in that Code that says anything about  
1220 having animals in your home as pets. So the Planning Director has determined  
1221 that it's customary to have dogs and cats in your house. And since this other

1222 provision says four, then we limit it to three. We back into that. The County Code  
1223 has not addressed this.

1224

1225 I agree with you wholeheartedly that this is a matter that should be brought  
1226 before the Board of Supervisors. And I say that because what you're asking this  
1227 Board to do is to set a precedent based on the interpretation of one person, the  
1228 Director of Planning. You're asking this Board to set this precedent that can be  
1229 applied throughout Henrico County to every one of thousands of residents in this  
1230 County. That's what you're asking us to do, and that's a tough thing for this  
1231 Board to be involved in when this matter should be somewhere else.

1232

1233 Mr. Tokarz - I agree with you, Mr. Wright. I certainly understand  
1234 the difficult spot that the Board of Zoning Appeals is—

1235

1236 Mr. Wright - It's not difficult for me, but.

1237

1238 Mr. Tokarz - It's difficult for the other members then. It's a difficult  
1239 spot because what you have here is the intersection of legal argument and  
1240 drafting of the County's Ordinance with the wisdom of the legislative judgment  
1241 that's been made by the Board of Supervisors. The best answer I can give you is  
1242 that fortunately enough, by statute, the Board of Zoning Appeals requirement  
1243 and jurisdiction and obligation is simply to determine whether the Director of  
1244 Planning has correctly applied the ordinance in this particular case, not to  
1245 determine whether TNR is good or bad, whether a feeding ban is wise or unwise,  
1246 whether the County's policy is compassionate or not. Those are not the issues  
1247 before you. I'm really here only to discuss the unfortunately narrow—or  
1248 fortunately, depending on your point of view— narrow legal point of whether the  
1249 Director's decision accurately interprets the Zoning Ordinance.

1250

1251 Mr. Wright - That bring me to my last point. You've already alluded  
1252 to this. Ms. Mills lives in an R-4 District. I was going to address this later, but you  
1253 already said—and I know—that there are I think eleven other residential districts  
1254 beginning with A-1 and going all the way through general residential in the  
1255 County. You're asking this Board to make a determination that affects thousands  
1256 of residents who have not been notified or had an opportunity to be heard. I  
1257 would venture to say that if this were brought up in that matter before the Board  
1258 of Supervisors, you're going to have to get a larger place than this for that  
1259 hearing for people who have rights. We all have rights. Unfortunately, in this  
1260 country today, those rights are being taken away every day—federally, state, and  
1261 now locally. This is something that we have to think about, but you're asking us  
1262 to make a decision that affects thousands of residents in other districts when  
1263 they are not before this Board.

1264

1265 Mr. Tokarz - I think inevitably, Mr. Wright, that's the consequence  
1266 of the way enforcement of the County Zoning Ordinance operates. As Mr. Witte  
1267 asked the question earlier, the way the County Zoning Ordinance is enforced is

1268 on a complaint-only basis. We have inspectors who, when the County receives a  
1269 complaint from neighbors, as they did in this case, saying there is a violation of  
1270 the County Code, will go out, do an investigation, and hopefully talk with the  
1271 owner. We try to get voluntary compliance. I've been doing this for twenty-plus  
1272 years and ninety-five percent of the time we get voluntary compliance. People  
1273 say, "I may not like it, but I'll comply." We have some others who do not comply  
1274 and we take them to court. And then there are some, a few number, you have  
1275 them, who will appeal a decision that's made by the Director of Planning, which  
1276 is certainly their right under State law. In fact that's one of the reasons that the  
1277 Board of Zoning Appeals was created, is to make those determinations.

1278  
1279 Whenever you make those determinations on those appeals, you are necessarily  
1280 affecting the person who is making the appeal before you. But it is true, I will  
1281 agree with you that the decisions that you make are going to probably set a  
1282 precedent because here's the consequence if it doesn't. The consequence is  
1283 that the next complaint we get about feral—no matter what your decision is, the  
1284 next complaint we get about feral cats there may be another appeal to the Board  
1285 of Zoning Appeals. And at some point one or two things is going to happen.  
1286 Either it's going to be decided by the Circuit Court, or it's going to be decided by  
1287 the Board of Supervisors. And as I've suggested to you today, the only question  
1288 you have to decide is the narrow one, is the interpretation correct.

1289  
1290 Any other questions?

1291  
1292 Mr. Witte - Yes. Mr. Tokarz, can you give me a broad definition  
1293 of *customarily incidental use*?

1294  
1295 Mr. Tokarz - I tried to do that in my first letter on September 30<sup>th</sup>.  
1296 There is no definition of *customary* in the Zoning Ordinance, or the word—

1297  
1298 Mr. Witte - I couldn't find it either.

1299  
1300 Mr. Tokarz - Or *incidental*. So I go to the dictionary. The *Webster's*  
1301 *New Collegiate Dictionary*, the latest edition, which I bought about two weeks  
1302 ago when I was sort of stymied here, says *customary* is defined as, "usual or  
1303 habitual." That's the first part of the definition. *Incidental* is defined as something  
1304 that is "subordinate to the main use." And so my definition of *customary*  
1305 *incidental use* is something that is a usual use that is not the main use, but is  
1306 subordinate to the principal use, which in this case the feeding of feral cats is  
1307 incidental because it is something Ms. Mills does as an adjunct to her main use  
1308 of the property, which is living in a single-family residence. So customarily  
1309 incidental is a habitual use of the property incidental to the principal use—not  
1310 incidental, subordinate to the principal use.

1311  
1312 Mr. Witte - All right, thank you.

1313

1314 Mr. Baka - Ms. Harris?

1315

1316 Ms. Harris - Yes.

1317

1318 Mr. Baka - To follow up on that question. The staff report said  
1319 incidental—and I think from your report—subordinate to something of greater  
1320 importance. And then after that, “having a minor role.” So I guess the question  
1321 comes up, is it within this Board’s purview to consider whether the effect of these  
1322 feral cats has a minor role currently on the property, or due to the effect on the  
1323 neighborhood, no longer has a minor role to that land?

1324

1325 Mr. Tokarz - Thank you for the question. I think reading 24-13—  
1326 and let me pull it open because one thing that Mr. Wright and I know from years  
1327 and years of being lawyers is you always look at the ordinance or the statute.  
1328 The beginning of 24-13 says: “Accessory uses customarily incidental to a  
1329 permitted principal or conditional use on the same lot therewith.” Now reading  
1330 that language as written, I do not believe—my opinion—that the Board of Zoning  
1331 Appeals in making a determination on this particular appeal should be  
1332 considering the—well, I’ll take that back. I was going to say shouldn’t consider  
1333 the effect on other neighbors. I do think you need to consider the effect on other  
1334 neighbors. That’s why you had four neighbors who testified in the May 26<sup>th</sup>  
1335 hearing about the effect of having those cats.

1336

1337 One of the reasons you have zoning ordinances, which admittedly, as Mr. Wright  
1338 says, you, by enacting a zoning ordinance, are saying to people you can’t have  
1339 the complete freedom to do what you want on your property. When you buy your  
1340 property, you buy it subject to laws. And the laws are designed to protect not only  
1341 your rights in the property, but also the rights of your neighbors. So the Zoning  
1342 Ordinance has been enacted in order to protect the rights of both the resident  
1343 (the owner) and the neighbor.

1344

1345 So the longwinded answer to your question is yes, I think you can consider the  
1346 effect of these cats on the other neighbors.

1347

1348 Mr. Baka - Quick follow-up. Is it relevant to say that some  
1349 landowners in the County might be able to care for feral cats and be consistent  
1350 with the definition of *incidental*, having a minor role? And then isn’t it also  
1351 possible to then look at other situations of other homeowners that are taking care  
1352 of other feral cats and it no longer has a minor role on that property in that  
1353 neighborhood in that situation? Or is that more of a legislative question for the  
1354 Board of Supervisors to consider?

1355

1356 Mr. Tokarz - I think it’s ultimately a legislative question. I agree that  
1357 you do have to consider each case on a case-by-case basis. Ms. Mills’ situation,  
1358 where she has an R-4 lot, is certainly different than a farm that has a thousand  
1359 acres. That’s certainly true. And you’d have to take a look at that. What I would

1360 suggest to the Board, though, is this. In those cases when there is no negative  
1361 affect on neighbors' properties, you're not going to get complaints and so you're  
1362 not going to get investigations, and you're not going to get Notices of Violation.  
1363 Here you had complaints. Here you've had four neighbors coming in to testify  
1364 about the negative impact this is having on them. And for that reason, I think it's  
1365 appropriate for the Board to consider that in making its decision.  
1366

1367 Ms. Harris - Mr. Tokarz, not only do we have those four persons  
1368 who testified, we've had letters from neighbors who've said that this is really a  
1369 nuisance. It makes us take a stronger look not at the compassionate issue, but  
1370 at the issue that says in R-4 zoning, residential zoning, this is the ordinance. For  
1371 example, Dr. Dugan who spoke said she had one hundred percent neighborhood  
1372 approval. Well in this particular case we don't have that large percentage of  
1373 approval, because clearly, to these neighbors, such as the one who was bitten  
1374 by a rabid cat, it's a nuisance. And when cases come before us, because we are  
1375 not in the legislative position, we have to determine if granting this request will be  
1376 harmful, affect the safety, health, or welfare. That's written in our directions. I see  
1377 the R-4 zoning for residential dwellers as being a strong point in argument for or  
1378 against feral colonies.  
1379

1380 Mr. Tokarz - Ms. Harris, I agree with you. I think that's one of the  
1381 things that is necessarily a legislative judgment. There is certainly an argument  
1382 to be made, a very sincere argument to be made for compassionate care of  
1383 animals. The competing argument on the other side is we have to protect human  
1384 health. I will mention to you one other thing in that regard, which I thought was  
1385 extremely interesting in the article that I have submitted to the Board from the  
1386 2009 *Conservation Biology* study of the scientific literature. Eighty percent of all  
1387 rabies vaccinations in the United States are due to contact with stray or feral  
1388 cats. Eighty percent. So we're not talking about simply a matter of  
1389 compassionate care for animals; we're talking about human health concerns and  
1390 we're talking about protection of property values and enjoyment of your property.  
1391

1392 Mr. Wright - I don't think there was one iota of testimony in that  
1393 hearing that could prove that Ms. Mills feeding these cats caused these  
1394 problems. That's a different question. We determined these cats were not kept  
1395 by her. She can't control these cats. All she does is give them some food. They  
1396 are still in the neighborhood. If she stops feeding these cats, it's going to be  
1397 more of a problem in the neighborhood because they're going to be all over the  
1398 place looking for food. We've had testimony today, and in that hearing, that by  
1399 feeding these cats, it causes them not to roam as much, and not to forage and  
1400 be on other people's property.  
1401

1402 Ms. Harris - I heard that. But I also heard at our other two  
1403 hearings that if neighbors who consider these cats a nuisance would call the  
1404 pound and say come get them off of my property, what's going to happen to  
1405 them. If we really honestly care about what happens to these feral cats, is that a

1406 solution, to let things go as they are and let neighbors call and complain and get  
1407 these cats removed and taken to the pound? And who knows what happens  
1408 then. So I'm concerned that we're seeing one side and we're not seeing the  
1409 complete picture. I can see why this case is before our Board, even though we  
1410 have no legislative authority at all.

1411

1412 Mr. Wright - There are a lot of complaints made by people in these  
1413 neighborhoods that really don't affect this Board or anything else. What you do is  
1414 you tell them to call their supervisor. That's what the Supervisor is for.

1415

1416 Ms. Harris - We'll pass the buck, okay. All right. Are there any  
1417 more questions of Attorney Tokarz?

1418

1419 Mr. Tokarz - Thank you.

1420

1421 Ms. Harris - Thank you. Anyone else who wishes to speak in  
1422 opposition? Please come forward, give us your name, and spell your last name.

1423

1424 Ms. Jenkins - Good morning. My name is Charmaine Jenkins—J-e-  
1425 n-k-i-n-s. I am one of the residents of this neighborhood. I received notice from  
1426 the County in regards to Susan's request, so I am here representing my  
1427 neighbors who unfortunately have been discouraged from coming forward for  
1428 multiple reasons. I want to address quite a few points that Mr. Wright brought up,  
1429 as well as some comments made by those that support this.

1430

1431 First of all, when we were here on the 26<sup>th</sup> of May, there was a resident who  
1432 acknowledged she was attacked by a rabid animal. In that hearing, Ms. Mills  
1433 acknowledged that she started to trap and neuter as a result of that attack. So  
1434 when Mr. Wright made reference to the fact that this rabid cat wasn't a result or  
1435 consequence of her feeding, unfortunately it was. It wasn't until that point that  
1436 she started to trap and neuter because the cats that she was feeding were not  
1437 properly vaccinated and they were running wild in the neighborhood.

1438

1439 The definition of a feral cat is that it's a wild cat. Unfortunately, I think that term is  
1440 being used when it's convenient. I live across the street from Ms Mills. I have  
1441 witnessed her petting the cats, playing with the cats. These are not wild cats. As  
1442 of this morning, one was on my porch. They are not afraid of people. They can  
1443 very easily be captured, taken to the SPCA, and adopted out. I think that what  
1444 has happened at this point is that when the petition was made, that she was  
1445 violating—and this is what I'm gathering from all of the conversations. When the  
1446 petition was made that she was violating having too many animals, is when this  
1447 concept of a feral cat came up. These animals are not feral. I think if you saw the  
1448 broadcast with her on the news, these animals are not afraid of people. I'm  
1449 speaking to the animals that are being fed at 9738 Laurel Pine Drive. I'm not  
1450 speaking about the broad term defining feral cats; I'm not speaking about cats in  
1451 Chesterfield; I'm not speaking about cats in Richmond. I'm speaking about the



1452 cats on Laurel Pine Drive. They are not feral. Whether you want to call them that  
1453 as a convenience, that's totally their option.

1454

1455 Also I wanted to address the concept that if you continue to feed these animals  
1456 they won't hunt. That is untrue. September 18<sup>th</sup>, 9735 came home to a mutilated  
1457 squirrel on their property. That home is the residence of a kindergartener who  
1458 had to have it explained to her why this mutilated squirrel was on the front porch.  
1459 The week of September 11<sup>th</sup> through 18<sup>th</sup>, several dead birds were found at  
1460 9739, which is also directly across the street from these cats. You can feed  
1461 them, you can pet them, you can play with them, but by nature cats are attracted  
1462 to small animals. They play with them. Maybe they think they're toys, I don't  
1463 know. This has become a nuisance. And I'm only speaking in regards to Laurel  
1464 Pine Drive. I don't think we're here to set a precedent for the County; I don't think  
1465 this is a legal matter for the whole County that's going to be affected. This is  
1466 directly affecting our neighborhood.

1467

1468 In addition to the reason why most of the neighbors won't participate in coming  
1469 forward is because on the 26<sup>th</sup> of May, when we were here, as I was leaving one  
1470 of her supporters attacked me right there in the hallway. They were arrested. We  
1471 went to court and they were found guilty. This is not a minor situation where  
1472 people are just trying to feed feral cats. This has become a very aggressive,  
1473 unhealthy environment.

1474

1475 In addition to that incident, I stated on May 26<sup>th</sup>, both Susan and one of her  
1476 supporters acknowledged coming on my property as I was trying to assist  
1477 Henrico County in capturing these animals. Coming on my property and  
1478 releasing these animals. So the question was made, well if you feeding them,  
1479 why don't the residents call the County to have them removed. We've tried that.  
1480 And they have been released in our absence. Unfortunately, I wasn't able to  
1481 prosecute her and her assistant simply because I don't keep a no-trespassing  
1482 sign on my property. I think it's distasteful and I choose not to put one up. But  
1483 they both have been notified not to enter my property again.

1484

1485 Like I said, in addition to that, there was a comment made where we need to do  
1486 the right thing when it's seen or unseen. Unfortunately, the petition that was  
1487 presented on the 26<sup>th</sup> of May, many residents acknowledged that when they  
1488 were approached with that petition it was misrepresented. I think your office has  
1489 been contacted by most of those individuals who signed that petition and said  
1490 that they were misrepresented when they signed that petition. So to imply that  
1491 the neighborhood is in support of this is inaccurate. To imply that this is  
1492 something that we enjoy, watching these animals terrorize our neighbors. And  
1493 you made reference to Ms. Gilcrest being bitten. She was attacked. When she  
1494 tried to get away, the cat continued to come to her. In addition to Ms. Gilcrest,  
1495 on Easmont, which is one street over, a man and a dog were attacked the same  
1496 day.

1497

1498 As far as the cats that are there now, they may have been spayed and neutered,  
1499 but many of the representatives that are in support of this have acknowledged  
1500 that a colony of cats will attract more cats. So if you have these five or six that  
1501 have been spayed, neutered, and rabies, who's to say that additional cats that  
1502 haven't been spayed, rabies, and neutered aren't going to come. That's  
1503 something that cannot be controlled.

1504  
1505 Ms. Harris - Are there questions for Ms. Jenkins? Thank you.

1506  
1507 Ms. Jenkins - You're welcome.

1508  
1509 Ms. Harris - Are there others who wish to speak in opposition?  
1510 There was one question, Ms. Jenkins, just for the record. Do you represent an  
1511 association?

1512  
1513 Ms. Jenkins - [Off microphone.] We don't have an association.  
1514 [Inaudible.]

1515  
1516 Ms. Harris - You know we can't hear you because you're not at  
1517 the microphone. It's not being recorded. If you don't speak in the microphone it's  
1518 not being recorded.

1519  
1520 Ms. Jenkins - No problem. We don't have an association in the  
1521 neighborhood. I've been a resident there for nine years. We haven't had one  
1522 since I've been there. But I am the block captain for Neighborhood Watch. I have  
1523 acknowledged that I have a significant relationship I would say with seventy  
1524 percent of the residents, and I do not know of anyone, other than one individual,  
1525 who is in support of this. So again, it needs to be acknowledged that this is an  
1526 issue on Laurel Pine Drive, as the County has notified me of an appeal for this  
1527 request. And I request that the County reject that because it is a nuisance; it is a  
1528 danger to the wildlife.

1529  
1530 Ms. Harris - You said that.

1531  
1532 Ms. Jenkins - Okay.

1533  
1534 Ms. Harris - One thing, though. You said people signed the  
1535 petition without reading it?

1536  
1537 Ms. Jenkins - No. I don't know what the petition said because  
1538 clearly she knows not to come to me with that. But they were told something  
1539 different than whatever the petition was. When I found out about the petition, it  
1540 was presented that I'm going to capture these cats. I don't know if it was ever  
1541 communicated that they would be released and remain in the neighborhood. And  
1542 I think as a result of that, those individuals who signed the petition have  
1543 subsequently contacted the office.

1544  
1545 Ms. Harris - Thank you.  
1546  
1547 Mr. Wright - I think you'll find, Ms. Harris, that that petition had  
1548 something to do with the non-commercial kennel application. When you notify  
1549 your neighbors that you're going to have a non-commercial kennel, they get  
1550 upset. That was what that was about. And I think there was testimony from Ms.  
1551 Mills that she was trying to explain to them that it wasn't that. I don't know.  
1552  
1553 Ms. Harris - So we don't have a copy of that petition, right?  
1554  
1555 Mr. Blankinship - That's not really relevant.  
1556  
1557 Ms. Harris - That's not really relevant? Okay. We have no one  
1558 else to speak in opposition. Thank you, Ms. Jenkins.  
1559  
1560 Ms. Jenkins - You're welcome.  
1561  
1562 Ms. Harris - Normally we would go to the rebuttal, Ms. Starr, but  
1563 we want to take a break. We need to take a recess. We've been here almost two  
1564 hours. Is your rebuttal going to be rather lengthy? We can't hear you.  
1565  
1566 Ms. Starr - There are things that have been said that we would  
1567 like the opportunity to respond to.  
1568  
1569 Ms. Harris - We'll take a recess. Thank you.  
1570  
1571 [The Board of Zoning Appeals takes a recess.]  
1572  
1573 [The Board of Zoning Appeals reconvenes.]  
1574  
1575 Ms. Harris - As we reconvene, we're going to ask the applicant or  
1576 her representative to give us the rebuttal.  
1577  
1578 Ms. Starr - Thank you so much. I will try to be as economical as I  
1579 can, but there are a number of things I do feel like need to be addressed.  
1580  
1581 Ms. Harris - Please identify yourself again.  
1582  
1583 Ms. Starr - Oh, I'm sorry, yes. I am Robin Starr—S-t-a-r-r. And  
1584 I'm the chief executive officer of the Richmond SPCA. I'm speaking on behalf of  
1585 Susan Mills.  
1586  
1587 First of all, Ms. Harris, you asked a question about the number of caretakers.  
1588 There isn't any way to know exactly. We do know that about 400 feral cat  
1589 caretakers in Henrico County use our clinic. Now there are other clinics in this

1590 community and certainly there are caretakers who use those other clinics. And  
1591 there are certainly ones that go to their own private veterinarian. So the number  
1592 that come to our own clinic is in no way the entire number.

1593

1594 I also want to mention that Ms. Jenkins said these cats were not feral. They are  
1595 feral. First of all, I have fifteen years of experience with feral cats. And I have  
1596 been there, and I have seen these cats, and I can tell you that they are feral.  
1597 Secondly, Mr. Atkinson of the County testified at the hearing in May that they  
1598 were feral. So I think that that is already a part of the record.

1599

1600 I also feel like I have to mention that she said that she was attacked by a  
1601 supporter of Ms. Mills and that he was convicted. I do not believe that that is the  
1602 case; he was not convicted of that. I feel like that in fairness to him we need to  
1603 correct that misstatement.

1604

1605 I also want to bring to your attention that the petition has been mentioned several  
1606 times. This is the document. It is a petition that has been signed by the majority  
1607 of the neighbors on Laurel Pine Drive. It indicates that they are comfortable and  
1608 happy with Ms. Mills continuing to care for these cats, spaying and neutering  
1609 them, and providing them with rabies vaccinations.

1610

1611 Ms. Harris - May we see that when you finish the reference?

1612

1613 Ms. Starr - Yes. Absolutely. I note to you that we have a great  
1614 many people here today in support of Ms. Mills. And we have heard from only  
1615 one person today that has objected to her care for these cats.

1616

1617 Mr. Tokarz returned to a discussion of the issue of the conditional use permit and  
1618 talked about the requirement of getting a conditional use permit for a non-  
1619 commercial kennel. That issue was considered and disposed of by this Board in  
1620 the previous hearing, and it had nothing to do with the kind of animals this is; it  
1621 had to do with the word *cat*. Your analysis—and I believe it was absolutely  
1622 correct—was that Ms. Mills is not keeping and cannot keep these cats in the  
1623 sense that is contemplated by the conditional use permit provision. And  
1624 consequently that issue has been disposed of. So really, all we are considering  
1625 here is whether or not feeding of companion animals is customarily incidental to  
1626 a residence in R-4 zoning.

1627

1628 It is perfectly clear in State law and in the County Code that feral cats are  
1629 companion animals. And there is nothing that indicates that the definition of  
1630 *companion animal* can be sliced up into individual categories. There is nothing  
1631 that indicates that you can limit it down to simply feral cats. It is a collective  
1632 definition. And it is more than clear that a great many people do care for and  
1633 feed companion animals at their residences. In fact, I would submit to you, most  
1634 of us have at some in our lives cared for a companion animal at our residence.  
1635 These feral cats are no different in being companion animals from any other

1636 animal that is within that definition, and consequently we must consider this issue  
1637 collectively.

1638

1639 I guess the thing that I am most mystified about is the constant talk about rabies  
1640 concerns. You know, the case before you, the seven cats that are at issue here  
1641 do not have rabies, cannot have rabies. They have been vaccinated for rabies.  
1642 We have the documentation and certificates that confirm that fact. And there is  
1643 no issue of rabies with respect to these cats. The thing that mystifies me is that if  
1644 the County is successful in not permitting Ms. Mills to continue to care for these  
1645 cats, that will increase, not diminish, the risk of rabies exposure. She has been  
1646 very carefully getting these cats rabies shots. If she is no longer permitted to do  
1647 that, then the risk of rabies exposure is going to go up, not down. So I don't  
1648 understand the crux of that argument, unless what is really being said is that the  
1649 cats should be trapped and killed. I suspect that that is really what is being  
1650 suggested here. Now first of all, that's not an appropriate decision for this Board.  
1651 It has always been within the power of Henrico County Animal Control to trap  
1652 these cats, take them back to their shelter, and after the requisite stray period,  
1653 kill them. That has always been something that the County could do. It might not  
1654 be popular, but is something that the County has the power to do. It is not a  
1655 decision for this Board of Zoning Appeals.

1656

1657 The thing that I think is perplexing, and frankly deeply disturbing about this is the  
1658 idea that it is being suggested, then, is that all of these cats should be trapped  
1659 and killed simply because they may in the future carry the risk of having rabies.  
1660 Now if the County of Henrico is going to begin to take the life of every single  
1661 animal that has the risk of having rabies, you will need to take the life of every  
1662 single warm-blooded animal in Central Virginia. Every warm-blooded animal,  
1663 including humans, has the risk of having rabies. So that is not a concept that has  
1664 ever been undertaken by any municipality. I don't know of any local government  
1665 that has ever gone and wholesale killed every single animal that is warm blooded  
1666 in order to eliminate the risk of rabies. It's not reasonable.

1667

1668 I guess where I would like to bring you back is with Katie Harris, in the eighth  
1669 grade, I think expressed it better than any of the rest of us can. She made a  
1670 deeply touching statement of the importance of compassion and responsible,  
1671 caring behavior about animals. You all are County leaders and I hope and I  
1672 believe that what you want to encourage in your County is the kind of behavior  
1673 that will make it a better place for all of us to live. And it is a better place to live if  
1674 we encourage compassion, responsible behavior, and kind behavior, instead of  
1675 encouraging hysteria, which is what prevails on the other side. These are fear-  
1676 mongering, unreasonable suggestions about these animals that truly pose  
1677 absolutely no risk.

1678

1679 I ask you to be on the side of promoting exactly what Katie Harris suggested:  
1680 kindness, compassion, responsible, understanding care for the animals that we

1681 share our world with. I thank you very much and I know that Ms. Mills thanks you  
1682 very much as well.

1683  
1684 Ms. Harris - Are there Board members who have questions?  
1685

1686 Mr. Baka - Yes ma'am. The Notice of Violation, to be specific,  
1687 reads, "Caring for feral cats in an R-4 District is not a permitted use." So we've  
1688 established the zoning is R-4 and because it wasn't a kennel, in previous months  
1689 the decision was that there was no keeping of the animals there, that it was  
1690 "caring for." So caring for feral cats. Is that correct, that they are indeed feral and  
1691 domesticated?  
1692

1693 Ms. Starr - Feral cats are domesticated. They are simply not  
1694 socialized to human beings.  
1695

1696 Mr. Baka - They're non-socialized domesticated cats. Would you  
1697 also concur they're wildlife in that instance?  
1698

1699 Ms. Starr - Absolutely not.  
1700

1701 Mr. Baka - Okay. And that was stated in your previous letter that  
1702 you submitted to the Board.  
1703

1704 Ms. Starr - Under Virginia law they are not wildlife.  
1705

1706 Mr. Baka - All right. So caring for feral cats in an R-4 District is  
1707 not a permitted use. In order to be a permitted use we talked about 24-6 and  
1708 whether the use is specifically enumerated in the Code or not. At what point do  
1709 you believe this use is incidental to the primary use of the property?  
1710

1711 Ms. Starr - Because I believe that the vast majority of residents  
1712 of Henrico County, and really everywhere, care for companion animals, feed  
1713 companion animals at their homes. I think that that is a widespread activity. We  
1714 know that sixty-three percent of people have dogs and cats. So it is very  
1715 common to care for and to feed companion animals in a residence.  
1716

1717 Mr. Baka - I understand how taking care of animals and having  
1718 pets is common among folks, but is there something in your mind that would  
1719 make the caring for feral cats no longer incidental at a residential home, in a  
1720 neighborhood that has other neighbors who are concerned about the effect of  
1721 that?  
1722

1723 Ms. Starr - Do I think there is something that would make it not  
1724 customarily incidental?  
1725

1726 Mr. Baka - Would you see a line that would be crossed, to say  
1727 that it is no longer a subordinate use or incidental use to the primary use of the  
1728 property, which would be residential?  
1729

1730 Ms. Starr - No I would not. I don't believe that whether or not it is  
1731 customarily incidental is an issue of what other people's opinions are. I need to  
1732 reiterate, though, the majority of her neighbors are supportive of Ms. Mills. And  
1733 they put their signatures right on this piece of paper to say so. So the majority of  
1734 people think that this is fine and they live on Laurel Pine Drive.  
1735

1736 Mr. Baka - I understand the point. I was just trying to understand  
1737 from the—again, the staff report defines this as subordinate to something greater  
1738 or having a minor role. I'm just trying to understand your view on this point. And I  
1739 appreciate you presenting that.  
1740

1741 Ms. Starr - I think they are indistinguishable from other  
1742 companion animals. They are defined as one of many animals that are  
1743 companion animals.  
1744

1745 Mr. Baka - Many of the Board members probably haven't had the  
1746 opportunity to say this, but we're grateful for the kindheartedness and  
1747 compassion of the many people who are here caring for animals. And we're  
1748 trying to also primarily focus on whether the decision of the Planning Director  
1749 was correct. The State code literally says the decision of such an appeal, so they  
1750 shall base it on the Board's judgment if the administrative officer was correct.  
1751 With that in mind, we're trying to focus on that, not necessarily on whether it's  
1752 good emotion or public policy to take care of feral cats at a property. It's two  
1753 different questions.  
1754

1755 Ms. Starr - We understand that. We are not suggesting that it is  
1756 an emotional decision. But we believe that it is clearly a permitted use because  
1757 the feeding of companion animals is customarily incidental to a residence in R-4  
1758 zoning. I think that is borne out by all of our lives. I would imagine the vast  
1759 majority of us have fed and cared for companion animals at our residence.  
1760

1761 Mr. Baka - Thank you for your comments.  
1762

1763 Ms. Harris - Any other questions from Board members? Thank  
1764 you, that covers the case.  
1765

1766 **[After the conclusion of the public hearings, the Board discussed the case**  
1767 **and made its decision. This portion of the transcript is included here for**  
1768 **convenience of reference.]**  
1769

1770 Ms. Harris - We have to either affirm the Notice of Violation, or  
1771 reverse the Notice of Violation. What is your pleasure?

1772

1773 Mr. Witte - Madam Chairman, I'd like to make a statement before  
1774 I make a motion. Many people who are in the audience know me. I'm an  
1775 advocate for animal rights, not an activist but an advocate. Animals rights, as we  
1776 all know, at a minimum is an emotional issue, sometimes even a volatile issue.  
1777 We've had a lot of compassionate and factual information today, but that's not  
1778 the issue today. My issue is, the County would probably be better served by a  
1779 more defining code, issued by the Board of Supervisors in the zoning ordinance.  
1780 But that's not our charge; our charge is to determine the narrow view of the  
1781 existing code. Customarily incidental use in this case, in my opinion, has not  
1782 been proven. In my opinion, the majority of the people in the community would  
1783 have to participate in the issue for it to be considered a customarily incidental  
1784 use. So with that, and much emotional regret, I make a motion that we deny the  
1785 appeal and uphold the ruling of the Director of Planning.

1786

1787 Ms. Harris - Is there a second?

1788

1789 Mr. Baka - I would second that motion.

1790

1791 Ms. Harris - Moved by Mr. Witte and seconded by Mr. Baka that  
1792 we affirm the Notice of Violation, uphold the decision of the Planning Director. All  
1793 in—

1794

1795 Mr. Wright - Wait a minute, we haven't had any discussion.

1796

1797 Ms. Harris - Questions, questions, questions. I'm sorry.

1798

1799 Mr. Wright - Madam Chairman, I hate to belabor this; we've been  
1800 here a long time. But I'm deeply concerned about this case. I have a great deal  
1801 of respect for Mr. Witte in his opinion; he has a right to that. But I disagree with  
1802 his opinion and motion.

1803

1804 I spent a good deal of time since our last meeting because I knew this was  
1805 coming. I've examined this Code end to end. The first thing we have to get out of  
1806 our mind is this has nothing to do with the disposition of feral cats. Ninety percent  
1807 of the testimony here—maybe not that much—was on that issue. That's for  
1808 some other body, the Board of Supervisors.

1809

1810 Mr. Witte - I agree.

1811

1812 Mr. Wright - So let's get that out of the way. This is back to a  
1813 simple issue. That is whether we will uphold the decision of the Director of  
1814 Planning. Now let me bring something to this Board's attention. I'm looking at  
1815 Section 24-116 of this Code. I'm going to quote part of that:

1816



1817 The decision on such appeal shall be based on the Board's  
1818 judgment to whether the administrative officer was correct. The  
1819 Board shall consider the purpose and intent of any applicable  
1820 ordinance, laws, regulations, in making its decision.  
1821

1822 My point is this Board has to make this decision. It's our decision, our judgment,  
1823 not the Director of Planning. If our judgment is consistent with the Director of  
1824 Planning, then we go with it; if it isn't, we don't go with it. To me that's very, very  
1825 clear.  
1826

1827 Now, we have to look at this ordinance with a great deal of concern. I think the  
1828 County Attorney went through this and I'm not going to belabor all that, the fact  
1829 that this use, customarily incidental use that we're talking about, applies to every  
1830 residential use in Henrico County, not just R-4. It applies to every residential use.  
1831 We've had some testimony today that there are a hundred-and-some thousand  
1832 homes that this could impact. Okay? So we are being asked here to make a  
1833 decision based on the interpretation of the Director of Planning that will impact all  
1834 these thousands of homes.  
1835

1836 Now, we had a lot of testimony here today that there are many feral cat colonies  
1837 throughout Henrico County—many, many. Many people are feeding these. I was  
1838 surprised. What does that mean when you have many, many people—I'd say a  
1839 hundred or more—feeding the feral cats? Is that customarily incidental? What  
1840 makes it? I want to point out this. If this were a violation of a specific provision of  
1841 the Henrico Code it would be easy for us.  
1842

1843 Mr. Witte - Absolutely.  
1844

1845 Mr. Wright - It would be simple because we would assume that the  
1846 Director of Planning would be just enforcing that. It would be a no-brainer. But  
1847 since this is not that, we have to be very, very careful how our judgment is  
1848 exercised because we are affecting the rights of a homeowner to use that  
1849 property. I might get a little tearful or conservative, but this country of ours is in a  
1850 terrible plight because every day, federally our rights are being taken away from  
1851 us. We're heading down that road. The federal government does it; the State is  
1852 doing it; now we have the County doing it. The ordinance—well let's go back.  
1853 Years ago there was no ordinance. You owned your property; you could do what  
1854 you wanted with that property. Okay? Well the County comes along, as it should,  
1855 and deems that that's not a good policy because they were putting gas stations  
1856 next to people's houses and doing all this stuff, and building all kinds of crazy  
1857 houses, over the line. So the County comes up with this zoning ordinance, and I  
1858 have it here, the whole thing. This is not like the Obama Health Bill which none of  
1859 the people who enacted have read; we've read it.  
1860

1861 Mr. Witte - Several times.  
1862

1863 Mr. Wright - Several times, yes. But here we are faced with the  
1864 interpretation of not a specific violation. When we are faced with the  
1865 interpretation of that ordinance, we have to be very, very careful in exercising our  
1866 judgment when we're talking about the right of a homeowner to use his property.  
1867 I've read all of this information that was presented. It comes down to one thing,  
1868 in my opinion: What is common sense? What is common sense? To me, it's  
1869 common sense—I've done it—if I have a stray animal coming on my property  
1870 that I could feed it. That's common sense. And if it's common sense, then it's  
1871 customarily incidental to the use of my property. And I don't really cotton to  
1872 Henrico County taking that away from me. They take a lot of things away from  
1873 me in the interest of the public and to protect my neighbors.

1874  
1875 Tell me in this ordinance where there is any mention of dogs or cats.

1876  
1877 Mr. Witte - There's not.

1878  
1879 Mr. Wright - None. You agree with me on that.

1880  
1881 Mr. Witte - Absolutely.

1882  
1883 Mr. Wright - I don't have them; I used to. I've had dogs and cats in  
1884 my house, and I didn't see a County official coming by citing me for a violation of  
1885 the Henrico Code because in the exercise of common sense it was determined  
1886 that I could keep my cats and dogs as long as I didn't exceed the number that's  
1887 there to protect my neighbors. That's common sense. Is it any less common  
1888 sense that I could go out—by the way, if we approve this, it's going to affect, as I  
1889 said, thousands of homes, people who didn't even know about this, wouldn't  
1890 even have a voice to try to uphold their right to use their property. When we are  
1891 doing that, we have to be very, very careful. But since dogs and cats are not  
1892 mentioned in the ordinance—I don't think the Director of Planning has in his file  
1893 where he checked all the houses in Henrico County to find out what percentage  
1894 of the homeowners were keeping dogs and cats. No, you know that's not true.

1895  
1896 Mr. Witte - Absolutely.

1897  
1898 Mr. Wright - He just says it's common sense. What is good  
1899 common sense? Today we're going away from what's common sense. We try to  
1900 regulate it by this and that and so forth. But we still have common sense. My  
1901 point is this, is it the exercise of good common sense to say that Ms. Mills or any  
1902 homeowner in Henrico County should be permitted to feed an animal that comes  
1903 on their property, whether it be cats, whether it be a rabbit, whether it be a  
1904 squirrel. And of course birdhouses are all over the place. We don't have to prove  
1905 how many people have birdhouses. I can go down my block and I see them all  
1906 over. To me, that's common sense.

1907

1908 Now, as I said, when we are talking about denying a homeowner the right to use  
1909 their property, where it's a very subjective interpretation, we have to be overly  
1910 zealous.

1911  
1912 Now I come to, I think, the main point that concerns me. What harm is caused by  
1913 Ms. Mills feeding these cats? An ordinance is adopted to cure an evil or cure a  
1914 problem, to fix a problem, to solve a problem. Upholding the Director of Planning  
1915 here doesn't solve anything. It doesn't solve one thing. These cats will then be—  
1916 we had testimony and I wrote it here. We had testimony by Mrs. Donahue that if  
1917 she stops feeding these cats they're not going away; it's a colony. And we had  
1918 testimony before about that. They're going to be there; okay. We had testimony  
1919 by Dr. Dugan that if she stops feeding these cats, where are they going to go? It  
1920 doesn't take a rocket scientist to figure this out. They're going to go to the  
1921 houses next door and down the road. They'll be more inclined to go to these  
1922 other houses to seek food. That's common sense. I don't need a doctorate or  
1923 something to tell me that. Good old common sense will tell me if she doesn't  
1924 feed these cats, they're going to go somewhere else in that neighborhood and  
1925 look for food. Furthermore, if she feeds these cats, that's going to make it less  
1926 likely that they're going to go looking for food because she feeds them twice a  
1927 day; that was in evidence. She's taking care of their needs.

1928  
1929 What it comes down to is we have a rule here for the sake of ruling. I'm violently  
1930 opposed to that. A rule for the sake of ruling that doesn't make any sense. If you  
1931 can show me how permitting feeding of feral cats would endanger the public or  
1932 cause problems to the neighbors...because the cats are still going to be there.  
1933 Furthermore, if you stop her caring for these cats, as was already testified to, she  
1934 won't keep up the inoculations. Right now the ones she takes care of are  
1935 immunized; they don't have rabies.

1936  
1937 For all of these reasons, it looks like to me, that to protect the interest, the *right*  
1938 of a property owner to use their property, in my judgment we should uphold the  
1939 appeal and deny the ruling of the Director of Planning.

1940  
1941 Ms. Harris - Other discussion?

1942  
1943 Mr. Witte - Yes, a little rebuttal there. I agree and I'm a  
1944 proponent of TNR. It's a great program.

1945  
1946 Mr. Wright - I like it.

1947  
1948 Mr. Witte - And it can continue whether or not they feed the cats  
1949 or not.

1950  
1951 Mr. Wright - That has no bearing on this case.

1952

1953 Mr. Witte - Absolutely. The bearing on the case, as Mr. Tokarz  
1954 reiterated, if it's not in the ordinance it's prohibited. That's the bottom line. I'm an  
1955 animal lover. I can't have cats anymore because my wife's allergic to them, but I  
1956 still have dogs. My brother has feral cats. He lives in a different County in an  
1957 agricultural area and they're greatly beneficial to him. But the bottom line is if it's  
1958 not specifically addressed in the ordinance it's prohibited.  
1959

1960 Mr. Wright - But it's not specifically—  
1961

1962 Mr. Witte - But it's not for us to change the ordinance. It's for the  
1963 Board of Super—  
1964

1965 Mr. Wright - It's not specifically in the ordinance that you can have  
1966 dogs and cats in your house.  
1967

1968 Mr. Witte - That's exactly right.  
1969

1970 Mr. Wright - Well then why are they permitted? That's because the  
1971 County has decided that it's customarily incidental to the use of your property for  
1972 you to have those. It's not specifically prohibited; it's not specifically authorized. It  
1973 comes under that interpretation. I just don't see that.  
1974

1975 Mr. Witte - I agree with you, to a certain extent. But I think it's  
1976 something that either you carry on to the Circuit Court and get a legal ruling on,  
1977 or the Board of Supervisors needs to adjust it. But with our charge—and certainly  
1978 if they came to my house and said I have to get rid of my dog, I would carry it to  
1979 the Circuit Court. And I would petition the Board of Supervisors.  
1980

1981 Mr. Wright - But if it's customarily incidental to the use of the  
1982 property then it is specifically authorized by the ordinance. That's what you  
1983 overlooked.  
1984

1985 Mr. Witte - That's what I said—  
1986

1987 Mr. Wright - And then that's a matter of opinion. It's my opinion  
1988 that feeding animals is customarily incidental and I should have that right. It's  
1989 your opinion that you don't have that right.  
1990

1991 Mr. Witte - I have control of my dog. I keep it on a leash. My  
1992 neighbors have control of their cats; they keep them in the house. My other  
1993 family members do the same things, and all my friends and neighbors do. That  
1994 makes it customarily incidental to me, in my opinion. But once they're outside the  
1995 control of the resident or occupant, then in my opinion it doesn't become  
1996 customarily incidental.  
1997

1998 Mr. Baka - I would certainly concur with Mr. Witte. Madam  
1999 Chairman, may I add a couple comments? I think at this point, if you go back to  
2000 Section 15.2-2309, subsection 1, what we're looking at is "the decision on such  
2001 an appeal shall be based on the Board's judgment of whether the administrative  
2002 officer was correct." We're looking at the narrow question of whether or not the  
2003 Planning Director erred in his decision, was that an error there? My opinion is  
2004 that there is latitude for the Planning Director to clearly state that caring for feral  
2005 cats in the R-4 District is not a permitted use under the guidelines of 24-6, Mr.  
2006 Wright, because it's not specifically mentioned. You asked if I keep a dog and I  
2007 keep a dog in my house and that's customarily incidental.

2008  
2009 I think we heard a lot of good testimony, and we heard a lot of kind and  
2010 compassionate folks speak about how they care for animals. But I think we really  
2011 need to focus on what is customarily incidental to the use of a residence.  
2012 Looking at that, I would say there is sufficient latitude for the Planning Director to  
2013 state in the Notice of Violation—, and not necessarily for us to look at it and  
2014 reinterpret the ordinance. This is the current ordinance. This is what he was  
2015 looking at when he made that decision. So based on the way Section 24-6 is  
2016 structured, I believe the Director had enough latitude to say that. Therefore I  
2017 concur with Mr. Witte's motion. I think we should vote to deny the appeal.

2018  
2019 Ms. Harris - Any more questions on this particular motion? Are we  
2020 ready to vote? All in favor of affirming the Notice of Violation or the decision of  
2021 the Planning Director say aye. All in favor say aye.

2022  
2023 And I think because I didn't participate in any of the discussion I need to say that  
2024 all of us have the right to utilize our property, but not to the detriment of our  
2025 neighbors. I think that somehow we need to draw the line at that point. That's the  
2026 bottom line as far as I can see.

2027  
2028 Mr. Wright - You didn't ask for a negative vote.

2029  
2030 Ms. Harris - No, I have not. I just wanted to say why I voted in the  
2031 affirmative.

2032  
2033 All opposed to affirming the Notice of Violation or the decision of the Planning  
2034 Direction say no.

2035  
2036 Mr. Wright - No.

2037  
2038 The ayes have it. Is that four to one? Four to one.

2039  
2040 After an advertised public hearing and on a motion by Mr. Witte seconded by Mr.  
2041 Baka, the Board **affirmed** the Notice of Violation for **APL2011-00004, SUSAN**  
2042 **W. MILLS'** appeal of a decision of the director of planning pursuant to Section  
2043 24-116(a) of the County Code regarding the property at 9738 Laurel Pine Drive

2044 (Laurel Pines) (Parcel 771-760-0658), zoned R-4, One-family Residence District  
 2045 (Brookland).  
 2046  
 2047  
 2048 Affirmative: Baka, Harris, Nunnally, Witte 4  
 2049 Negative: Wright 1  
 2050 Absent: 0

2051  
 2052

2053 **[At this point, the transcript continues with the public hearing on the next**  
 2054 **case.]**  
 2055

2056 **CUP2011-00021** **CHERYL A. GUSTAFSON** requests a conditional use  
 2057 permit pursuant to Section 24-12(e) of the County Code to have a  
 2058 noncommercial kennel at 8597 Woodlake Drive (Woodlake) (Parcel 762-759-  
 2059 5122), zoned R-3, One-Family Residence District (Brookland).  
 2060

2061 Ms. Harris - All persons who wish to speak to this case, please  
 2062 stand and raise your right hand to be sworn in.  
 2063

2064 Mr. Blankinship - Do you swear the testimony you're about to give is  
 2065 the truth and nothing but the truth so help you God?  
 2066

2067 Ms. Gustafson - I do.  
 2068

2069 Ms. Harris - Please state your name and spell your last name.  
 2070

2071 Ms. Gustafson - My name is Cheryl Gustafson, and that's spelled G-u-  
 2072 s-t-a-f as in Frank-s-o-n.  
 2073

2074 Ms. Harris - Please state your case.  
 2075

2076 Ms. Gustafson - I'm here to request what I call a hobby kennel. When I  
 2077 went to the Planning Office they basically said it was a private non-commercial  
 2078 kennel. I currently have three dogs and I'm looking to breed my two females with  
 2079 a sire. I would like to breed and show my dogs, and sustain that five-to-seven  
 2080 number. I have worked with a breeder down in Suffolk. What we have discovered  
 2081 is possibly due to the age of my females I may have to—I can't wait so long. So  
 2082 that's why I need to do it every couple of years, and that's why it's sustained that  
 2083 way. And then I want to show them, take them to ring, and try to enjoy that  
 2084 aspect of owning a dog, learn that circuit, and breed a couple of champions.  
 2085 Again, I'd like to sustain the quantity because being a single female, I really don't  
 2086 want to have to come back here when the life of my dogs end and have to do  
 2087 this again when I'm forty or fifty. And I do have contingencies in my will and in my  
 2088 provisions to provide for whatever is left of my, if you want to call it a pack, to be  
 2089 provided for until they are deceased.

2090

2091 I've checked with all my immediate neighbors about have this; they have no  
2092 issues. They've actually been very encouraging. In fact, the neighbor to the east  
2093 of my property is a County of Henrico wildlife rehabilitator. So she has bats,  
2094 hawks, deer, cats—all sorts of animals that come in and out of her place. I was  
2095 never asked if that was okay. I have no problem; they're contained. And she,  
2096 again, has actually been encouraging in my endeavor, as well as going to  
2097 provide any—I guess if you want to call it midwife care when I do go through my  
2098 first litter.

2099

2100 I did read some of the conditions that were on here, and I do have a couple of  
2101 concerns on those. Also, when I do breed my dogs, I will probably be a co-owner  
2102 on them, so I will also have part ownership on that to make sure they are not  
2103 randomly bred so it's not a puppy mill or any kind of provision in that sense.

2104

2105 Ms. Harris - What are the questions you have on the conditions?

2106

2107 Ms. Gustafson - It says five dogs and then basically that would  
2108 dwindle down to nothing and expire. I want to sustain that, and I'd like it to be five  
2109 to seven dogs because depending on the staging of the dogs—currently my two  
2110 are seven and eight. I may not be able to have puppies from them; I may have to  
2111 lease a female. And the breeder has recommended not to go beyond four to six  
2112 years. I also don't want to limit it to one litter of puppies from my girls because I  
2113 may end up with boys and I don't want to keep boys. I have one sire; you don't  
2114 want two males in the house. I would like to have a puppy from each generation  
2115 as they get to be aged. I'm not doing this to propagate a second income, to  
2116 make this a sub-business or anything like that. But I don't want to limit it to one  
2117 litter because again, my breeder had a litter from one of her females recently and  
2118 it's resulted in two males. Again, there was nothing she could do. If I had been  
2119 limited to one litter, I'm stuck. Nothing personal, but to me, females are easier to  
2120 care for. And again, having more than one intact male in your house is not  
2121 responsible.

2122

2123 Mr. Blankinship - What numbers would you be comfortable with?

2124

2125 Ms. Gustafson - Can I say five to seven? I don't plan to go over five,  
2126 but in the staging, as two are dying or in that age where they will be hitting there,  
2127 I may have to stage another in, if that makes sense. And I want it sustained, not  
2128 dwindling. I mean I have provided for them in my will, so at the point of my death  
2129 this would be gone, or if I move.

2130

2131 Mr. Blankinship - Oh, okay. So just strike the whole second sentence?

2132

2133 Ms. Gustafson - Exactly.

2134

2135 Mr. Blankinship - I'm sorry, third sentence of Condition 1.

2136  
2137 Mr. Wright - How about #2?  
2138  
2139 Mr. Blankinship - Right.  
2140  
2141 Ms. Gustafson - Yes, and I do want to strike that. Everything else, I'm  
2142 in compliance there.  
2143  
2144 Mr. Blankinship - Is there a number of litters you—  
2145  
2146 Ms. Gustafson - I don't know. You can't breed them until they're two.  
2147 I'm keeping the male away from them. I'm learning this process. I have one  
2148 female that goes into heat every year, year and a half. I have one that goes  
2149 every three months. If I say four and have male, male, male, male, I can't do  
2150 anything with it. That's why I don't want to even have that in there. I'm not going  
2151 to be doing this as a puppy mill; I'm not going to be doing this to breed the breed.  
2152 As an addendum to this, we find homes for and potential owners for either pet  
2153 dogs or show dogs prior to having the litters. So they have homes. There's a  
2154 waiting list. I don't say okay, I have two I don't want; they're gone. They're  
2155 wanted.  
2156  
2157 Mr. Wright - You wanted to keep two from the litter as show dogs.  
2158  
2159 Ms. Gustafson - Yes. My current two are not quality. One was injured  
2160 and one has—  
2161  
2162 Mr. Wright - So you have three; that gives you five.  
2163  
2164 Ms. Gustafson - Right.  
2165  
2166 Mr. Wright - How long do you keep those show dogs?  
2167  
2168 Ms. Gustafson - I'll keep mine. I can place a show dog, but I'd still be  
2169 the owner and they wouldn't be in my home.  
2170  
2171 Mr. Wright - I'm concerned about whether they're in your home.  
2172  
2173 Ms. Gustafson - Oh, no, I won't have more than seven in my home.  
2174  
2175 Mr. Wright - Once you have another litter, those two would go  
2176 somewhere else?  
2177  
2178 Ms. Gustafson - Yes.  
2179  
2180 Mr. Wright - Okay.  
2181



2182 Ms. Gustafson - I would only sustain two, if you want to call it breeding  
2183 females. And once they've had theirs, at that point then I would neuter them.  
2184  
2185 Mr. Wright - There would be times you'd maybe be back to three.  
2186  
2187 Ms. Gustafson - Absolutely. And actually that's probably the case right  
2188 now. With the case of my two females currently, I think they are too old and it's  
2189 their first litter. So I may have to come up with a whole other scenario. The  
2190 breeder I'm working with in Suffolk, she will lease me a female.  
2191  
2192 Mr. Wright - So you're really not in violation right now.  
2193  
2194 Ms. Gustafson - No, I'm not.  
2195  
2196 Mr. Blankinship - She's actually in front of us before she's going to do  
2197 this.  
2198  
2199 Ms. Gustafson - I'm not in violation.  
2200  
2201 Mr. Wright - This is unusual. Thank you.  
2202  
2203 Ms. Gustafson - I don't want to go through the expense again, and  
2204 that's why I want is sustained. I've been waiting for Mr. Right to find me. He  
2205 hasn't, so I'm going on with my bucket list of happiness and breeding and having  
2206 a dog. Learning to show is something I want to do.  
2207  
2208 Mr. Witte - If I can ask, I got the impression that there are only  
2209 two puppies to a litter. Is that standard?  
2210  
2211 Ms. Gustafson - No, no. They can have up to eight. It just depends on  
2212 the female and their history. I just went down to see a litter, to watch the  
2213 process, to know what to look for, and they had seven. They had five males and  
2214 then two females.  
2215  
2216 Mr. Witte - Just for my interest, how do you know how many  
2217 future owners to allot puppies to?  
2218  
2219 Ms. Gustafson - I work with this breeder and she's been doing this for  
2220 twenty-some years. She has a website and she takes applications when she's  
2221 planning a breeding. Once the breeding is successful, she lets people know and  
2222 then she takes an initial deposit for the dog.  
2223  
2224 Mr. Witte - So if you don't enough puppies you return—  
2225  
2226 Ms. Gustafson - They're on the waiting list.  
2227

2228 Mr. Witte - Okay.  
2229  
2230 Ms. Gustafson - Right now we have five on the waiting list from those  
2231 seven.  
2232  
2233 Mr. Wright - Plus we know until they're four months old there is no  
2234 violation.  
2235  
2236 Mr. Witte - Absolutely.  
2237  
2238 Ms. Gustafson - That must have just changed because when I filled  
2239 out this paperwork the gentleman told me it was six months.  
2240  
2241 Mr. Blankinship - It's four under our code. There may be other  
2242 provisions in other codes.  
2243  
2244 Ms. Gustafson - Okay. But that is true. I'll give another example. She  
2245 owns a dog and she bred him. The puppy went to China with the owners  
2246 because the family is in the military and went there. He was bred there and he's  
2247 in a litter of champions. He's a Chinese champion. They had to DNA all the  
2248 puppies there, bring them to the States. She has him right now on her property.  
2249 She's a co-owner, but it's not her thing. They're showing it at Nationals in Utah,  
2250 and then when showing it in Virginia Beach. Then it'll go back. So it's kind of a  
2251 transition and everything, and it's not permanent. But you can have scenario like  
2252 that. When we go to Virginia Beach I will be showing one of her dogs as well as  
2253 mine.  
2254  
2255 Mr. Blankinship - If Condition #2 is taken out altogether, there would be  
2256 nothing in this use permit that would prevent you from breeding both females  
2257 twice a year and selling the puppies from a box on the—  
2258  
2259 Ms. Gustafson - And I'm not going to do that, but I mean you only  
2260 have my word.  
2261  
2262 Mr. Blankinship - Can you help us come up with a condition so that's  
2263 not what this Board's approving? We like to work with standard conditions so that  
2264 we treat everyone the same. These are the kind of conditions that we would  
2265 normally recommend for a conditional use permit like this.  
2266  
2267 Ms. Gustafson - Male dog may have no more than one kept puppy  
2268 from each litter? That limits me to—  
2269  
2270 Mr. Blankinship - What separates that from what you called a puppy  
2271 mill?  
2272

2273 Ms. Gustafson - I don't know how to word it any other way. I don't want  
2274 to say—maybe we could say one litter per year? I don't know. Again, I don't want  
2275 to get stuck. And I have a specific example of those three male litters. The male  
2276 is pretty predominant in her line and that's who sires.  
2277

2278 Ms. Harris - We say that this is only for five to seven adults?  
2279

2280 Mr. Blankinship - To keep on the property.  
2281

2282 Mr. Wright - Doesn't that limit it?  
2283

2284 Mr. Blankinship - That limits the number she can keep on the property.  
2285 But she could then operate a puppy mill, as that is commonly referred to.  
2286

2287 Ms. Gustafson - But I'm not a commercial, so isn't a puppy mill  
2288 commercial and then I'd be in violation?  
2289

2290 Mr. Blankinship - How would we say this is a violation—  
2291

2292 Mr. Wright - Not operate a puppy mill.  
2293

2294 Ms. Gustafson - You can say it that way.  
2295

2296 Mr. Blankinship - What is a puppy mill other than a kennel where you  
2297 have no limit on the number of litters.  
2298

2299 Mr. Witte - What's the maximum number of litters that you  
2300 anticipate in any given year?  
2301

2302 Ms. Gustafson - In any given year it would probably be one to two per  
2303 female. But again, if I don't have—if I get a puppy from my girls this time, I'm not  
2304 going to be having puppies for three years because you don't breed for puppies  
2305 until they're two. And then they have to go through hip tests, they have to go  
2306 through eye tests. And I want to show them first and that kind of hinders the  
2307 showing. The soonest the first puppy would be bred is three years. And then  
2308 biologically there is a three-year window kind of. I'm circumventing it right now  
2309 with my two females; that's why I'm going to Dr. Kolster at Springfield Veterinary  
2310 to help me. It's almost like a woman over forty or forty-five trying to have a child.  
2311 We're trying to help the process; it may not happen. Like I said, I don't want to  
2312 say one litter. And if you put five, I don't want to say oh good, I can have five; I'm  
2313 not going to do that.  
2314

2315 Mr. Witte - Our situation is there has to be some type of  
2316 enforcement capabilities. So would you be content with two litters per year?  
2317

2318 Mr. Blankinship - And would the Board think that's—

2319  
2320 Ms. Gustafson - They go into heat twice. And I was told you typically  
2321 don't do back-to-back puppies with that. And there are two schools of thought.  
2322 I'm just learning that when they're pregnant they're the most healthy. That's  
2323 probably why if I didn't get my two I'd do it again. But two per year is certainly—  
2324  
2325 Mr. Witte - Or one per year. If you had per year, every other year  
2326 you could breed your dogs.  
2327  
2328 Ms. Gustafson - Right. And that would be fine. I would be amenable to  
2329 that. I would prefer two, but again, like I said, if I got my boy, then I have to wait.  
2330  
2331 Ms. Harris - Is there anything else you wish to say, or are there  
2332 any more questions from Board members?  
2333  
2334 Ms. Gustafson - Thank you for your time.  
2335  
2336 Ms. Harris - Okay.  
2337  
2338 **[After the conclusion of the public hearings, the Board discussed the case**  
2339 **and made its decision. This portion of the transcript is included here for**  
2340 **convenience of reference.]**  
2341  
2342 Ms. Harris - What is the pleasure of the Board?  
2343  
2344 Mr. Blankinship - The applicant did ask for two changes in the  
2345 conditions.  
2346  
2347 Mr. Witte - I'll make a motion that we approve it with the  
2348 amended conditions as discussed. I don't think it's a safety issue, and I also  
2349 think it's not going to be detrimental to the neighborhood.  
2350  
2351 Mr. Nunnally - Second.  
2352  
2353 Ms. Harris - Motion by Mr. Witte, seconded by Mr. Nunnally that  
2354 this conditional use be approved. Is there any discussion on this motion? All in  
2355 favor say aye. All opposed say no. The ayes have it; the motion passes.  
2356  
2357 After an advertised public hearing and on a motion by Mr. Witte, seconded by  
2358 Mr. Nunnally, the Board **approved** application **CUP2011-00021, CHERYL A.**  
2359 **GUSTAFSON's** request for a conditional use permit pursuant to Section 24-  
2360 12(e) of the County Code to have a noncommercial kennel at 8597 Woodlake  
2361 Drive (Woodlake) (Parcel 762-759-5122), zoned R-3, One-family Residence  
2362 District (Brookland). The Board approved the use permit subject to the following  
2363 conditions:  
2364

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2409

1. This approval is only for seven adult dogs the property owner ultimately plans on owning. The approval is not for the boarding of dogs at any time.
2. Each female dog may have no more than one litter of puppies per year pursuant to this approval.
3. All animals shall be kept indoors or in a fenced yard or on a leash when in public.
4. The applicant shall maintain the property so that noise and odors are controlled.

Affirmative:	Baka, Harris, Nunnally, Witte, Wright	5
Negative:		0
Absent:		0

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

**CUP2011-00022**                      **BRANDON WAHL** requests a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to allow a pool in the side yard at 5904 Shady Willow Court (Shady Ridge) (Parcel 744-777-2150), zoned R-3C, One-family Residence District (Conditional) (Three Chopt).

Ms. Harris -                      All persons who wish to speak to this case please stand and raise your right hand to be sworn in.

Mr. Blankinship -                      Raise your right hand, please. Do you swear the testimony you're about to give is the truth and nothing but the truth so help you God?

Mr. Wahl -                      I do.

Ms. Harris -                      Please state your case, Mr. Wahl.

Mr. Wahl -                      I live on a cul-de-sac, so I don't have a backyard, if you will. And my side—yes, there you go—is in such a way that it's not visible from the street and is barely visible from my one neighbor on my side, which as you see on the drawings that I provided, I will be putting in Leland Cypress or some such screen. So even that small five- to six-foot section where they can see into my side yard would be gone.

2410 Ms. Harris - Are there other swimming pools in the neighborhood?  
2411 And if so, are they in the side yard?  
2412  
2413 Mr. Wahl - There are two others. And no, I do not believe they  
2414 are on the side yard. But they are also not on cul-de-sacs. They're on like the  
2415 straight streets.  
2416  
2417 Mr. Blankinship - Paul, could you put up the site map? It's 5724 Shady  
2418 Grove Road. Right where the words "Shady Ridge" are labeled there. The Board  
2419 approved a use permit a couple of years ago for a pool in the side yard of that  
2420 lot.  
2421  
2422 Mr. Witte - Have you spoken to your neighbors?  
2423  
2424 Mr. Wahl - I have. The one to the right of my house as you face it  
2425 are fairly new. I let him know what I was doing. He was perfectly fine with it.  
2426  
2427 Mr. Witte - How about the neighbor on the other side?  
2428  
2429 Mr. Wahl - I haven't really honestly spoken to them about the  
2430 pool. They can't even see our house from their property because of the  
2431 screening in between our houses. From where the pool would be, he wouldn't  
2432 even be able to see it over there.  
2433  
2434 Ms. Harris - That's 5900? Is that address 5900?  
2435  
2436 Mr. Wright - 5908.  
2437  
2438 Ms. Harris - 5908 is the neighbor that you spoke with?  
2439  
2440 Mr. Wahl - Yes. The one that would be able to see my side yard,  
2441 the only one.  
2442  
2443 Mr. Wright - 5904, wouldn't it be?  
2444  
2445 Mr. Wahl - 5904 is my property.  
2446  
2447 Mr. Wright - Oh that's yours; okay.  
2448  
2449 Mr. Wahl - If you look at the picture, it's the one to the right there  
2450 where you see the white Toyota, I believe it is.  
2451  
2452 Ms. Harris - Can we see this picture that shows the location of the  
2453 pool in the side yard? Would you pull that up, please? Is this the one that we  
2454 have?  
2455

2456 Mr. Blankinship - The one we have should be in here.  
2457  
2458 Mr. Witte - There it is.  
2459  
2460 Ms. Harris - Okay, this is the one. The two houses here, whose—  
2461  
2462 Mr. Wahl - Mine is to the right. The one where you can see the  
2463 white car, that is my neighbor that I've spoken with about putting the pool in the  
2464 side yard. Where you can see the large holly towards the right at the corner of  
2465 my home, as you keep going, I will be putting in two more large screening trees,  
2466 along with a privacy fence as well, or some kind of fencing around the pool there.  
2467 But from a privacy perspective, I will be absolutely putting in some other large  
2468 trees there.  
2469  
2470 Ms. Harris - Are there any other questions by Board members?  
2471  
2472 Mr. Witte - I notice the property owner behind you has a pool  
2473 also. I presume they're not opposed.  
2474  
2475 Mr. Wahl - I haven't spoken with them. I don't believe they're in  
2476 our subdivision.  
2477  
2478 Mr. Witte - They're still an adjoining property owner.  
2479  
2480 Mr. Wahl - Understood. I have not spoken with them directly.  
2481 They're a pretty good distance, plus there already is screening in between my  
2482 back lot and their lot. So you can't really see each other.  
2483  
2484 Mr. Witte - At 300 feet, aren't they?  
2485  
2486 Mr. Wahl - Yes, they're a good ways away.  
2487  
2488 Mr. Blankinship - They did receive a notice as well, Mr. Witte.  
2489  
2490 Mr. Witte - Oh good. Okay, thank you.  
2491  
2492 Ms. Harris - Any other questions? Mr. Wahl, thank you for coming  
2493 in.  
2494  
2495 Mr. Wahl - Thank you.  
2496  
2497 **[After the conclusion of the public hearings, the Board discussed the case**  
2498 **and made its decision. This portion of the transcript is included here for**  
2499 **convenience of reference.]**  
2500  
2501 Mr. Wright - I move we approve it.

2502  
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Mr. Nunnally - Second.

Ms. Harris - Moved by Mr. Wright, seconded by Mr. Nunnally that this case would be approved.

Mr. Wright - The basis of my approval is that I don't think it will adversely affect the health, safety, or welfare of those living in the area. And it's in compliance with the Henrico Code.

Ms. Harris - All in favor say aye. All opposed say no. The ayes have it; the motion passes.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board **approved** application CUP2011-00022, **BRANDON WAHL's** request for a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to allow a pool in the side yard at 5904 Shady Willow Court (Shady Ridge) (Parcel 744-777-2150), zoned R-3C, One-family Residence District (Conditional) (ThreeChopt). The Board approved the use permit subject to the following conditions:

1. Only the improvements shown on the plot plan filed with the application may be constructed pursuant to this approval. Any additional improvements shall comply with the applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements will require a new use permit.
2. The swimming pool shall be located at least ten feet from the existing dwelling and at least ten feet from the side property line.
3. The applicant shall meet all requirements of the Building Inspections Department, including safety fencing around the pool.

Affirmative:	Harris, Witte, Baka, Nunnally, Wright	5
Negative:		0
Absent:		0

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

**CUP2011-00023** **DOMINION VIRGINIA POWER** requests a conditional use permit pursuant to Sections 24-12(c) and 24-52(a) of the County Code to build and operate an electric substation at 11201 New Wade Lane (Parcel 747-770-5210), zoned A-1, Agricultural District (Three Chopt).



2548  
2549 Ms. Harris - All persons who wish to speak to this case please  
2550 stand and raise your right hand to be sworn in.  
2551  
2552 Mr. Blankinship - Do you swear the testimony you're about to give is  
2553 the truth and nothing but the truth so help you God?  
2554  
2555 Ms. Harris - Please state your name and your case. Spell your last  
2556 name, please.  
2557  
2558 Ms. Freye - Good morning, Madam Chair, members of the Board.  
2559 My name is Gloria Freye. I'm an attorney with McGuire Woods here on behalf of  
2560 Dominion Virginia Power. Here with me are the folks from the Dominion Team,  
2561 Dan Duty, who is the project manager; Ryan Boggs, the Dominion attorney;  
2562 Courtney Fisher, who is their permitting specialist; Rod Lester, a planning  
2563 engineer; Joe Santuck, a planning engineer; Dena O'Baugh, their real estate  
2564 specialist; and Todd Boykin, who is their civil engineer.  
2565  
2566 We do want to thank Mr. Blankinship and his staff for the thoroughly detailed  
2567 report that's been provided in your packet. As he explained, this request is for a  
2568 conditional use permit to locate an electric substation on this site. The  
2569 Agricultural zoning district does permit an electric substation, but with a  
2570 conditional use permit, and provided there has been a finding of substantial  
2571 accord to the Comprehensive Plan. The Board of Supervisors did find the  
2572 proposed electric substation to be in accord with the Comprehensive Plan at its  
2573 October 11<sup>th</sup> hearing. That allows us to be before you today about the conditional  
2574 use permit.  
2575  
2576 Dominion has studies its network and the demand for service in this area, and  
2577 has determined that there is a need for a new substation. The area north of  
2578 Interstate 64 and west of 295 has experienced significant growth over the past  
2579 decade. According to the latest U. S. Census Bureau data, this portion of  
2580 Henrico County has experienced a population growth rate of 132 percent, from  
2581 8,140 people in 2000 to 18,904 in 2010. This growth in population translates into  
2582 a growing demand for electricity. In addition, the County's 2026 Land Use Plan  
2583 has designated a significant portion of this area for future office development.  
2584 Based on the growth trend and the expected future land uses, a substation is  
2585 needed to maintain current levels of service, improve reliability, and provide  
2586 additional capacity for the connecting substations that are located at Mountain  
2587 Road and Short Pump.  
2588  
2589 If I can get it up here, we have a map that shows the service area that would be  
2590 provided. The area in blue is where the service would be for the Nuckols  
2591 substation, and it would connect to the substation at Short Pump and at  
2592 Mountain Road.  
2593

2594 Dominion researched seven properties that are situated along this transmission  
2595 line. Of those seven locations, this is the one property that met all the criteria.  
2596 The location is the appropriate distance from the connecting substations at Short  
2597 Pump and Mountain Road, and the substation here can be largely situated within  
2598 the existing transmission line. By locating the substation in close proximity to the  
2599 existing transmission line, Dominion and the customers can avoid the time and  
2600 expense that would be associated with constructing a new transmission line that  
2601 would also be subject to FCC approval. In addition, by building the substation in  
2602 close proximity to the transmission line, Dominion will minimize the impact that a  
2603 new transmission line could potentially have on local property owners.

2604

2605 The site has good access off of a low-traffic road. The property owner was willing  
2606 to sell the land subject to the County approving. The property is next to 295 and  
2607 not close to houses. And there is already an existing 100-foot-tall double pole  
2608 structure there that supports a transmission line in the easement that crosses the  
2609 southern portion of the property.

2610

2611 In selecting the site, Dominion also considered the effect on adjacent property  
2612 owners. The proposed location for the substation is within and adjacent to the  
2613 ninety-foot-wide, 230 KB transmission line right-of-way that's been in operation  
2614 since nineteen [inaudible; blank] [0:39:19]\*. The proposed substation would be  
2615 located in the southern part of the property near 295. The lower elevation of this  
2616 property, and the existing vegetation that exists on this site, already reduces the  
2617 visual impact from adjacent properties and adjacent roads. To provide additional  
2618 screening, supplemental landscaping is proposed as shown on the landscape  
2619 plan that's also in your packet. So in addition to protecting the existing  
2620 vegetation, we've also added a condition on this landscape plan that says in the  
2621 event the right-of-way along New Wade Lane, or the right-of-way along the ramp  
2622 to 295, if that vegetation were ever disturbed, we've reserved a fifty-foot planting  
2623 strip to put that vegetation back. This is in addition to the landscape that we'll put  
2624 around the substation itself.

2625

2626 Most of the proposed structures that would be in the substation are less than  
2627 eighteen feet tall, except for the 75-foot backbone structure and the two static  
2628 poles, which are seventy feet tall. All of those are less than the 100-foot  
2629 transmission. None of the structures or equipment would affect light or air to  
2630 adjacent properties. The substation will be enclosed with an eight-foot-tall black  
2631 vinyl-clad chain link fence. Evergreen landscaping that was shown on that plan  
2632 will be planted to screen the security fence. And a security fence will ensure the  
2633 safety of the persons on the property and the safety of the public.

2634

2635 I would like to add that on the landscaping plan, that plan was developed in  
2636 conjunction with the County Planning staff and their trained architect planners to  
2637 determine what species and what number of plants should be planted to  
2638 effectively screen the substation.

2639

2640 The proposed access to the property is from New Wade Lane, which has very  
2641 little traffic. After construction, the substation typically would generate only three  
2642 to four trips a month. And that minimal traffic would not create any congestion for  
2643 this residential road.

2644  
2645 Dominion has worked with the surrounding property owners. They hosted an  
2646 open house on the property on June ninth. Notifications were sent to twenty  
2647 landowners. About five folks did come to that open house. They walked down to  
2648 the site; they looked at the maps and the drawing; and we responded to their  
2649 questions.

2650  
2651 Subsequently, we did meet with the Urban family. And the Urban family is here  
2652 today. We met with them. Their request was to move the gravel driveway from  
2653 the west side of the property to the east. We had our engineer look at that and  
2654 determined that there would be no problem to move that gravel road to the east.  
2655 We also consulted with the County's traffic engineer to see if there's a safety  
2656 issue with moving the driveway to the east. His determination was that it should  
2657 not create any safety problem provided Dominion puts a gate at that access. So  
2658 this drawing that's before you now shows that eastern location off the curve of  
2659 New Wade, and there is a gate noted on the plan for that location. I believe the  
2660 Urban's have submitted a letter to you for your record stating that that's their  
2661 preference for the location of the driveway. Dominion actually prefers this  
2662 eastern location as well. The eastern location is more environmentally sensitive  
2663 to this site. On the east we don't have a perennial stream to cross and we don't  
2664 have a Resource Protection Area that we have to stay away from. So  
2665 environmentally it's a better location for the gravel road to be at the eastern  
2666 location.

2667  
2668 The eastern location, even though it's only three to four trips a month, it does  
2669 keep that traffic away from the houses, farther away from them. It also would  
2670 enter the site in an area where we do not have to disturb the topography or the  
2671 vegetation, which on the west end it would change that. We do have some  
2672 simulations. Paul, could you put those up? One of the concerns about moving  
2673 the road would was whether it would make the substation itself more visible.  
2674 These are computer generated. What we have done is we've measured the  
2675 heights and calculated what the view would look like with mature vegetation. This  
2676 is the view from Nuckols. That was the concern about whether putting a road  
2677 there would open that up more. I think there is another one, Paul, that shows the  
2678 road. This is looking from Nuckols. This is the western side. If we don't put a  
2679 road there, that would remain looking like that. And this is one showing the road  
2680 on the east side. You can see even down where the screening is around the  
2681 substation, it doesn't make it any more visible from that direction.

2682  
2683 In conclusion, Dominion believes that the location, the topography, the design,  
2684 and the screening that is going to be provided for this all combine to meet all the  
2685 jurisdictional requirements that you need to grant a conditional use permit.

2686 Dominion has reviewed the proposed conditions and can agree to them,  
2687 provided the Number One condition would substitute the alternative east plan.  
2688 For these reasons Dominion believes that a substation would not change the  
2689 character of the area, would have limited visual impact, would provide a needed  
2690 service to the County, is consistent with the goals and objectives of the  
2691 Comprehensive Plan, and ask that you grant the conditional use permit.  
2692

2693 Mr. Wright - I would like ask a couple questions. I live right off  
2694 Nuckols Road. I go by that place three or four times a day, so I'm thoroughly  
2695 familiar with the location. Will there be any noise created by this installation?  
2696

2697 Ms. Freye - I have one of our engineers here who can answer that  
2698 specifically.  
2699

2700 Mr. Wright - Are you the noise man?  
2701

2702 Mr. Duty - My name is Dan Duty; I'm the project manager. There  
2703 will be some noise. It's about comparable to a residential heat pump. I think with  
2704 the 295 traffic right next to it and some of the other traffic noise, I don't think  
2705 anybody will ever hear it once they're off the property line.  
2706

2707 Mr. Wright - A lot of 295 traffic. I can attest to that. And will that be  
2708 continual or will it be going off and coming on?  
2709

2710 Mr. Duty - There are two noises that you could possibly here.  
2711 The transformer hums and it hums a little bit louder when the load is up. So late  
2712 in the afternoon on a summer day it may hum a little bit louder, about the time  
2713 people are going home. Sometimes the transformers have fans to help cool  
2714 them, and sometimes you will hear that. That would be another noise. But there  
2715 again, I think if you were a hundred feet outside of the fence, which is still well on  
2716 the property, you wouldn't be able to hear it.  
2717

2718 Mr. Wright - How about any emissions from this that would be  
2719 detrimental to the public health?  
2720

2721 Mr. Duty - There is no fuel that is being burned. It's just a  
2722 transformation station to grab the 230 high-voltage, the 230,000 volts and reduce  
2723 it down to— thirty-four five, which we send out to the neighborhood.  
2724

2725 Mr. Wright - If we use the eastern access, you would access that  
2726 almost immediately after coming off of Nuckols Road, right?  
2727

2728 Mr. Duty - There's a sharp bend.  
2729

2730 Mr. Wright - Yes.  
2731

2732 Mr. Duty - Instead of turning that hard right on New Wade, you  
2733 could just go straight through. There's a farmer's gate there now and somewhat  
2734 of a farm lane there already.  
2735  
2736 Mr. Wright - If you use the western one, how far would you have to  
2737 go on that—what do you call that road?--  
2738  
2739 Mr. Blankinship - New Wade.  
2740  
2741 Mr. Wright - —New Wade Road before you would—  
2742  
2743 Mr. Duty - Several hundred feet. It's all the way to the western  
2744 boundary of the property.  
2745  
2746 Mr. Wright - As far as traffic is concerned, it would be much better  
2747 to use the eastern. It would have less impact on these other properties.  
2748  
2749 Mr. Duty - We think so.  
2750  
2751 Mr. Wright - And also, the western one, doesn't that run right  
2752 along the property line of that property owner there?  
2753  
2754 Mr. Duty - Yes it does.  
2755  
2756 Mr. Wright - Is there a home there?  
2757  
2758 Mr. Duty - There is a home. Mr. Urban owns some property  
2759 there.  
2760  
2761 Mr. Wright - Right now that's just a field, isn't it.  
2762  
2763 Mr. Duty - Yes.  
2764  
2765 Mr. Wright - That would cause some disturbance of the land and  
2766 so forth to put that western one in. I'm sure you'd have to do the same thing on  
2767 the eastern, but that's right at Nuckols Road.  
2768  
2769 Mr. Duty - Yes. The elevation is quite a bit higher on the western  
2770 boundary, so it would be quite a cut to get a road entrance up into there.  
2771  
2772 Ms. Harris - Are there any electric substations in Henrico County  
2773 that would similar to this?  
2774  
2775 Mr. Duty - There is one at Short Pump. That's right down the  
2776 line to the west. And then back to the northeast.  
2777

2778 Ms. Harris - Yes, I saw that on your map. Is it going to look just  
2779 like that?  
2780  
2781 Mr. Duty - Well, the same kind of components. The arrangement  
2782 or the layout would be a little bit different, but you have the same types of  
2783 equipment in there.  
2784  
2785 Ms. Harris - So no physical structures as such? I know you talked  
2786 about the poles and all that.  
2787  
2788 Mr. Duty - There would be a control house which we have  
2789 instrumentation in. It's unmanned. It would probably be twenty by twenty-eight  
2790 feet.  
2791  
2792 Mr. Baka - I realize most of the trees that are along the I-295  
2793 onramp appear to be actually in the VDOT right-of-way so they're not yours. But  
2794 the trees that are on this parcel, would they remain undisturbed? There is no  
2795 condition necessarily, and I don't know if that's a question for the staff or for the  
2796 applicant, if you're willing to allow that the trees that don't need to be disturbed  
2797 on the property could remain. Is that something that could be considered? A  
2798 buffer? I don't think noise buffers are significant; famous last words, but I don't  
2799 think noise would be a significant issue here, not as much as visual. It might help  
2800 to reduce seeing that as you go by.  
2801  
2802 Mr. Duty - It's our intent to leave all the vegetation there.  
2803 Thanks.  
2804  
2805 Mr. Blankinship - If we have that shown on the landscape plan—the  
2806 final submission of the landscape plan, then that would be enforceable from our  
2807 point of view. Under Condition #4.  
2808  
2809 Mr. Duty - Thanks.  
2810  
2811 Ms. Harris - Any further questions by Board members? We would  
2812 like to thank you for your presentation.  
2813  
2814 Mr. Blankinship - Madam Chairman, as you know one of the most  
2815 important questions you need to answer in reviewing a use permit is whether the  
2816 proposed use is consistent with the Comprehensive Plan. In a case like this  
2817 where it's essentially a public use, that question is also referred to the Planning  
2818 Commission by state law, and Henrico County also to the Board of Supervisors.  
2819 So the Planning Department has already made a presentation to the Planning  
2820 Commission and the Board of Supervisors on that specific question, is this  
2821 proposed substation consistent with or substantially in accord with the  
2822 Comprehensive Plan. The presentation to the Planning Commission was made  
2823 by Mr. David Conmy on the Planning Department staff. And we've asked Mr.

2824 Conmy to come this morning and give you a brief version of the presentation he  
2825 made to the Planning Commission.

2826

2827 Mr. Conmy - Thank you. Madam Chair, members of the Board.  
2828 Since the 2026 Comprehensive Plan does not recommend a public land use for  
2829 the subject parcel, Section 15.2-2232(a) of the Code of the Virginia mandates a  
2830 substantially in according finding be submitted to and approved by the Planning  
2831 Commission prior to the use of the property for a public purpose.

2832

2833 At their September 15<sup>th</sup> meeting, the Planning Commission made such a  
2834 determination based on Planning staff's recommendation. The Board of  
2835 Supervisors at their October 11<sup>th</sup> meeting further endorsed this determination  
2836 through an adopted resolution.

2837

2838 Staff's substantially in accord recommendation was based on the proposed  
2839 substation's compatibility with surrounding land uses, as well as future needs to  
2840 serve a growing population, and its meeting the goals, objectives, and policies of  
2841 the Comprehensive Plan. In review of its compatibility, mitigation of visual impact  
2842 of the substation through landscape screening improvements was an important  
2843 consideration. Therefore, the SIA was approved with the landscaping and  
2844 general development plans before you, which both work to reduce potential  
2845 visual impact of the substation from multiple view sheds, especially the Nuckols  
2846 Road corridor and other key vantage points.

2847

2848 Most of the landscaping improvements fall within the limits of the property line,  
2849 further ensuring their long-term preservation. Furthermore, two twenty-foot  
2850 landscaping easement strips will be recorded along New Wade Lane and the I-  
2851 295 onramp in order to preserve existing vegetative screening, and provide for  
2852 future screening should these roadways be widened.

2853

2854 Finally, the location of the access drive at the western end of the property  
2855 instead of the alternate along the eastern boundary further reduces the visual  
2856 impact of the substation from the Nuckols Road corridor.

2857

2858 Beyond the requirements of a substantially in accord determination, the  
2859 proposed electric substation is permitted in the A-1 District, subject to a  
2860 conditional use permit, which is up for your consideration today.

2861

2862 This concludes my presentation and I'd be happy to answer any questions you  
2863 may have.

2864

2865 Ms. Harris - Will you spell your last name, please?

2866

2867 Mr. Conmy - Sure. That's spelled C-o-n-m-y.

2868

2869 Ms. Harris - Are there questions for Mr. Conmy?

2870  
2871 Mr. Conmy - Thank you.  
2872  
2873 Ms. Freye - Madam Chair, Gloria Freye, again. I would like to  
2874 correct a statement that I made earlier. I mistakenly said fifty-foot reserved  
2875 planting easements. It really is twenty feet, as Mr. Conmy said.  
2876  
2877 Mr. Witte - I have a question for you while you're back up here.  
2878 Have you read the suggested conditions?  
2879  
2880 Ms. Freye - Yes sir. And they're in agreement with them provided  
2881 that the #1 condition refers to the alternative east general development plan.  
2882  
2883 Mr. Witte - Okay. Thank you.  
2884  
2885 Ms. Freye - Thank you.  
2886  
2887 Ms. Harris - If there are no further questions from Board member,  
2888 this concludes this case.  
2889  
2890 **[After the conclusion of the public hearings, the Board discussed the case**  
2891 **and made its decision. This portion of the transcript is included here for**  
2892 **convenience of reference.]**  
2893  
2894 Mr. Wright - I move we approve it.  
2895  
2896 Ms. Harris - Do we have a second?  
2897  
2898 Mr. Baka - Second.  
2899  
2900 Mr. Wright - The basis for the approval is I don't think it adversely  
2901 affects the health, safety, and welfare of those living in the neighborhood. And I'd  
2902 like to add that I would also like to approve the eastern entrance along Nuckols  
2903 Road. It won't affect the property owners; it makes more sense; you don't have  
2904 to drive as far to get there. It just makes sense to me.  
2905  
2906 Mr. Blankinship - Mr. Baka, does your second still stand with that  
2907 change?  
2908  
2909 Mr. Baka - Yes it does.  
2910  
2911 Ms. Harris - Moved by Mr. Wright, seconded by Mr. Baka that this  
2912 case be approved. Are there any questions on this motion? All in favor say aye.  
2913 All opposed say no. The ayes have it; the motion passes.  
2914



2915 After an advertised public hearing and on a motion by Mr. Wright, seconded by  
2916 Mr. Baka, the Board **approved** application **CUP2011-00023, DOMINION**  
2917 **VIRGINIA POWER's** request for a conditional use permit pursuant to Sections  
2918 24-12(c) and 24-52(a) of the County Code to build and operate an electric  
2919 substation at 11201 New Wade Lane (Parcel 747-770-5210), zoned A-1,  
2920 Agricultural District (Three Chopt). The Board approved the use permit subject  
2921 to the following conditions:

- 2922
- 2923 1. Only the improvements shown on the plans filed with the application, showing  
2924 the eastern alternative access road, may be constructed pursuant to this  
2925 approval. Any additional improvements shall comply with the applicable  
2926 regulations of the County Code. Any substantial changes or additions to the  
2927 design or location of the improvements will require a new use permit.
  - 2928
  - 2929 2. Prior to submitting an application for building permit, the applicant shall  
2930 submit the necessary information to the Department of Public Works to  
2931 ensure compliance with the requirements of the Chesapeake Bay  
2932 Preservation Act and the code requirements for water quality standards.
  - 2933
  - 2934 3. Prior to submitting an application for building permit, the applicant shall  
2935 present a complete grading, drainage, and erosion control plan prepared by a  
2936 Professional Engineer certified in the state of Virginia to the Department of  
2937 Public Works for approval. This plan must include the necessary floodplain  
2938 information if applicable.
  - 2939
  - 2940 4. Prior to submitting an application for building permit, the applicant shall  
2941 submit a detailed landscaping and lighting plan for review and approval by  
2942 the Planning Department. All landscaping shall be maintained in a healthy  
2943 condition at all times. Dead plant materials shall be removed within a  
2944 reasonable time and replaced during the normal planting season.

2945

2946	Affirmative:	Baka, Harris, Nunnally, Witte, Wright	5
2947	Negative:		0
2948	Absent:		0

2949

2950

2951

2952 **[At this point, the transcript continues with the public hearing on the next**  
2953 **case.]**

2954

2955 Ms. Harris - Mr. Blankinship, the last case on the agenda, did we  
2956 have a letter in reference to that being withdrawn?

2957

2958 Mr. Blankinship - Yes ma'am. VAR2011-00005, that case had to be  
2959 withdrawn from your agenda.

2960

2961 **VAR2011-00005** **BRONSON E. STONEMAN, JR.** requests a variance  
2962 from Section 24-9 of the County Code to build a one-family dwelling at 3261  
2963 Varina on the James (Parcel 822-664-5836 (part)), zoned A-1, Agricultural  
2964 District (Varina). The public street frontage requirement is not met. The applicant  
2965 has 0 feet public street frontage where the Code requires 50 feet public street  
2966 frontage. The applicant requests a variance of 50 feet public street frontage.

2967  
2968 Ms. Harris - Do we need a motion?

2969  
2970 Mr. Blankinship - No ma'am.

2971  
2972 Ms. Harris - Okay.

2973  
2974 **[The public hearing is complete and the Board discussed the cases in**  
2975 **order and made its decisions. The transcript continues here with the rest of**  
2976 **the meeting.]**

2977  
2978 Ms. Harris - Do we have a motion on the approval of the minutes?

2979  
2980 Mr. Witte - I make a motion we approve them.

2981  
2982 Ms. Harris - Is there a second?

2983  
2984 Mr. Nunnally - Second.

2985  
2986 Ms. Harris - Moved by Mr. Witte, seconded by Mr. Nunnally that  
2987 the minutes be approved. Any questions on the motion? All in favor say aye. All  
2988 opposed say no. The ayes have it; the motion passes.

2989  
2990 Mr. Baka - I will abstain from the motion because I wasn't  
2991 present.

2992  
2993 Ms. Harris - Mr. Baka is abstaining from that vote.

2994  
2995 On a motion by Mr. Witte, second by Mr. Nunnally, the Board **approved as**  
2996 **submitted the Minutes of the September 22, 2011** Henrico County Board of  
2997 Zoning Appeals meeting.

2998  
2999 Affirmative: Harris, Witte, Nunnally, Wright 4

3000 Negative: 0

3001 Absent: 0

3002 Abstain: Baka 1

3003  
3004 Ms. Harris - The presentation on recent ordinance amendment,  
3005 can we defer that? I know you're ready to go with the presentation. Is there any

3006 way possible that we can defer this until the next meeting? Do we have a long  
3007 agenda for the next meeting?  
3008

3009 Mr. Blankinship - Not at this point. At this point we only have a case or  
3010 two scheduled.  
3011

3012 Ms. Harris - Do you want us to review anything before you present  
3013 that? We're going to defer Presentation on Recent Ordinance Amendment until  
3014 the next meeting. Is that okay?  
3015

3016 Mr. Madrigal - It's all right with me, yes.  
3017

3018 Mr. Blankinship - I don't see why.  
3019

3020 Mr. Witte - I would like to also make note of the passing of our  
3021 colleague and keep his family in our thoughts and prayers.  
3022

3023 Ms. Harris - Thank you so much. You may have already noticed  
3024 we have a new member from the Tuckahoe District, Mr. Gregory Baka, who hit  
3025 the floor running today. Thank you.  
3026

3027 Mr. Blankinship - He had no choice.  
3028

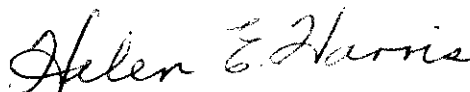
3029 Ms. Harris - Thank you. Motion for adjournment?  
3030

3031 Mr. Witte - So moved.  
3032

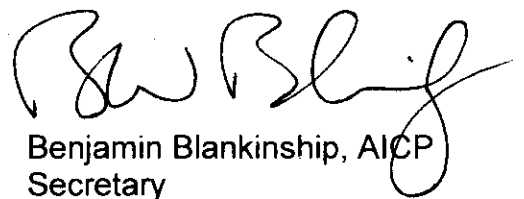
3033 Mr. Baka - Second.  
3034

3035 Ms. Harris - Moved by Mr. Witte, seconded by Mr. Baka that we  
3036 adjourn the meeting.  
3037

3038 Meeting is adjourned.  
3039

3040   
3041

3042  
3043 Helen E. Harris  
3044 Chairman  
3045

3046   
3047  
3048 Benjamin Blankinship, AICP  
3049 Secretary  
3050  
3051