

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 27, 2016 AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH OCTOBER**
6 **10, 2016, AND OCTOBER 17, 2016.**

7
Members Present: Greg Baka, Chairman
Dennis J. Berman, Vice Chairman
Gentry Bell
Helen E. Harris
William M. Mackey, Jr.

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

8
9 Mr. Baka - Good morning and welcome to the October 2016
10 meeting of the Board of Zoning Appeals. Mr. Blankinship, would you please read
11 our rules?
12

13 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,
14 ladies and gentlemen. The rules for this meeting are as follows: Acting as
15 secretary, I'll announce each case. And as I'm speaking, the applicant is welcome
16 to come down toward the podium. We will then have a member of staff give a brief
17 introduction to the case. Then the applicant will be invited to speak. After the
18 applicant has spoken, anyone who wishes to speak to that case will have an
19 opportunity to speak. I skipped ahead there. The first thing we will do is ask
20 everyone who intends to speak to that case to stand and be sworn in. Then staff
21 will speak, then the applicant, then anyone else. After everyone has had a chance
22 to speak, the applicant, and only the applicant, will have an opportunity for rebuttal.
23

24 After the Board has heard all the testimony and asked any questions, they will take
25 that matter under advisement, and they will proceed to the next public hearing.
26 They will render all of their decisions at the end of the meeting. So if you wish to
27 hear their decision on a specific case, you can either stay until the end of the
28 meeting, or you can check the Planning Department website—we usually get it
29 updated within the hour after 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 directly
33 into the microphone on the podium and state your name. Please spell your last
34 name just to make sure we get it correctly in the record.
35

36 Finally, there is a binder in the foyer which includes the staff report for each case.
37 So anybody who is interested in more information on a specific case is welcome
38 to review that.

39
40 I am not aware, as I mentioned, of any deferrals or withdrawals at this point.

41
42 Mr. Baka - Okay. So with no deferrals or withdrawals at this point,
43 Mr. Blankinship, would you call our first case for the record?

44
45 Mr. Blankinship - CUP2016-00020, Curles Neck Properties, LLC.

46
47 **CUP2016-00020 CURLES NECK PROPERTIES, LLC** requests a
48 conditional use permit pursuant to Sections 24-52(d) and 24-103 of the County
49 Code to extract materials from the earth at 4721 Curles Neck Road (Parcels 833-
50 666-1289 and 834-666-2189) zoned Agricultural District (A-1) (Varina).

51
52 Mr. Blankinship - Would everyone who intends to speak to this case
53 please stand and be sworn in? Do you swear the testimony you're about to give is
54 the truth, the whole truth, and nothing but the truth so help you God?

55
56 Mr. Lewis - I do.

57
58 Mr. Blankinship - Thank you. Mr. Gidley?

59
60 Mr. Gidley - Thank you, Mr. Secretary. Good morning,
61 Mr. Chairman, members of the Board. This case was deferred from last month's
62 public hearing so the property owner could work out some concerns with the
63 adjacent property owners.

64
65 The subject property is located at 4721 Curles Neck Road, which is part of Curles
66 Neck Farm. It's located off of Route 5 in the Varina District. Sand and gravel
67 extraction has occurred here since the 1950s. Use of the property as a working
68 farm goes back to 1638, and it was also the site of two Civil War battles.

69
70 The property itself contains 125 acres and is the site of this 12,500-square-foot
71 Georgian Revival mansion, which was built in 1896. This home is listed on the
72 National Register of Historic Places and the Virginia Landmarks Register. The
73 historic designation also applies to 17 other structures on the property, including a
74 store, stables, and blacksmith shop.

75
76 Today's request would allow for the extraction of sand and gravel from 72 of the
77 125 acres of this property as shown here.

78
79 Mr. Blankinship - Let me interrupt you briefly, Mr. Gidley. Late in the
80 process, there was a change on this application. I should have gotten this map
81 updated, members of the Board; I apologize for that. But as you go on down to the

82 site plans, you will see that on the eastern edge where you have that curve along
83 the access road, some of that area is now taken out of the mining area. I apologize
84 for not bringing you up to date on that before now, Mr. Gidley. It's now 68 acres, I
85 believe.

86

87 Mr. Gidley - Okay, thank you.

88

89 Evaluation. First, is the request consistent with the Comprehensive Plan and
90 Zoning Ordinance. The property is zoned A-1, Agricultural District, and is
91 designated as Prime Agricultural on the 2026 Comprehensive Plan. Sand and
92 gravel extraction is permitted in the A-1 district with the issuance of a conditional
93 use permit.

94

95 I guess this is the older one too. During excavation, however, there would be a
96 significant—are they still—I'm sorry; I've been out of town. Are the buildings still
97 impacted?

98

99 Mr. Blankinship - Most of the buildings are. You'll notice the silos there
100 are now no longer in the area to be excavated.

101

102 Mr. Gidley - Okay. Thank you.

103

104 You do have these outbuildings for the mansion, which are a part of the overall
105 setting. And these would be impacted if there was a sand-and-gravel operation as
106 shown here. The mansion itself, which was shown earlier, would be preserved.
107 Several of the outbuildings, however, as I noted, would be demolished.

108

109 Mr. Bell - Are they of historical significance?

110

111 Mr. Blankinship - They are what are called *contributing structures*,
112 Mr. Bell. The National Register—I'm trying to think of the name for the form you
113 submit. *Nomination*, I think is the term—was focused on the house itself. But when
114 they review those, they also look at contributing structures on the same property.
115 So I guess the way to look at that is any one of those structures probably would
116 not have been put on the National Register. But because they're part of the historic
117 setting of the house, they're included within the nomination for the historic
118 designation for the house.

119

120 Mr. Bell - Thank you.

121

122 Mr. Berman - I believe that's symbolic; it doesn't guarantee
123 protection.

124

125 Mr. Blankinship - Yes, that's correct.

126

127 Mr. Gidley - Okay. Upon completion of the extraction operation, the
128 land will be reclaimed and may be returned to an architectural use. The
129 reclamation plan shown here indicates the establishment of permanent vegetation
130 with a 5 percent slope on the property. It would drain towards a pond proposed for
131 the center of the site, located right here. Upon restoration, the site will be similar
132 to the rest of Curles Neck Farm, and thus is consistent with both the Zoning
133 Ordinance and the Comprehensive Plan.

134
135 Most of the surrounding Curles Neck Farm consists of reclaimed sand and gravel
136 mines. The nearest residence is over one mile away. Typically, the most significant
137 impact from sand and gravel operations is the truck activity associated with
138 removal of the sand and gravel. However, sand and gravel extracted at Curles
139 Neck has always been removed by barge on the James River. That would continue
140 with this operation here, so there would be no real trucking activity out on Route 5
141 or impact in that regard.

142
143 There is a change to the standard condition for extraction operations. Due to the
144 complexity of the site, the applicant would prefer 180 days to get their permitting
145 in order rather than the standard 90 days. Staff is okay with this change, and the
146 conditions in your staff report were amended to reflect this change.

147
148 Mr. Baka - That condition number, Paul, is?

149
150 Mr. Blankinship - Two, three, four, and five?

151
152 Mr. Baka - All four of them?

153
154 Mr. Blankinship - Yes. Each one of them has 180—

155
156 Mr. Baka - Change each one of them.

157
158 Mr. Blankinship - —rather than 90. It's not the standard condition, but it's
159 also not unusual. We have done that before when an applicant has known in
160 advance that it was going to take them more than 90 days to go through the
161 permitting process.

162
163 Mr. Baka - Thank you.

164
165 Mr. Gidley - In conclusion, because the proposed use is consistent
166 with the Comprehensive Plan and the intent of the Zoning Ordinance and will have
167 no substantial detrimental impact on nearby property, staff recommends approval
168 subject to the conditions found in the staff report.

169
170 This concludes my presentation. I'll be happy to answer any questions you have.

171

172 Mr. Baka - Thank you for your presentation. Questions from
173 members of the Board?

174
175 Ms. Harris - Yes. Mr. Gidley, in the report we see that 11 out of 17
176 buildings will be demolished. Are the silos the reason why we're not counting—you
177 say 11 out of 17? So what are the buildings that are not being demolished? Do you
178 know?

179
180 Mr. Blankinship - When I drafted the report, Ms. Harris, I took that
181 number off of the National Register nomination. I could not locate all of those
182 buildings on the site. Paul, can you bring up the reclamation plan, please?

183
184 Mr. Gidley - Sure.

185
186 Mr. Blankinship - I can show you a couple of examples.

187
188 Mr. Gidley - Right here.

189
190 Mr. Blankinship - Yes. Just at the north edge of the site, if you could
191 zoom just a—yes. You see the four-story frame building? That's one of the
192 nominated buildings, but it's outside of the mining area. And then just to the north
193 and west from there, you see another dwelling and an outbuilding. Yes, there is
194 one. There are some other buildings. I'm not sure which ones exactly were part of
195 the nomination and which ones were not. But there are other buildings on the larger
196 Curles Neck site that are not within the mining site.

197
198 Ms. Harris - So the number we're dealing with is 11, right?

199
200 Mr. Blankinship - Yes ma'am.

201
202 Ms. Harris - Okay. Our report for the conditions shows 180 days.
203 Are we changing that or is that what we're recommending?

204
205 Mr. Blankinship - One hundred eighty days is staff's recommendation.

206
207 Ms. Harris - So we have no changes as far as that is concerned?

208
209 Mr. Blankinship - That's correct.

210
211 Mr. Baka - Correct.

212
213 Ms. Harris - Thank you.

214
215 Mr. Blankinship - There was some confusion in different versions of the
216 report going different directions. So we just wanted to make sure everyone
217 understood that.

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Ms. Harris - We received some information this morning, the introduction, the mining methods and haul roads and access roads. How different is that from the report we already received?

Mr. Blankinship - One change is the one I pointed out while Mr. Gidley was speaking, which is the change in the fifth line under the introduction: "Owns 125.7-acre site of which only 68 acres will be mined." That had previously been 72, but they revised the area, made it slightly smaller.

On the other one I'm not sure of the exact wording change, but under "Haul Road and Access Roads," when Curles Neck was mined between the 1950s and say the last decade, the sand and gravel was hauled all the way to the south end of Curles Neck Farm and loaded on barges there.

Since this property has now been divided off from that larger property, they had to find a different site. So there is now going to be—yes, where the cursor's pointing on your map there, they're going to establish a new barge landing there. So they won't be hauling the sand and gravel through the rest of Curles Neck; it will all be done on this property.

Mr. Lewis can tell us if there are any other changes when he comes up. I believe those are the two significant changes. And then the map, again, shows that change at the eastern end where the mining area had followed the haul road all the way over almost parallel to the pond off to the east. It has now been brought back on the opposite side of the other haul road. Sorry, I don't know a clearer way to state that.

Mr. Baka - Makes sense. Okay. Other questions from members of the Board? Not at this time. Thank you. At this point, we would hear from the applicant.

Mr. Gidley - Thank you, Mr. Chair.

Mr. Lewis - Good morning. My name is Monte Lewis. L-e-w-i-s. I'm with Lewis and Associates. We're the civil engineers on the project. I'll be happy to answer any questions.

Just to get you up on the process of where we are as far as the historical and environmental permits. John has applied for those and had a pre-meeting with DHR, DEQ, all of them. He's getting ready to submit the plan probably within the next week. So what you see on my plan as far as what buildings are going to be demolished really depends on the state. If the state declares that certain buildings have to be preserved, then we'll have to adjust our plan to take them out of the mining area.

264 It was a little confusing. I have a map here where I tried to highlight the buildings
265 that are old and are within the mining area. Do you want me to put it up there?
266

267 Mr. Blankinship - Please, Miguel, could you help him with the camera?
268 Fred, we're going to go to the document camera, please. Maybe Fred has stepped
269 out of the booth.

270
271 Mr. Berman - No, there's somebody in there.

272
273 Mr. Blankinship - Oh, there we go.

274
275 Mr. Lewis - We do have John Brooks and Jerry Cable here. Jerry's
276 the owner. John is the environmental expert from Timmons who's working on the
277 permits. The light's all right. Can we get a little better focus on that? Okay. That's
278 pretty good.

279
280 Mr. Baka - That's good.

281
282 Mr. Lewis - The yellow buildings are the ones that are older. The
283 buildings that have "new" were probably built since 2000. Some of them are pole
284 barns. Some of them are sheds with farm equipment because it is an active farm.
285 Right now I think they have soybeans planted everywhere, but I think I've seen it
286 rotated between soybeans and corn.

287
288 You can see the mansion building off to the left. There's a 200-foot setback to the
289 mansion building. The RPA (Resource Protection Area) is 100 feet from the bank
290 of the James River. And we are substantially further away from that than what's
291 required by the County and the State.

292
293 I would like to point out one thing. In the report, it said the nearest residence was
294 a mile away. There is one that's closer. It's about 1,000 feet from the property line,
295 and it's north of this site. A very nice house that's up there. I'm not sure if they're
296 renting it or if it's a weekend retreat or a yearlong residence.

297
298 Mr. Blankinship - I must have mistaken it for a farm building or
299 something. I apologize.

300
301 Mr. Lewis - As you can see, there are mining sites all around this
302 that have been reclaimed when Vulcan was working on the site. They did an
303 excellent job of reclaiming the sites. The farm is working well. It looks very nice.
304 And I understood that they got several awards for that reclamation. I'm only saying
305 that because we were involved with the other permits that Vulcan got over the
306 years on this side of the road and across Route 5, which was called The Slash.

307
308 If you have any questions, I'd be glad to answer them.

309

310 Mr. Blankinship - Could we begin with Ms. Harris's question of what has
311 changed in the narratives from the original one to the one that we distributed?
312

313 Mr. Lewis - Okay. Like Ben pointed out, the silos that you see on
314 the right-hand side of this are not on the property. I mistakenly had the line going
315 around those. That was not correct, so we pulled that line back. We're 100 feet
316 from the property line in all directions. So that decreased.
317

318 I made it a little bit clearer that the haul road is completely on our site. There's not
319 going to be any hauling off the site of any materials. It's confined on site. There
320 was some confusion if we were going to reuse the old barge area that's over there
321 on the farm; we are not.
322

323 Other than that, it's just some—I think some of the conditions we had worked
324 through because of the permits that we have to get through the State and the timing
325 that the State takes in getting those permits. Although we've applied and are
326 working with the State, they have not made any mention that this is not going to
327 work for them. But we just have to go through their process.
328

329 Mr. Baka - Very good. Any other questions?
330

331 Mr. Bell - Did I understand that—getting back to the buildings
332 and sheds and stuff—that the State will have the final decision whether they should
333 be kept or can be destroyed for the extraction of materials?
334

335 Mr. Lewis - Yes sir. As part of the environmental permit, when you
336 send in a permit to the State, they send it to all of their agencies, one of them being
337 the historical people. They review it, give their conditions. That is going to be under
338 review. John Brooks can speak in more detail about that if you need some better
339 information.
340

341 Mr. Bell - It's not needed.
342

343 Mr. Lewis - The State does have to approve them. Even if the State
344 approves them, we still have to document them as part of the condition that Ben
345 has written up.
346

347 Mr. Bell - Thank you.
348

349 Mr. Lewis - Yes sir.
350

351 Mr. Berman - Would you be agreeable to adding to condition #16 a
352 time frame that would allow a response of the Preservation Society to come in and
353 do the documentation and/or the possibly the purchase and removal of those if
354 you're going to remove those? I just wanted to kind of time-box it because what I
355 don't—

356

357 Mr. Lewis - Purchase and removal in case somebody—let's say a
358 scenario where the State says yes, you can take it down, but somebody wants it?

359

360 Mr. Berman - Well and even just to give people enough time to
361 document it. I'm not an archeologist, but I think that if you told them all right, it's
362 going to be knocked down tomorrow, they wouldn't have a chance to respond. So
363 I'm wondering if we could give some sort of time frame—30, 60 days?

364

365 Mr. Lewis - We have to document it before we start any work. Is
366 that what you're talking about or are you talking about documentation from—

367

368 Mr. Berman - From an external source, a preservation society.

369

370 Mr. Lewis - Some other preservation society.

371

372 Mr. Baka - Or from Virginia Department of Historic Resources.

373

374 Mr. Lewis - Yes. I don't have any problem with writing them into
375 that condition because they're going to be voting on it anyway.

376

377 Mr. Blankinship - Would that same 180 days work?

378

379 Mr. Lewis - I think so.

380

381 Mr. Berman - Okay. I'll add the motion when appropriate.

382

383 I understand the business aspect of being able to do this. But my question in
384 preserving the history and pride of days gone by, are they aware that there are tax
385 breaks towards expenses of maintaining these sites if they chose to leave them
386 up?

387

388 Mr. Lewis - I'm not sure of that. I've just been commissioned to get
389 a mining plan.

390

391 Mr. Berman - I understand. Okay. That's all.

392

393 Mr. Blankinship - I'm sure they are aware, Mr. Berman. I'm sure they're
394 aware of those programs.

395

396 Mr. Berman - Okay. Thank you.

397

398 Mr. Baka - And to clarify, since these structures that are proposed
399 to be removed are all contributing structures to the original mansion, contributing
400 in their historic nature. If one of those contributing structures were found to be a
401 historic resource that is significant in itself that the Virginia Department of Historic

402 Resources did not approve of its demolition, then are you suggesting today that
403 that structure would remain on site and would—

404
405 Mr. Lewis - Yes sir.

406
407 Mr. Baka - The excavation would work around it somehow.

408
409 Mr. Lewis - Yes sir.

410
411 Mr. Baka - Okay, just to be clear on that. That's what I understood.

412
413 Mr. Lewis - There are some structures on there, and I don't know
414 if they lend themselves to it, but there was also talk with the State of if they had a
415 structure that they wanted to preserve and if we could move it, do the mining,
416 re-grade, and then move it back, that's also a possibility.

417
418 Mr. Baka - Okay.

419
420 Mr. Lewis - It really depends on what the State says.

421
422 Mr. Baka - Thank you. That helps make it clearer to me.

423
424 Mr. Berman - Any of the structures that are thought to be removed,
425 are any of them in such disrepair that they couldn't be restored?

426
427 Mr. Lewis - That I don't know. Would you know—

428
429 Mr. Berman - It's hard to tell from the pictures.

430
431 Mr. Baka - Typically that would be at the discretion of the
432 architectural historian, based at the Virginia Department of Historic Resources,
433 from my experiences.

434
435 Mr. Berman - Would they be condemned because they're in such
436 disrepair?

437
438 Mr. Lewis - Just to my eye, some of them look pretty rough,
439 especially that one that's off to the left and high. It's grouped where I have it listed
440 as modern sheds. There are sheds around it. And in the middle it looks like—if you
441 walk by it, you say oh, this is an old chicken coup. Because it's probably been used
442 for multiple things over the years. Some of the others look to be in fair shape, but
443 I didn't go in them to see if they were structurally sound. Some of them are being
444 used for shops right now for the modern farm equipment being stored inside.

445
446 Mr. Berman - I didn't want to make a big fuss over something that's
447 just going to fall apart if somebody sneezes on it.

448
449 Mr. Lewis - Right. Probably picked up on the study that's done by
450 the—
451
452 Mr. Baka - As this project goes forward, sir, would you all be willing
453 to send a final report of the findings of the Virginia Department of Historic
454 Resources to the secretary of the Board of Zoning Appeals just simply as
455 information to pass along to this Board for future cases?
456
457 Mr. Lewis - Yes sir. That is one of the conditions that we're doing.
458
459 Mr. Blankinship - They'll send it to Recs and Parks, and they'll coordinate
460 that.
461
462 Mr. Baka - Okay. And this Board will have the opportunity in the
463 future to simply review the findings after the case for future edification.
464
465 Mr. Blankinship - Sure.
466
467 Mr. Baka - Thanks.
468
469 Ms. Harris - Mr. Lewis, a couple of questions. Did you say 180 days
470 was ample time for you to get the project?
471
472 Mr. Lewis - We would always like more, but Mr. Blankinship said
473 that he was a little uncomfortable with extending that because he's used the 180
474 in the past, and it's worked fine with them. As far as historic and environmental,
475 John, are you still okay with 180?
476
477 Mr. Blankinship - If we get five months out and you can see that you're
478 not going to make 180, we can just come back to the Board and adjust things.
479
480 Mr. Lewis - Yes.
481
482 Ms. Harris - Okay. Another question. What about the dairy barn?
483 Would that be destroyed?
484
485 Mr. Lewis - The dairy farm?
486
487 Ms. Harris - Barn. The barn.
488
489 Mr. Lewis - The barn?
490
491 Ms. Harris - I know you're going to demolish some buildings.
492

493 Mr. Lewis - I know we took down the old dairy long ago, but I don't
494 know what other—.

495

496 Ms. Harris - I think that's something that is unique to Curles Neck
497 Dairy. I was just hoping that would be preserved.

498

499 Mr. Lewis - I have photos here and numbering on these buildings
500 if you want to see what they look like. It's hard to go through them and then put
501 them with the plan. If you look at the plan, the numbers are on here.

502

503 Mr. Baka - Yes sir.

504

505 Mr. Brooks - John Brooks—B-r-o-o-k-s—with Timmons Group. I'm
506 the environmental scientist charged with getting the environmental permitting. The
507 dairy barns were removed probably ten years ago as a part of the earlier mining
508 processes to the north. So they are no longer on the property.

509

510 Mr. Blankinship - That explains why I couldn't locate them.

511

512 Mr. Brooks - They weren't on this property.

513

514 Ms. Harris - That is in the report. The horse barn—

515

516 Mr. Blankinship - Yes, that was part of the National Register
517 documentation. But that, of course, was prepared prior to what he's talking about.

518

519 Ms. Harris - Okay, thank you.

520

521 Mr. Baka - Thank you, sir. Is there anyone else who would like to
522 speak about this case on in opposition to this case? Seeing none, the Board will
523 move on to the next case. As is tradition, the Board will hear all the cases first, and
524 the votes are at the end of the meeting.

525

526 **[After the conclusion of the public hearings, the Board discussed the case**
527 **and made its decision. This portion of the transcript is included here for**
528 **convenience of reference.]**

529

530 Mr. Baka - What is the pleasure of the Board?

531

532 Mr. Mackey - I make a motion that we approve with an added
533 condition.

534

535 Mr. Blankinship - Number 16 adding a limit of 180 days for them to
536 complete the survey.

537

538 Mr. Mackey - Yes.

539

540 Mr. Baka - Is there a second to that motion?

541

542 Mr. Bell - Second.

543

544 Mr. Baka - Motion's been made and seconded. Is there any
545 discussion of the motion? All those in favor of the motion, signify by saying aye.
546 Opposed? The ayes have it; the motion passes.

547

548 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
549 Mr. Bell, the Board **approved** application **CUP2016-00020, CURLES NECK**
550 **PROPERTIES, LLC's** request for a conditional use permit pursuant to Sections
551 24-52(d) and 24-103 of the County Code to extract materials from the earth at 4721
552 Curles Neck Road (Parcels 833-666-1289 and 834-666-2189) zoned Agricultural
553 District (A-1) (Varina). The Board approved the conditional use permit subject to
554 the following conditions:

555

556 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24
557 of the County Code.

558

559 2. Within 180 days of approval, the applicant shall post a financial guaranty in an
560 amount of \$216,000, guaranteeing that the land will be restored to a reasonably
561 level and drainable condition, consistent with the elevation of the land prior to the
562 beginning of excavation. In the event of termination of that financial guaranty, this
563 permit shall be void, and excavation shall cease. Within 180 days of termination,
564 the applicant shall restore the land as provided for under the conditions of this use
565 permit. Termination of such financial guaranty shall not relieve the applicant from
566 its obligation to indemnify the County of Henrico for any breach of the conditions
567 of this use permit.

568

569 3. Within 180 days of approval, the applicant shall submit environmental
570 compliance plan to the Department of Public Works (DPW) for review and
571 approval. The applicant shall continuously satisfy DPW that erosion control
572 measures are in accordance with the approved plan and are properly maintained.
573 As site conditions change, updated plans and bonds may be required as
574 determined by DPW.

575

576 4. Within 180 days of approval, the applicant shall obtain a mine license from the
577 Virginia Department of Mines, Minerals and Energy.

578

579 5. Within 180 days of approval, the areas approved for mining under this permit
580 shall be delineated on the ground by five-foot-high metal posts at least five inches
581 in diameter and painted in alternate one foot stripes of red and white. These posts
582 shall be so located as to clearly define the area in which the mining is permitted.

583

- 584 6. Throughout the life of this permit, the applicant shall comply with the
585 Chesapeake Bay Preservation Act and all state and local regulations administered
586 under such act applicable to the property, and shall furnish to the Planning
587 Department copies of all reports required by such act or regulations.
588
- 589 7. Hours of operation shall be Monday through Friday, 6:00 a.m. to 6:00 p.m. when
590 Daylight Saving Time is in effect, and 7:00 a.m. to 5:00 p.m. at all other times.
591
- 592 8. No operations of any kind are to be conducted at the site on Saturdays,
593 Sundays, or national holidays.
594
- 595 9. All access to the property shall be from the established entrance onto New
596 Market Road or by barge from the James River.
597
- 598 10. The applicant shall maintain gates at the entrance to the property. These gates
599 shall be locked at all times, except when authorized representatives of the
600 applicant are on the property.
601
- 602 11. The applicant shall post and maintain a sign at the entrance to the mining site
603 stating the name of the operator, the use permit number, the mine license number,
604 and the telephone number of the operator. The sign shall be 12 square feet in area
605 and the letters shall be three inches high.
606
- 607 12. The applicant shall post and maintain "No Trespassing" signs every 250 feet
608 along the perimeter of the property. The letters shall be three inches high. The
609 applicant shall furnish the Chief of Police a letter authorizing the Division of Police
610 to enforce the "No Trespassing" regulations, and agreeing to send a representative
611 to testify in court as required or requested by the Division of Police.
612
- 613 13. All material excavated from the property shall be moved by barge on the James
614 River. No trucks hauling material excavated from the property shall travel on New
615 Market Road.
616
- 617 14. All roads used in connection with this use permit shall be effectively treated
618 with calcium chloride or other wetting agents to eliminate any dust nuisance.
619
- 620 15. The applicant shall maintain the property, fences, and roads in a safe and
621 secure condition indefinitely, or convert the property to some other safe use.
622
- 623 16. Within 180 days of approval, and before beginning any work on the site, each
624 structure to be demolished shall be documented with an architectural survey and
625 photographed, and an archeological survey shall be performed for the 125-acre
626 site. The applicant shall provide copies of the resulting documents to the
627 Department of Recreation and Parks. If, during excavation, the applicant discovers
628 evidence of cultural or historical resources, or an endangered species, or a

629 significant habitat, it shall notify appropriate authorities and provide them with an
630 opportunity to investigate the site.

631
632 17. If water wells located on surrounding properties are adversely affected, and
633 the extraction operations on this site are suspected as the cause, the effected
634 property owners may present to the Board evidence that the extraction operation
635 is a contributing factor. After a hearing by the Board, this use permit may be
636 revoked or suspended, and the operator may be required to correct the problem.

637
638 18. Open and vertical excavations having a depth of 10 feet or more, for a period
639 of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect
640 the public safety.

641
642 19. Topsoil shall not be removed from any part of the property outside of the area
643 in which mining is authorized. Topsoil shall be stockpiled within the authorized
644 mining area and provided with adequate erosion control protection. Sufficient
645 topsoil shall be stockpiled on the property for respreading in a layer five inches
646 deep. If the site does not yield sufficient topsoil, additional topsoil shall be brought
647 to the site to provide the required five-inch layer of cover. All topsoil shall be treated
648 with a mixture of seed, fertilizer, and lime as recommended by the County after
649 soil tests have been provided to the County.

650
651 20. The reclamation of the property shall take place simultaneously with the mining
652 process. The final grading of the site shall be consistent with the elevation of the
653 land prior to the beginning of excavation as shown on the approved reclamation
654 plan. Reclamation shall not be considered completed until the mined area is
655 covered completely with permanent vegetation.

656
657 21. If it is necessary to bring topsoil or fill material to the site for reclamation, such
658 material shall be brought in by barge on the James River. No trucks hauling topsoil
659 or fill material to be placed on the property shall travel on New Market Road.

660
661 22. The operator shall submit a quarterly report stating the origin, nature, and
662 quantity of any off-site generated material deposited on the site, certifying that no
663 hazardous material was included. The material to be deposited on the site shall be
664 limited to imperishable materials such as stone, bricks, tile, sand, gravel, soil,
665 asphalt, concrete and like materials, and shall not include any hazardous materials
666 as defined by the Virginia Hazardous Waste Management Regulations.

667
668 23. A superintendent, who shall be personally familiar with all the terms and
669 conditions of Section 24-103 of the County Code, and this use permit, shall be
670 present at the beginning and conclusion of operations each work day to see that
671 all the conditions of the Code and this use permit are observed.

672
673 24. A progress report shall be submitted to the Board every year on or about
674 October 31. This progress report shall include how much land has been mined to

675 date of the report, how much land is left to be mined, how much reclamation has
676 been performed, when and how the remaining amount of land will be reclaimed,
677 and any other pertinent information about the operation that would be helpful to
678 the Board.

679
680 25. This permit shall expire October 31, 2026. On or about October 25, 2018;
681 October 22, 2020; October 27, 2022; and October 24, 2024; the Board will hold a
682 public hearing to consider renewal of this use permit. The permit will be renewed
683 in two-year increments unless the Board finds that the applicant is in violation of
684 any of these conditions, or that the operation has had a substantial detrimental
685 impact on nearby property. Examples of detrimental impacts may include
686 excessive noise, excessive traffic, or environmental impacts such as water or air
687 pollution.

688
689 26. Reclamation of the property shall be completed within one year of either the
690 termination of this permit, or the final cessation of excavation at the property,
691 whichever occurs sooner.

692
693 27. Failure to comply with any of the foregoing conditions shall automatically void
694 this permit. The Board may revoke this use permit at any time if it finds, after a
695 public hearing, that the operator is in violation of any of these conditions, or that
696 the operation has had a substantial detrimental impact on nearby property. In the
697 event the Board revokes this use permit, the applicant agrees to immediately stop
698 all excavation at the property until the Board has issued a notice to resume
699 excavation. If the applicant appeals such revocation of this use permit, the
700 applicant agrees that all excavation work at the property shall remain stopped until
701 such appeal is finally resolved or the Board has issued a notice to resume
702 excavation.

703
704
705 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
706 Negative: 0
707 Absent: 0

708
709
710 **[At this point, the transcript continues with the public hearing on the next**
711 **case.]**

712
713 Mr. Blankinship - Next is conditional use permit 2016-00022, River Pools
714 & Spas.

715
716 **CUP2016-00022 RIVER POOLS & SPAS** requests a conditional use
717 permit pursuant to Section 24-95(i)(4) of the County Code to allow a pool in the
718 side yard at 5808 Grayley Court (HENLEY) (Parcel 732-774-7197) zoned
719 Agricultural District (A-1) (Three Chopt).

720

721 Mr. Blankinship - Would anyone who intends to speak to this case
722 please stand and be sworn in. Raise your right hands, please. Do you swear the
723 testimony you're about to give is the truth, the whole truth, and nothing but the truth
724 so help you God? Thank you. Mr. Gidley?

725

726 Mr. Gidley - Thank you, Mr. Secretary.

727

728 The subject property is located at 5808 Grayley Court in the western part of the
729 County. If the site looks familiar, that's because back in July the owners received
730 a conditional use permit for a pool house and outdoor kitchen that was also located
731 in the side yard. Following this approval, the pool contractor came in to obtain a
732 building permit for a swimming pool to be located in the side yard. Like accessory
733 buildings, swimming pools are also required to be located in the rear yard or maybe
734 placed in the side yard with the issuance of conditional use permit.

735

736 The property is zoned A-1, Agricultural District, and is designated as Rural
737 Residential on the Comprehensive Plan. One-family dwellings are consistent with
738 both designations, and the proposed swimming pool is allowed as an accessory
739 use to a dwelling in the A-1 district.

740

741 Although the Zoning Ordinance limits accessory structures to the rear yard, this lot
742 is oddly shaped due to its location on a cul-de-sac. The front of the house faces
743 the bulb of the cul-de-sac. As a result, the side of the house here faces the actual
744 rear yard, whereas the back of the house faces the side yard here. As a result, one
745 could argue the proposed location of the proposed swimming pool is consistent
746 with the intent of the regulation, because most people driving up the cul-de-sac
747 here are going to look at the house and think this is the backyard. Although again
748 under the Zoning Ordinance it's actually a side yard.

749

750 As far as any detrimental impacts on nearby properties, the lot actually slopes
751 downward from where the house is towards the side property line here. Between
752 the downward slope and also the existing house, the pool obviously would not be
753 visible from the street.

754

755 The swimming pool's proposed location is actually further from the closest
756 neighbor, which would be right here at 5812 Grayley Court. It would be further from
757 them than if it was actually placed in the rear yard. If they followed code to the T,
758 it would be located somewhere in here. But instead, they're proposing a location
759 here. If the conditional use permit were approved, it would actually be further away
760 from this residence than if they followed the strict letter of the law here.

761

762 It would also not be visible to the properties in the rear along Willscott Place. That's
763 because in the back here you have a wooded area, and I don't anticipate the trees
764 being taken down because there are wetlands in there. So they should stay in
765 perpetuity.

766

767 As a result, staff does really see any substantial detrimental impact to any
768 neighbors from this request.

769
770 This is where the swimming pool would go. Again, in the back you can see the
771 trees and the wetland area that's located right here. And they provide a good
772 screen and a good buffer from neighboring properties.

773
774 In conclusion, the proposed swimming pool is consistent with both the Zoning
775 Ordinance and the Comprehensive Plan. It is not expected to cause any
776 substantial detrimental impact to nearby property. As a result, staff recommends
777 approval of this request subject to the conditions found in your staff report.

778
779 That concludes my presentation. If you have any questions, I will be happy to
780 entertain them.

781
782 Mr. Baka - Thank you. Questions of staff? Thank you very much.

783
784 Mr. Gidley - Thank you, Mr. Chairman.

785
786 Mr. Baka - Do we want to hear from the applicant? Would
787 someone representing the applicant please come forward to the podium?

788
789 Mr. Dunn - Daniel Dunn—D-u-n-n—with River Pools. There's
790 really nothing to add further to that, but I will answer any questions.

791
792 Mr. Baka - Thank you. Any questions of the applicant on this
793 case?

794
795 Ms. Harris - Yes, Mr. Dunn. Do you know if there will be an auto lid
796 or a fence enclosure? Have you decided yet?

797
798 Mr. Dunn - Yes. We're planning on an auto cover for the pool.

799
800 Ms. Harris - Okay, thank you.

801
802 Mr. Berman - Could you describe how that works, please?

803
804 Mr. Dunn - The auto cover is basically a device that will be
805 recessed within the patio at the deep end of the pool. It's lockable so it can be
806 locked; nobody would be able to access it without a key. It's pretty much just press
807 a button and it closes or opens. That's about it.

808
809 Mr. Blankinship - Is that connected also with an alarm in the house?

810
811 Mr. Dunn - Typically, an alarm in the house is only going to be
812 required by code if there is a fence where the house is used as part of the fence.

813

814 Mr. Blankinship - Okay.

815

816 Mr. Dunn - So there would not be an alarm in this case, but it would
817 be easy to provide one.

818

819 Mr. Blankinship - It's closed and locked. You don't really need the alarm
820 I guess.

821

822 Mr. Baka - I'll just point out that condition 5 as drafted states that
823 either an automatic cover lid or a fence is installed. For the owner's sake, if the
824 added expense of the automatic cover lid is not proceeded with, then a fence is
825 required. Just to be aware.

826

827 Mr. Dunn - Correct.

828

829 Mr. Baka - Any other questions of the applicant at this time?

830

831 Mr. Berman - I'm still trying to figure out what is automatic about it. In
832 other words, what is there to protect like the neighbor's kid from waltzing into the
833 area with the pool uncovered?

834

835 Mr. Dunn - What's automatic is that basically with the push of a
836 button it will close as opposed to manually putting on the cover. So it's not going
837 to close on its own. Somebody would need to actually do that. There's no timer on
838 it or anything like that.

839

840 Mr. Berman - I thought that the ordinance for the fence surrounding
841 the pool was to prevent an animal or a person from falling into the pool accidentally.
842 I don't see how this cover replaces that requirement.

843

844 Mr. Mackey - Mr. Chairman, if I may. I thought all inground pools
845 required a minimum of a four-foot safety fence around the pool.

846

847 Mr. Dunn - Most counties that I've experienced are allowing auto
848 covers to take the place of a fence. But traditional settings, a fence is what's
849 required.

850

851 Mr. Baka - A question of the staff then in that instance. What has
852 been previous staff policy on recommendations on other cases just like that?

853

854 Mr. Blankinship - It's a Building Code requirement, so normally we don't
855 try to do their job for them. We just require compliance with the Building Code,
856 which of course it's required anyway. We really list it in the condition as much to
857 put them on notice as anything else that there is a Building Code requirement they
858 have to comply with. I think the reason we drafted it the way we did is that I don't

859 know exactly what the Building Code official will accept or won't or under what
860 circumstances they'll require one or the other. So we would just leave that to their
861 expertise and confine ourselves to the planning and zoning aspects of the case
862 normally.

863
864 Mr. Baka - So if this case is approved with condition 5 as written,
865 they'll have the discretion to do either/or. At a future date, should the staff contact
866 the building official and ask for further clarification for a future meeting?
867

868 Mr. Mackey - I think that would be a good idea.
869

870 Mr. Blankinship - I would be happy to do that.
871

872 Mr. Baka - Yes sir.
873

874 Mr. Parikh - Good morning, Board members. I'm the owner of the
875 property.
876

877 Mr. Baka - Yes. Would you please state your name and spell it for
878 the record?
879

880 Mr. Parikh - Nikunj Parikh. The reason I'm here is not for this
881 approval because it's already there. As the owner, the house is big in a way where
882 we are trying to do everything in the back of the house like the way it's supposed
883 to be done actually. Considering the builder years ago when he submitted the front
884 and the side and the side and back, it's making it difficult for the owner, actually,
885 that he has to go through every time in meeting and wait for months to come back.
886 Because even the contractor does not know this answer.
887

888 So my request to you guys, maybe change the whole zoning and say the house
889 is—front and side is not on the side to side, so every time I have to do something
890 in the backyard or a side yard or something, I can apply it according to that. There
891 is a need for that. Otherwise, we can just go directly to approval like it's the way
892 it's supposed to be instead of going to a special request every time. I think that will
893 be my request to you guys to change. It should have been done probably when
894 the house was built actually, but it was never done probably.
895

896 Mr. Baka - Thank you for your feedback. That clearly is a
897 challenge not just for yourself, but every landowner who may live on a cul-de-sac
898 or have a pie-shaped or triangular-shaped lot where the naturally thought-of rear
899 yard is in fact actually the side yard based on the Zoning Code.
900

901 You do have criteria in this case which would appear to make it very reasonable
902 to approve this conditional use permit request. In fact, when I drove by in the cul-
903 de-sac and looked in, it was hard to see the backyard. The natural topography
904 slopes off to the rear with a large wooded area and the distance from the neighbor's

905 house. Your case posses a number of criteria that this Board tends to look for when
906 considering an approval. So thank you for your feedback. I appreciate it.

907
908 Mr. Bell - One real quick question. Have you had any comments
909 about your putting a pool in either positive or negative from neighbors or anyone?

910
911 Mr. Parikh - No, no. They know exactly what we are trying to do in
912 the back, actually. Most of the neighbors are surprised that I have to go and wait
913 for this thing every month for a meeting. They say why can't the County just go
914 through and make this as a backyard instead of a side yard so you don't have to
915 go through the same thing again. So that's actually why I'm here. While you guys
916 are approving the pool, at the same time you can make it as a back of the house,
917 as a backyard instead of the side. It will be easier for us to do some projects in the
918 future also.

919
920 Mr. Baka - Thank you for the feedback. Any other questions of the
921 applicant today?

922
923 Mr. Berman - Have you read and understand and agree to the
924 conditions set forth?

925
926 Mr. Parikh - Sure.

927
928 Mr. Berman - Is there a precedent to do what Mr. Parikh is asking us
929 to do?

930
931 Mr. Blankinship - I don't think that's within this Board's jurisdiction. I think
932 the Supervisors would do that. We are reviewing the entire Zoning Ordinance over
933 the next couple of years to see what we can improve. I'm sure this issue will be
934 raised.

935
936 Mr. Berman - Okay, thanks.

937
938 Mr. Blankinship - There are a lot of things in our Zoning Ordinance that
939 were written with a straight rectangular lot fronting on a street in mind that are
940 difficult to interpret in other cases.

941
942 Mr. Baka - Thank you very much for appearing today. Is there
943 anyone who would like to speak in opposition to this case? Seeing none, we'll
944 move on to our next case.

945
946 **[After the conclusion of the public hearings, the Board discussed the case
947 and made its decision. This portion of the transcript is included here for
948 convenience of reference.]**

949
950 Mr. Baka - The pleasure of the Board is?

951
952 Mr. Berman - I'd like to make a motion to accept CUP2016-00022 in
953 that it meets the staff-recommended conditions based on meeting the two CUP
954 evaluation requirements

955
956 Mr. Baka - Is there a second?

957
958 Ms. Harris - I second. I think that someone said on the Board that
959 our Supervisors are taking a second look at how we identify these properties that
960 are located in cul-de-sacs as to what is a front yard, a side yard. So I do second
961 this motion because I think it is needed.

962
963 Mr. Baka - Very good. Any further discussion or are we ready for
964 a vote? All in favor say aye. All opposed say no. The ayes have it; the motion
965 passes.

966
967 After an advertised public hearing and on a motion by Mr. Berman, seconded by
968 Ms. Harris, the Board **approved** application **CUP2016-00022, RIVER POOLS &**
969 **SPAS'** request for a conditional use permit pursuant to Section 24-95(i)(4) of the
970 County Code to allow a pool in the side yard at 5808 Grayley Court (HENLEY)
971 (Parcel 732-774-7197) zoned Agricultural District (A-1) (Three Chopt). The Board
972 approved the conditional use permit subject to the following conditions:

973
974 1. This conditional use permit applies only to the construction of an in ground
975 swimming pool in the side yard. All other applicable regulations of the County Code
976 shall remain in force.

977
978 2. Only the improvements shown on the plans filed with the application may be
979 constructed pursuant to this approval. Any additional improvements shall comply
980 with the applicable regulations of the County Code. Any substantial changes or
981 additions to the design or location of the improvements shall require a new
982 conditional use permit.

983
984 3. The applicant shall provide a minimum 10-foot setback from the edge of the
985 swimming pool to the principal residence and a minimum 10-foot setback from the
986 side property line to the interior pool wall.

987
988 4. If land disturbance will affect over 2,500 square feet of land area, before
989 beginning grading, or other land disturbing activity, the applicant shall submit an
990 environmental compliance plan to the Department of Public Works.

991
992 5. The pool shall be built with the auto cover lid as shown on the plans, or
993 enclosed by a fence as required by the Building Code.

994
995
996 Affirmative: Baka, Bell, Berman, Harris, Mackey 5

997 Negative: 0
998 Absent: 0
999

1000
1001 **[At this point, the transcript continues with the public hearing on the next**
1002 **case.]**
1003

1004 Mr. Blankinship - Mr. Chairman, the next two cases are companions.
1005 With your permission, I'll call them together. Although at the end of the meeting,
1006 we will have to vote separately on them. They are conditional use permits 2016-
1007 00023 and 00024. They are both Home Depot.
1008

1009 **CUP2016-00023 HOME DEPOT** requests a conditional use permit
1010 pursuant to Section 24-116(d)(1) of the County Code to allow a temporary sales
1011 stand at 6501 W Broad Street (Parcel 768-742-3277) zoned Business District (B-
1012 3) (Tuckahoe).
1013

1014 **CUP2016-00024 HOME DEPOT** requests a conditional use permit
1015 pursuant to Section 24-116(d)(1) of the County Code to allow a temporary sales
1016 stand at 11260 W Broad Street (Parcel 742-762-4307) zoned Light Industrial
1017 District (M-1C) and West Broad Street Overlay (WBSO) (Three Chopt).
1018

1019 Mr. Blankinship - Would everyone who intends to speak to this case
1020 please stand and be sworn in. Do you swear the testimony you're about to give is
1021 the truth, the whole truth, and nothing but the truth so help you God?
1022

1023 Mr. Blankinship - Thank you. Mr. Madrigal.
1024

1025 Mr. Madrigal - Thank you, Mr. Secretary, Mr. Chair, members of the
1026 Board.
1027

1028 Before you are two similar requests to allow temporary sale stands in the parking
1029 lots of two home improvement stores.
1030

1031 The first site is a Home Depot location at 6501 West Broad Street, which is part of
1032 an existing shopping center containing Burlington Coat Factory, Aldi, Office Max,
1033 and O'Charley's. Home Depot's building sits independently and is 109,000 square
1034 feet in area with an attached 22,500-square-foot garden center. Open parking is
1035 provided predominately at the front of the store. You can see that here on the site
1036 plan.
1037

1038 The second site is at 11260 West Broad, which is part of the Brookhollow Shopping
1039 Center consisting of Target, Hobby Lobby, and Kohl's. The Home Depot building
1040 sits in line with the other anchors and is 106,800 square feet in area with an
1041 attached 25,500-square-foot garden center. Open parking is shared and provided
1042 along the front of the stores.

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In both instances, the applicant is requesting the installation of a 40-by-60-foot tent to be temporarily installed in the parking lots at the front of the garden center for each store. The tents will be used for Christmas tree sales between November 2nd and December 26th, and will temporarily displace approximately 14 parking stalls during that time.

Both locations allow for Christmas tree sales within the garden center without the need for a CUP. However, the plan of development for each site prohibits outside storage as a condition of approval. Because of this requirement, a CUP is required for the outdoor sales.

In both instances, a home improvement store is consistent with both the zoning and Comprehensive Plan designations for each respective site. The seasonal sale of Christmas trees is a customary use accessory to a home improvement store and is not out of character with the principal use. Although the applications for each site do not state why Christmas tree sales can't be conducted within the garden centers, the only detrimental impact that staff anticipates with these requests is congestion in each store's parking lot. Again, the proposed tents will displace approximately 14 parking stalls.

With respect to the first location at 6501 West Broad Street, in years past, the shopping center had complied with minimum parking requirements. After the addition of Aldi to the center in 2015, required parking was slightly impacted by approximately 32 parking stalls. Although it is impacted, similar requests have been approved over the last four years, and the Planning Department has not received any complaints about the use or the lack of parking.

With respect to the Brookhollow Shopping Center location, the center has approximately 153 excess parking stalls. The proposed use should not pose any significant parking issues for this site.

In conclusion, the applicant's requests are consistent with the surrounding land uses, the intent of the Zoning Ordinance, and the Comprehensive Plan. The proposals will be of a short duration, and there appears to be no lasting or substantial detrimental impacts. Specific conditions have been prepared in each case to mitigate any adverse impacts on adjacent uses. For these reasons, staff recommends approval subject to the conditions of approval.

This concludes my presentation.

Mr. Baka - Any questions of Mr. Madrigal?

Mr. Mackey - I have one. Mr. Madrigal, since the addition of Aldi in 2015, would this be the first year that they've had the deficiency in the parking stalls?

1089

1090 Mr. Madrigal - Yes. Over the last four years, Home Depot was short
1091 approximately 15 stalls if you just considered that site independently. But when
1092 you consider the whole shopping center, it met parking requirements. Since they
1093 added Aldi, they had to do some reconfiguration of the parking lot. There were
1094 some grading issues. And that eliminated a few more stalls. That's why we're at
1095 32.

1096

1097 Mr. Mackey - Okay.

1098

1099 Mr. Baka - I would add that Aldi is on an almost lower level tier
1100 topo-wise than the Home Depot, so it's naturally two parking lot areas even though
1101 it's one shopping center.

1102

1103 Mr. Mackey - All right, thank you.

1104

1105 Mr. Baka - Thank you. At this point we'll hear from the applicant.
1106 Please state your name and spell it for the record.

1107

1108 Mr. Schneider - Good morning, y'all. My name's Dan Schneider. It's
1109 spelled S as in Sam, c-h-n-e-i-d-e-r. I'm the assistant store manager at the Short
1110 Pump Home Depot. I am representing both stores.

1111

1112 With regard to 6501 West Broad Street, Mr. Chairman, you brought up a very good
1113 point. We really are detached from the shopping center. We are a totally separate
1114 building. There is about a six-foot retaining wall dividing us from Burlington, Aldi,
1115 and O'Charley's. In previous years, there have been no issues. It has been a very
1116 successful community connection operation.

1117

1118 In regard to the site that we reside at, West Broad Street in the Far West End in
1119 Short Pump, same thing. Each year we have been successful in a community
1120 connection environment.

1121

1122 If there are any questions, I'll be more than happy to answer them for you.

1123

1124 Mr. Baka - Very good. Any questions?

1125

1126 Ms. Harris - Yes, I have a question. Mr. Schneider, since there is a
1127 deficiency regarding the 6501 West Broad Street location in the parking spaces,
1128 why not erect a smaller tent? I know the tent size you're going to use is 40 by 60.
1129 Have you considered erecting a smaller tent?

1130

1131 Mr. Schneider - There was no consideration of that. We've used the
1132 same tent each year in that area. It is off to the side close to the retaining wall, so
1133 it is not in the main I guess you'd say area where people park and/or enter and exit
1134 the store.

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1180

The tent in Short Pump is actually a 40 by 40. That is a little smaller tent because that area is a little more compact. It's a totally different scenario. That is like a strip mall kind of thing. We are not separated. We are tagged in the middle of these stores. And because of safety and because of area, we decided to make that a little smaller to fit the surroundings and the setting.

Ms. Harris - I thought in both reports you were dealing with the 40 by 60.

Mr. Schneider - They were. I received a call from the tent company yesterday saying that our tent was 40 by 40 in Short Pump and 40 by 60 at 6501 West Broad.

Ms. Harris - Okay. We need to make that change, I think, in the report. Have you ever had a security problem? I often wondered when I drive by outdoor shrubbery and Christmas tree places will there be a security problem at night when no one is manning that area.

Mr. Schneider - As far as theft is concerned?

Mr. Berman - As far as the public is concerned by it being an outdoor area. Do you have problems with security?

Mr. Schneider - There is no evidence at either location that we've ever had any security issues dealing with theft or safety or protection of our customers or associates. There is nothing on record that states any of that for any year that we've done this. Corporate does a great job as far as really preplanning this, making sure that it's safe and it's sound, that exits have applicable signs, lights. Even when the store is closed and the tent power is down, the safety exit lights and security lights are still shining through the night.

Mr. Berman - To Ms. Harris's point, it's been our best practice to recommend a condition where a police notification sign is posted so that after hours there's a phone number in case, God forbid, the tent catches on fire or to just make it no trespassing so that people don't think they can just roam around the tent.

Mr. Schneider - Sure.

Mr. Berman - So I may make that motion if that's agreeable to you.

Mr. Schneider - We have no problems with that. We have security surveillance on the front of both stores. So there is 24-hour surveillance. Usually, both locations have a great relationship with fire and police. They are monitored. As salaried managers, we are on call 24/7 with Tycos, so we are notified if anything

1181 happens as far as fire or alarm. The tent will be set with a fire alarm, so if there is
1182 a situation, we will be notified immediately. Some salaried manager will go to either
1183 site.

1184
1185 Mr. Berman - Good. I'm glad to hear that the tent in Short Pump was
1186 reduced in size. When we were on site, if you put a 40 by 60 there, it would
1187 encroach on the cart return area.

1188
1189 Mr. Schneider - Yes sir. We're probably going to shift that out of the
1190 way so that it's not a burden to exiting or anything like that. The car corrals are
1191 stationed in place, but they are able to be moved spots if necessary.

1192
1193 Mr. Berman - We were kind of tugging on them when we were out
1194 there.

1195
1196 Mr. Baka - How are they anchored?

1197
1198 Mr. Schneider - We just basically went through a parking lot renovation.
1199 With these new stands, there are mollies that are bolted into the ground with about
1200 eight-inch little couplings in all eight spots. So all of the bollards are attached to
1201 these. What you do is you loosen the screw at the bottom, you lift it up. We then
1202 have to take the molly out and move it.

1203
1204 So we would temporarily secure—I guess this is the cart we're looking at. We just
1205 feel uncomfortable that that is a little too close to where the tent will be once we
1206 use the corrals, the timbers to block off that area to protect customers. So we will
1207 probably move it farther into the lot.

1208
1209 Mr. Berman - Okay, great.

1210
1211 Mr. Schneider - But it is easy. Well, let me say it's not easy to move,
1212 but it's possible.

1213
1214 Mr. Berman - Great. In your parking lot reconfiguration, it looks like
1215 you made some of the handicap spaces temporary. Could you possibly relocate
1216 the displaced handicap spaces down a couple of aisles?

1217
1218 Mr. Schneider - As of two days ago I could have. They put our
1219 permanent signs in place just the other day. We are hoping that the tent's going to
1220 sit back off the first six spots so that those handicap spots aren't taken away from
1221 the customers.

1222
1223 Mr. Berman - Even better.

1224
1225 Mr. Baka - That's even better.

1226

1227 Mr. Berman - With regards to the lower Broad Street location, there
1228 is a temporary structure in the place where you intend to put the tree sales. I
1229 believe it's like a pumpkin patch?
1230
1231 Mr. Schneider - Yes sir. That's our pumpkin corral, our harvest
1232 seasonal area. That will come down Sunday. So that goes away. It's just a
1233 temporary setting that sits from like September 15th through October 30th.
1234
1235 Mr. Berman - Do you do sales out of that?
1236
1237 Mr. Schneider - I'm sorry?
1238
1239 Mr. Berman - Do you do sales out of that corral?
1240
1241 Mr. Schneider - There is not an actual register there. Usually, they will
1242 pick pumpkins. It's right across from the door and the register there. We do have
1243 associates that man that to help customers load carts and then to go back and pay
1244 for them.
1245
1246 Mr. Berman - As long as you're not selling mulch out there again.
1247
1248 Mr. Schneider - No mulch at this time of year.
1249
1250 Mr. Berman - At this time.
1251
1252 Mr. Schneider - I guess we'll meet back on that one in the spring.
1253
1254 Mr. Berman - Yes. In all seriousness, we really appreciate the
1255 partnership that Home Depot has with Henrico County. And we understand the
1256 struggle, that you are in a strip mall, and you share the parking lot. We get that,
1257 and we want to be able to work with you as best we can.
1258
1259 Mr. Schneider - And we appreciate your cooperation. We try to do what
1260 we can. Corporate is big on community connection. We do a lot with Henrico and
1261 all other stores in other municipalities. That is an important factor to us.
1262
1263 Mr. Berman - Thank you, Mr. Schneider.
1264
1265 Mr. Baka - One comment. When the 6501 West Broad Street
1266 store applies for the conditional use permit process for this, Mr. Blankinship, would
1267 that also be in order when they need outdoor storage for the similar display there
1268 for pumpkins?
1269
1270 Mr. Blankinship - They technically should, yes.
1271
1272 Mr. Baka - Okay.

1273
1274 Mr. Blankinship - The POD condition prohibits outdoor storage.
1275
1276 Mr. Baka - Staff could follow up on that when they reapply for the
1277 permits.
1278
1279 Mr. Schneider - Yes, I can point that out too.
1280
1281 Mr. Baka - Thanks. Other questions of the applicant?
1282
1283 Mr. Blankinship - I have one. It's almost a curiosity. The one thing about
1284 these applications that's always concerned me is that you're occupying required
1285 spaces on Black Friday, on what is typically the busiest shopping day of the year.
1286 And certainly with Target and Kohl's at the one location, I know that's an issue.
1287
1288 For your store, though, it seems to me, from my own experience, that the
1289 springtime is really your busiest shopping time. Can you talk just a little bit about
1290 how busy you are at that time of year?
1291
1292 Mr. Schneider - As far as the springtime?
1293
1294 Mr. Blankinship - Well, comparing that and Black Friday.
1295
1296 Mr. Schneider - We have a spring Black Friday. As far as the exterior
1297 part, the gardens, the whole year is made up in that two weeks in the springtime
1298 with the mulch. We probably sell upwards of 20,000 to 30,000 bags of mulch and
1299 different garden soils. So it is a very big time.
1300
1301 The Christmas trees bring more of a family environment. After Black Friday, that's
1302 when sales really start to boom. Our biggest Black Friday of the fall time is basically
1303 in the store. That's where most of our traffic is in the store for that and spring is
1304 pretty much out of the store.
1305
1306 Mr. Blankinship - In terms of the impact on the parking during that during
1307 that busiest time of the year.
1308
1309 Mr. Schneider - We haven't seen any issues where we've had
1310 complaints or issues or accidents or reports of any GL claims filed through either
1311 store. So I feel as though we're pretty fortunate. I think people—it's kind of like—I
1312 don't know what reference to make, but it's kind of like if you pulled in the parking
1313 lot and you didn't see the tent, you'd be wondering what happen. Did we close?
1314 It's kind of like a permanent fixture like you would see at any other retailer.
1315
1316 Mr. Blankinship - Thank you.
1317

1318 Mr. Baka - Thank you. Thank you very much for your presentation
1319 today.

1320
1321 Mr. Schneider - Thank you.

1322
1323 Mr. Baka - Is there anyone else who wishes to speak to either of
1324 these two cases? Seeing none, we'll move on to our next case.

1325
1326 **[After the conclusion of the public hearings, the Board discussed the case**
1327 **and made its decision. This portion of the transcript is included here for**
1328 **convenience of reference.]**

1329
1330 Mr. Baka - I will make a motion to approve this case with the five
1331 conditions as presented in the staff report. This should be a temporary use and it
1332 will not be a detrimental or substantial impact on any of the neighboring properties
1333 or parking situations.

1334
1335 Mr. Berman - I would request that we add the sixth condition
1336 establishing an after-hours no trespassing and contact information sign.

1337
1338 Mr. Baka - Okay, very good. I accept that condition and add that
1339 to the motion.

1340
1341 Mr. Berman - There is no need for a public safety review, I would
1342 think. We could just add it.

1343
1344 Mr. Blankinship - I think they're familiar with this.

1345
1346 Mr. Berman - Okay.

1347
1348 Mr. Baka - All right. And you seconded that motion, sir?

1349
1350 Mr. Berman - I second the motion.

1351
1352 Mr. Baka - All right. Motion's been made and seconded. Any
1353 discussion? All in favor say aye. All opposed say no. The ayes have it; the motion
1354 passes.

1355
1356 After an advertised public hearing and on a motion by Mr. Baka, seconded by Mr.
1357 Berman, the Board **approved** application **CUP2016-00023, HOME DEPOT's**
1358 request for a conditional use permit pursuant to Section 24-116(d)(1) of the County
1359 Code to allow a temporary sales stand at 6501 W Broad Street (Parcel 768-742-
1360 3277) zoned Business District (B-3) (Tuckahoe). The Board approved the
1361 conditional use permit subject to the following conditions:
1362

- 1363 1. This conditional use permit applies only to the temporary sale of Christmas
 1364 trees from November 2 through December 26, 2016. All other applicable
 1365 regulations of the County Code shall remain in force.
 1366
 1367 2. Only one tent, as shown on the plot plan filed with the application, may be
 1368 erected pursuant to this approval. Any additional improvements shall comply
 1369 with the applicable regulations of the County Code. Any substantial changes or
 1370 additions to the design or location of the improvements will require a new use
 1371 permit.
 1372
 1373 3. The applicant shall obtain a building permit for the tent, and shall comply with
 1374 all requirements and conditions of the Department of Building Construction and
 1375 Inspections.
 1376
 1377 4. The tent shall not interfere with approved landscaping islands or parking lot
 1378 lighting. All approved landscaping shall be maintained in a healthy condition.
 1379
 1380 5. The tent shall be removed from the property no later than January 2, 2017, at
 1381 which time this permit shall expire.
 1382
 1383 6. A sign shall be posted on the tent providing emergency contact information and
 1384 stating that trespassing after hours is prohibited.
 1385

1386
 1387 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
 1388 Negative: 0
 1389 Absent: 0
 1390

1391
 1392 Mr. Baka - CUP2016-00024, Home Depot at 11260 West Broad
 1393 Street.
 1394

1395 Mr. Berman - I move that we approve this request and also add the
 1396 same condition as the previous CUP for the after-hours signage.
 1397

1398 Mr. Baka - Okay.
 1399

1400 Ms. Harris - I second the motion and say that the 40-by-40-foot tent
 1401 will be used instead of what was indicated in the report, which was 40 by 60.
 1402

1403 Mr. Berman - That's correct. Entered into the record was the satellite
 1404 picture. Ms. Harris points out it says 40 by 60; it needs to be 40 by 40.
 1405

1406 Mr. Baka - Very good. Motion's been made and seconded. Any
 1407 discussion?
 1408

1409 Ms. Harris - I think the system is working. And as long as it's
1410 working, we're not getting complaints, I don't see the need to change it at this time.

1411
1412 Mr. Baka - Very good. All in favor say aye. All opposed say no.
1413 The ayes have it; the motion passes.

1414
1415 After an advertised public hearing and on a motion by Mr. Berman, seconded by
1416 Ms. Harris, the Board **approved** application **CUP2016-00024, HOME DEPOT's**
1417 request for a conditional use permit pursuant to Section 24-116(d)(1) of the County
1418 Code to allow a temporary sales stand at 11260 W Broad Street (Parcel 742-762-
1419 4307) zoned Light Industrial District (M-1C) and West Broad Street Overlay
1420 (WBSO) (Three Chopt). The Board approved the conditional use permit subject
1421 to the following conditions:

- 1422
- 1423 1. This conditional use permit applies only to the temporary sale of Christmas trees
1424 from November 2 through December 26, 2016. All other applicable regulations
1425 of the County Code shall remain in force.
 - 1426
 - 1427 2. Only one tent, as shown on the plot plan filed with the application, may be
1428 constructed pursuant to this approval. Any additional improvements shall
1429 comply with the applicable regulations of the County Code. Any substantial
1430 changes or additions to the design or location of the improvements will require
1431 a new use permit.
 - 1432
 - 1433 3. The applicant shall obtain a building permit for the tent, and shall comply with
1434 all requirements and conditions of the Department of Building Construction and
1435 Inspections.
 - 1436
 - 1437 4. The tent shall not interfere with approved landscaping islands or parking lot
1438 lighting. All approved landscaping shall be maintained in a healthy condition.
 - 1439
 - 1440 5. The tent shall be removed from the property no later than January 2, 2017, at
1441 which time this permit shall expire.
 - 1442
 - 1443 6. A sign shall be posted on the tent providing emergency contact information
1444 and stating that trespassing after hours is prohibited.

1445
1446
1447 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
1448 Negative: 0
1449 Absent: 0

1450
1451
1452 **[At this point, the transcript continues with the public hearing on the next**
1453 **case.]**
1454

1455 Mr. Blankinship - Next is conditional use permit CUP2016-00025, Ken
1456 Lewandowski.

1457
1458 **CUP2016-00025** **KEN LEWANDOWSKI** requests a conditional use
1459 permit pursuant to Section 24-95(i)(4) of the County Code to build a detached
1460 garage in the side yard at 2730 Kingsland Road (LAKE ZEHLER ESTATES)
1461 (Parcel 827-679-8766) zoned Agricultural District (A-1) (Varina).

1462
1463 Mr. Blankinship - Would everyone who intends to speak to this case
1464 please stand and be sworn in. Raise your right hands, please. Do you swear the
1465 testimony you're about to give is the truth, the whole truth, and nothing but the truth
1466 so help you God? Thank you. Mr. Gidley?

1467
1468 Mr. Gidley - Thank you, Mr. Secretary.

1469
1470 The subject property is located at 2730 Kingsland Road in the eastern part of the
1471 County. The property is just over four acres in lot area and slopes upward from
1472 Kingsland Road to the home site. From there, it slopes downhill to a floodplain that
1473 is located along the rear of the property line. Here is the view from the street. You
1474 can see it goes uphill here to the house before it goes back downhill.

1475
1476 The existing home, as you can see here, contains a two-car garage. The applicant,
1477 however, would like to have additional space to store a third vehicle along with
1478 some lawn equipment. As a result, he is proposing to build a two-car garage in the
1479 side yard located between the existing driveway right here and the side property
1480 line, which would be right over here. So the location of the proposed garage would
1481 be right in this general area here. Although the applicant could locate the garage
1482 in the rear yard, this is made more difficult by the downhill slope. In addition, his
1483 septic system, along with an underground propane tank, are both located in the
1484 rear yard.

1485
1486 As far as the evaluation, the property is zoned A-1, Agricultural District. With the
1487 exception of the floodplain, it's designated as Suburban Residential 1 on the
1488 Comprehensive Plan. One-family dwellings are a permitted use in the A-1 district,
1489 and a detached garage is allowed as an accessory use to a dwelling, obviously.

1490
1491 The proposed garage would only be visible from two properties. That's the home
1492 across the street here, which is roughly 300 feet away from the proposed garage
1493 site. The other home it would be visible from is the home to the east. You can see
1494 there are a number of trees between this neighbor and the site of the proposed
1495 garage, so there would be quite a bit of privacy. As a result, staff does not foresee
1496 any substantial detrimental impact from this proposal.

1497
1498 In conclusion, the detached garage the applicant wishes to construct is consistent
1499 with both the Zoning Ordinance and the Comprehensive Plan. It is not expected to

1500 cause any substantial detrimental impact to nearby property. As a result, staff
1501 recommends approval of the application subject to the conditions in the staff report.
1502
1503 This concludes my presentation. If you have any questions, I will be happy to
1504 answer those.
1505
1506 Mr. Baka - Thank you. Questions of staff?
1507
1508 Ms. Harris - Mr. Gidley, did you address how close this proposed
1509 garage will be to the garage that already exists?
1510
1511 Mr. Gidley - It shows 25 feet here, Ms. Harris, this being the existing
1512 home and this being the proposed garage.
1513
1514 Ms. Harris - Thank you.
1515
1516 Mr. Gidley - Yes ma'am.
1517
1518 Mr. Berman - And on that diagram it has three feet from the property
1519 line. Is that the appropriate setback requirement?
1520
1521 Mr. Gidley - Under the Zoning Ordinance, yes sir. Sometimes
1522 Building Code requires additional, depending up whether it needs to be fire rated.
1523
1524 Mr. Berman - Okay. Thanks.
1525
1526 Mr. Baka - Thank you, Mr. Gidley.
1527
1528 Mr. Gidley - Thank you, Mr. Chairman.
1529
1530 Mr. Baka - We'll now hear from the applicant. Good morning.
1531 Would you please state your name and spell it for the record?
1532
1533 Mr. Lewandowski - Good morning. I'm Kenneth Lewandowski. That's L-e-
1534 w-a-n-d-o-w-s-k-i. I'm the homeowner. Everything that the speaker, Mr. Gidley
1535 brought up in his presentation we've already taken into consideration to include
1536 increased fire protection on that wall because we are going three feet from the
1537 property line instead of the five. So it requires my builder to—what, a one-hour,
1538 two-hour wall?
1539
1540 Male - I'm actually not sure about that.
1541
1542 Mr. Lewandowski - Anyway, it has a built-in fire plan.
1543
1544 Mr. Baka - Built to fire building department codes.
1545

1546 Mr. Lewandowski - Right, yes. So that's already been taken into
1547 consideration. So we're going to ensure that that wall is rated at whatever fire level
1548 it needs to be.

1549
1550 Unfortunately, the property that I own, the side yard is actually the only practical
1551 place for me to put a garage just simply because of the slope in the backyard. And
1552 then I have an engineered septic system. It's made up of more than just a tank. It's
1553 a tank with some pods in the back and where the propane tank is. It's just not
1554 feasible to put anything in the backyard.

1555
1556 Questions?

1557
1558 Mr. Baka - Questions?

1559
1560 Mr. Bell - One quick question. Have you received any complaints
1561 or other statements regarding construction of this garage from your neighbors or
1562 anyone?

1563
1564 Mr. Lewandowski - No I have not. I actually talked to my neighbor, Richard,
1565 and I told him what I was going to do. He didn't say anything.

1566
1567 Mr. Bell - Thank you.

1568
1569 Mr. Lewandowski - You're welcome.

1570
1571 Mr. Baka - Any other questions?

1572
1573 Mr. Blankinship - I just had one question. The garage you have now is
1574 side-loaded, so you pull up from Kingsland Road and then make a left turn into it.
1575 Is this one going to be straight across from that where you'll come up and make a
1576 right turn into it?

1577
1578 Mr. Lewandowski - No sir. This one will actually face the road. So as you
1579 drive up the driveway, it'll be off to the right and you pull straight in.

1580
1581 Mr. Blankinship - So are you going to have to widen the driveway as
1582 well?

1583
1584 Mr. Lewandowski - No sir. The garage is actually going to take up just a
1585 small amount of the current driveway now. But we're going to ensure that there is
1586 at least 25 feet from the existing garage to what would be the side wall of this
1587 garage.

1588
1589 Mr. Blankinship - Okay. Thank you.

1590
1591 Mr. Berman - Do you have a homeowners association?

1592
1593 Mr. Lewandowski - No sir.
1594
1595 Mr. Berman - Okay.
1596
1597 Mr. Baka - Thank you very much for appearing, sir.
1598
1599 Mr. Lewandowski - You're welcome, sir. Thank you.
1600
1601 Mr. Baka - Anyone else who would like to speak to this case?
1602 Seeing none, we'll move on to the next case.
1603
1604 **[After the conclusion of the public hearings, the Board discussed the case**
1605 **and made its decision. This portion of the transcript is included here for**
1606 **convenience of reference.]**
1607
1608 Mr. Mackey - I move that we accept CUP2016-00025 with the added
1609 conditions of the staff.
1610
1611 Mr. Baka - Okay. Is there a second to that motion?
1612
1613 Ms. Harris - I second this motion because we say we want to be
1614 sure that there are no adverse impacts on the safety, health or welfare of the
1615 community. And also we're running into the same situation where it's not feasible
1616 sometimes to place a garage in the place that we would hope, according to the
1617 code. It's more practical in this case to put it in the side yard. That's the reason for
1618 my seconding the motion.
1619
1620 Mr. Baka - Very good. All in favor say aye. All opposed say no.
1621 The ayes have it; the motion passes.
1622
1623 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
1624 Ms. Harris, the Board **approved** application **CUP2016-00025, KEN**
1625 **LEWANDOWSKI's** request for a conditional use permit pursuant to Section 24-
1626 95(i)(4) of the County Code to build a detached garage in the side yard at 2730
1627 Kingsland Road (LAKE ZEHLER ESTATES) (Parcel 827-679-8766) zoned
1628 Agricultural District (A-1) (Varina). The Board approved the conditional use permit
1629 subject to the following conditions:
1630
1631 1. This conditional use permit applies only to the location of a detached garage in
1632 the side yard. All other applicable regulations of the County Code shall remain in
1633 force.
1634
1635 2. Only the improvements shown on the plans filed with the application may be
1636 constructed pursuant to this approval. Any additional improvements shall comply
1637 with the applicable regulations of the County Code. Any substantial changes or

1638 additions to the design or location of the improvements shall require a new
1639 conditional use permit.

1640
1641 3. The new construction shall match the existing dwelling as nearly as practical in
1642 materials and color.

1643
1644 4. If land disturbance will affect over 2,500 square feet of land area, before
1645 beginning construction the applicant shall submit an environmental compliance
1646 plan to the Department of Public Works.

1647
1648 5. All exterior lighting shall be shielded to direct light away from adjacent property
1649 and streets.

1650
1651
1652 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
1653 Negative: 0
1654 Absent: 0

1655
1656
1657 **[At this point, the transcript continues with the public hearing on the next**
1658 **case.]**

1659
1660 Mr. Blankinship - Next is conditional use permit 2016-00026, Kanawha
1661 Recreation Association.

1662
1663 **CUP2016-00026 KANAWHA RECREATION ASSOCIATION** requests
1664 a conditional use permit pursuant to Section 24-12(b) of the County Code to
1665 expand a noncommercial recreation facility at 8100 Holmes Avenue (Parcel 755-
1666 735-8779) zoned One-Family Residence District (R-3) (Tuckahoe).

1667
1668 Mr. Blankinship - Would everyone who intends to speak to this case
1669 please stand and be sworn in. Do you swear the testimony you're about to give is
1670 the truth, the whole truth, and nothing but the truth so help you God? Thank you.
1671 Mr. Gidley.

1672
1673 Mr. Gidley - Thank you, Mr. Secretary.

1674
1675 This request is from the Kanawha Recreation Association, which is located at the
1676 intersection of Holmes Avenue and Zionsville Road. The association has been
1677 located here since acquiring the property in 1955. Over the years, it has obtained
1678 a number of conditional use permits to allow an expansion of the facility. Today it
1679 consists of four swimming pools, nine tennis courts, a snack bar, restrooms, a
1680 picnic shelter, a playground, and a basketball court that you call all see below you
1681 here. This pool right here is the lap pool that they wish to replace. And this is a
1682 picture of this same pool.

1683

1684 The association would like to replace this existing six-lane lap pool that was
1685 approved in 1967 and replace it with a new eight-lane lap pool. In addition, the
1686 bleachers that are shown here would be replaced with a newer set of bleachers.

1687
1688 The property is zoned R-3, One-Family Residence District and is designated as
1689 Open Space Recreation on the Comprehensive Plan. Private, non-commercial
1690 recreation areas are permitted by conditional use permit in the R-3 district and are
1691 consistent with the designation on the Comprehensive Plan.

1692
1693 As far as any detrimental impact to nearby property, the expansion of the pool from
1694 six lanes to eight lanes would expand it southward roughly six or seven feet.
1695 However, the pool would still be located 300 feet from the nearest dwellings to the
1696 south. As you can see here, there is a tree line right along the southern property
1697 lines. As such, the neighbors should not notice any real change other than during
1698 construction, when the existing pool would be removed and the new pool would be
1699 installed. The existing light poles that are on the site, they would also be reinstalled
1700 at the same height and same light intensity, so there should not be any impact
1701 there. As a result, staff does not see any substantial detrimental impact to nearby
1702 property from the proposed improvements.

1703
1704 In conclusion, the expansion of the pool should not result in any noticeable change
1705 to the nearby property owners. Since the proposal is consistent with both the
1706 Zoning Ordinance and the Comprehensive Plan, staff recommends approval of
1707 this request subject to the conditions found in your staff report.

1708
1709 That concludes my presentation. I'll be happy to answer any questions you may
1710 have.

1711
1712 Mr. Baka - I have a couple questions, Paul, if I may. We have a 9-
1713 1/2-acre recreation facility that's been there for many years. I tried to find where
1714 the impact or where the expansion was. I walked on the site. The pool is changing,
1715 shifting the number of lanes slightly from one pool to another in the same location.
1716 The bleachers are shifting slightly from older bleachers to newer bleachers in the
1717 same location.

1718
1719 I realize the code—and I'm looking at Section 24-12(b) says that private non-
1720 commercial recreation areas require a conditional use permit. I'm trying to
1721 understand why this specific request requires a CUP when it appears to be a
1722 negligible change.

1723
1724 Mr. Blankinship - That's a good question. Do you want me to take that?

1725
1726 Mr. Gidley - Sure.

1727
1728 Mr. Baka - Question for Ben.

1729

1730 Mr. Blankinship - It is very often a judgment call for us where there is an
1731 existing permit for something and they apply for an expansion or a change or a
1732 modification of what's on the ground. What we normally do is pull the last set of
1733 conditions and look first to see is there a clear statement that says any change to
1734 this plan requires review by the BZA. If not, then we just kind of look at how much
1735 has changed since that. Sometimes it's only been a couple years since they've
1736 had a review and we don't really feel that it needs to come back. Sometimes, like
1737 in this case, it's been several years since anything has been reviewed by the BZA.
1738 And most of these sorts of facilities have small changes that take place over time.
1739 So there is also kind of a cumulative effect of little changes that have been made
1740 over time that have not been before this Board. And when it gets to a certain point,
1741 we like to see it reviewed.

1742
1743 Mr. Baka - I understand.

1744
1745 Mr. Blankinship - It is sometimes a judgment call. Typically, if there's a
1746 condition on the approval that says that you're bound by the plan that was
1747 approved and any changes to the plan have to come back to the Board, if it
1748 required a building permit, it requires coming back to the Board. But that's not a
1749 hard and fast rule.

1750
1751 Mr. Baka - Sure. I appreciate your explanation, Mr. Blankinship,
1752 because I was looking towards a threshold of would there be an expansion on the
1753 9-1/2 acres somewhere onto an unimproved area such as grass or the asphalt of
1754 the basketball courts in the back that is not currently being used for active
1755 recreation. If you're expanding active recreation into maybe a passive recreation
1756 area or just open space, then that would definitely need this CUP. But I see what
1757 you're saying, because I was looking at the improvements are going in the exact
1758 same location where they were previously.

1759
1760 Mr. Blankinship - But they are larger.

1761
1762 Mr. Baka - Slightly larger.

1763
1764 Mr. Berman - But the non-permeable area remains the same.

1765
1766 Mr. Gidley - It would expand. Because you're adding two more
1767 lanes to the lap pool, the pool would expand southward roughly seven feet.

1768
1769 Mr. Berman - So the concrete patio is expanding?

1770
1771 Mr. Baka - Into where the bleachers are, slightly.

1772
1773 Mr. Gidley - Impervious surface would expand; therefore, Public
1774 Works is going to have a more significant review than just simply a building permit.

1775

1776 Mr. Berman - Okay. I couldn't tell how the footprint was changing. So
1777 the fence is literally being bumped out?
1778
1779 Mr. Gidley - The existing pool is being removed. The bleachers are
1780 being removed. The new pool will come in and go south seven feet further. The
1781 bleachers will be put there, and the fence would also be located further to the
1782 south, as you noted.
1783
1784 Mr. Berman - Okay. So to Mr. Baka's point, it is taking up some new
1785 unimproved areas.
1786
1787 Mr. Gidley - Yes.
1788
1789 Mr. Berman - All right, I get it.
1790
1791 Mr. Gidley - And one thing I would add, in the past, certain
1792 recreation areas, in so far as their lap pools and swim meets are concerned, have
1793 generated a substantial amount of input from some of the nearby neighbors. So
1794 it's probably best to go ahead and at least advertise it and get that out there just in
1795 case there are some issues we aren't aware of.
1796
1797 Mr. Berman - Thank you.
1798
1799 Mr. Gidley - Thank you.
1800
1801 Mr. Baka - Other questions?
1802
1803 Ms. Harris - Mr. Gidley, do you know what installing the new pool
1804 involves? I know we said we're going to replace it with a larger pool, but what do
1805 they really have to do? Do you know?
1806
1807 Mr. Gidley - Other than removing the existing pool, which would be
1808 breaking up the concrete and hauling off the debris, they would have to come in
1809 and install the new one. As far as more details, I guess I'd let the engineer get into
1810 the construction aspects of it.
1811
1812 Ms. Harris - Because they're going to have disturb the earth to
1813 enlarge it.
1814
1815 Mr. Gidley - Yes ma'am.
1816
1817 Ms. Harris - Thank you.
1818
1819 Mr. Baka - All right. Thank you, Mr. Gidley.
1820
1821 Mr. Gidley - Thank you, Mr. Chair.

1822

1823 Mr. Baka - We'll now hear from the applicant.

1824

1825 Mr. Kratzer - Good morning. My name is Karl Kratzer. K-r-a-t-z-e-r. I
1826 am current president of Kanawha Recreation Association. Thank you very much
1827 for this hearing.

1828

1829 I did want to add just a few elements. Because this pool is so old, it has reached
1830 the life expectancy. It's structurally obsolete. So we were going to come back to
1831 the County for a construction permit for either replacement of the six-lane or
1832 installation of an eight-lane pool. It's time for us to do that.

1833

1834 We would like to expand this to eight lanes. We do have a very competitive pool,
1835 so our lap pool is also our competition pool. We also have very active adult swim
1836 programs in the morning, active after-work swim programs. So at this time, since
1837 we are taking on this major construction project, we would like to expand to this
1838 eight-lane pool.

1839

1840 In our application, we said three and sometimes four times a year we have our
1841 late-night swim meets. We have an enormous team of 250 children, and we often
1842 go against teams that are also 250 children to 275. So our swim meets can often
1843 last to 11:30, 12:00 at night, depending on how efficient they are running.

1844

1845 Mr. Blankinship - And whether there's lightning.

1846

1847 Mr. Kratzer - We've all suffered through that. We've actually had a
1848 couple of good years; so we're due.

1849

1850 Two extra lanes at other pools in our James River Aquatic Association such as—
1851 well other pools that have had eight lanes, it takes sometimes between 45 minutes
1852 to an hour off of these competitions, which is a betterment for our neighbors, and
1853 we recognize that.

1854

1855 Mr. Baka - Good. One question, if I may. Approximately how far
1856 would your fence be bumped out to the south compared to now?

1857

1858 Mr. Kratzer - If somebody can zoom into the tennis courts—I mean
1859 not the tennis courts, the basketball court. We held that line. The fence line would
1860 stay. So we're not going to have to touch the basketball court. I think that fence
1861 line moves out—

1862

1863 Mr. Blankinship - I think the other basketball court.

1864

1865 Mr. Baka - Yes, you're pointing—that one.

1866

1867 Mr. Kratzer - Yes. Our challenge to our engineers at Timmons was
1868 to maintain as much of the existing concrete as possible. We did not want to disturb
1869 the areas between the competition pool and our L-shape pool, which if you can
1870 pan up. So honestly, our only choice was to bump this to the south with the
1871 expansion of the two lanes. To construct that—to the question provided earlier—
1872 our only option was to take out the bleachers that are associated with the south
1873 lanes, add the two lanes, and then reconstruct those bleachers. We can do that
1874 and still stay off the basketball court. It's minor. It's an expense, but from a land-
1875 use snapshot, it's minute.

1876
1877 Mr. Mackey - Mr. Kratzer, how much higher will the bleachers have
1878 to go?

1879
1880 Mr. Kratzer - They can remain at the same height, sir. The
1881 topography of the site is such that we actually had to build up to actually put in a
1882 ten-foot pool. So instead of retained earth at this point, we can actually put in a
1883 retaining wall. These are details that are being worked out with our designers at
1884 the moment. Where the pool ends, we can then put the bleachers back onto either
1885 a structure, — it currently it sits on piers. You can see the piers in the right-hand
1886 corner there. So we will have to take that up prior to construction, hold as much of
1887 the concrete on three of the sides—well all the concrete on three of the sides, and
1888 then move that out. You can actually see the darkened spot in the background,
1889 which is the basketball court. We would not encroach on that.

1890
1891 Mr. Mackey - Thank you.

1892
1893 Mr. Berman - Have you or the Timmons Group looked into some of
1894 the new ADA disability requirements for new pool construction?

1895
1896 Mr. Kratzer - Yes.

1897
1898 Mr. Sibold - Good morning. My name is Chris Sibold. S-i-b-o-l-d.
1899 I'm with Timmons Group.

1900
1901 To answer the question, we also have a pool designer on board. The design team
1902 specializes in this type of construction. He will incorporate all ADA requirements
1903 into the project.

1904
1905 Mr. Berman - Thank you.

1906
1907 Mr. Baka - Other questions of representatives of the applicant?
1908 Thank you very much for your presentation. Is there anyone else here who would
1909 like to speak to this case? Seeing none, we'll move on to the next.

1910

1911 [After the conclusion of the public hearings, the Board discussed the case
1912 and made its decision. This portion of the transcript is included here for
1913 convenience of reference.]
1914

1915 Mr. Baka - I will make a motion to approve this conditional use
1916 permit with the nine conditions as presented in the staff report on the grounds that
1917 it's not expected to adversely affect the health, safety or welfare of the surrounding
1918 properties. Is there a second to that motion?
1919

1920 Mr. Bell - Second.

1921
1922 Mr. Baka - Thank you. Motion's been made and seconded. Any
1923 discussion?
1924

1925 Ms. Harris - Yes. I think this association is showing progress. It's
1926 been there a number of years, but it is adapting to the current trend and showing
1927 that it is a progressive association.
1928

1929 Mr. Baka - Very good. All in favor say aye. All opposed say no.
1930 The ayes have it; the motion passes.
1931

1932 After an advertised public hearing and on a motion by Mr. Baka, seconded by Mr.
1933 Bell, the Board **approved** application **CUP2016-00026, KANAWHA**
1934 **RECREATION ASSOCIATION's** request for a conditional use permit pursuant to
1935 Section 24-12(b) of the County Code to expand a noncommercial recreation facility
1936 at 8100 Holmes Avenue (Parcel 755-735-8779) zoned One-Family Residence
1937 District (R-3) (Tuckahoe). The Board approved the conditional use permit subject
1938 to the following conditions:
1939

1940
1941 1. This conditional use permit applies only to the replacement of the existing lap
1942 pool and bleachers with a new lap pool and bleachers as shown on the plans
1943 submitted with the application. Any additional improvements shall comply with the
1944 applicable regulations of the County Code. Any substantial changes or additions
1945 to the design or location of the improvements shall require a new conditional use
1946 permit.
1947

1948 2. Before beginning any clearing, grading, or other land disturbing activity, the
1949 applicant shall submit an environmental compliance plan to the Department of
1950 Public Works.
1951

1952 3. The hours of operation for the swimming pools shall be limited to between 10:00
1953 a.m. and 9:00 p.m. However, up to four times per year, the hours may be extended
1954 to 12:00 Midnight for swimming meets. Public address systems, starter guns and
1955 similar equipment may be used at swimming meets, but at no other time except
1956 for emergency purposes.

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- 4. For safety and security, lights beamed only on the swimming pool, and operated on a time clock, shall be provided whenever water is in the pool. All exterior lighting shall be shielded to direct light away from adjacent residential property and streets.
- 5. The swimming pool shall be enclosed by a fence as required by the Building Code.
- 6. The existing parking spaces on the property shall be retained.
- 7. The recreation center shall be operated on a nonprofit basis and be open only to members and their guests.
- 8. No activities shall be conducted on the playground between the hours of 10:30 p.m. and 8:00 a.m.
- 9. All landscaping shall be maintained in a healthy condition at all times. Dead plant materials shall be removed within a reasonable time and replaced during the normal planting season.

Affirmative:	Baka, Bell, Berman, Harris, Mackey	5
Negative:		0
Absent:		0

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

Mr. Blankinship - All right. That completes the conditional use permit portion of the agenda. There are two variances on this morning's agenda. The first is VAR2016-00018, Jackie L. Allen.

VAR2016-00018 JACKIE L. ALLEN requests a variance from Sections 24-95(c)(1) and 24-95(c)(4) of the County Code to build an addition at 3708 Hargrove Avenue (PLEASANT VIEW) (Parcel 801-735-4375) zoned One-Family Residence District (R-4) (Fairfield). The least side yard setback, total side yard setback and front yard setback are not met. The applicant proposes 4 feet least side yard setback, 16 feet sum of side yard setbacks, and 32 feet front yard setback, where the Code requires 7 feet least side yard setback, 18 feet sum of side yard setbacks, and 35 feet front yard setback. The applicant requests a variance of 3 feet least side yard setback, 2 feet sum of side yard setbacks, and 3 feet front yard setback.

Mr. Blankinship - Would everyone who intends to speak to this case please stand and be sworn in. Do you swear the testimony you're about to give is

2003 the truth, the whole truth, and nothing but the truth so help you God? Thank you.
2004 Mr. Madrigal.

2005
2006 Mr. Madrigal - Mr. Secretary, Mr. Chair, members of the Board.
2007 Before you is a request to waive setback requirements in order to build an addition
2008 and a porch onto a single-family dwelling.

2009
2010 The subject property is located in the Pleasant View subdivision, which was
2011 established in 1947. The applicant's lot is improved with a one-story, 840-square-
2012 foot, one-family dwelling with an attached covered side porch, also built in 1947.
2013 You can see the porch here, the attached covered side porch. It's been enclosed
2014 now.

2015
2016 Additional improvements include a rear deck and small frame shed located in the
2017 rear yard. The applicant acquired the property in February 2015. In April 2016, the
2018 County received an anonymous complaint regarding work being done to the home
2019 without necessary permits. On April 29th, the applicant obtained permits to enclose
2020 the side porch, build a new covered front porch, and add four roof dormers to the
2021 dwelling.

2022
2023 The building permit plot plan incorrectly stated the front yard setback. During the
2024 course of work, the footprint of the non-conforming side porch was expanded by
2025 approximately 24 square feet. In both of these instances, the minimum required
2026 setbacks were violated. Because the lot was created prior to 1947, it is subject to
2027 the exception standards, which require a 35-foot front yard setback and side
2028 setbacks of 7 and 18 feet for the least side yard and sum of side yards.

2029
2030 Although the house is set back 39.9 feet from the front property line, the new
2031 covered front porch running along the width of the house extends seven feet into
2032 the front yard. As a result, a majority of the porch projects approximately two feet
2033 in to the minimum front yard setback in excess of the six-foot-width limit imposed
2034 by code.

2035
2036 With respect to the covered side porch, the applicant initially indicated that he was
2037 going to enclose the existing footprint. Again, during the course of work, the
2038 applicant expanded the footprint so that the new room is now in line with the front
2039 of the house. The new square footage violates both the minimum side yard and
2040 sum of side yards setbacks, which are at 4.9 and 16.9 feet instead of 7 and 18 feet
2041 respectively.

2042
2043 With respect to the threshold question, code requires that a variance be considered
2044 when one of two conditions is met. The first situation is when strict application of
2045 the code unreasonably restricts the utilization of the property or when a variance
2046 alleviates a hardship resulting from a physical condition related to the property or
2047 improvements at the time of the effective date of the ordinance.

2048

2049 With respect to the first part of the test, the property is improved with an existing
2050 dwelling with a covered side porch and rear deck. It is difficult to argue that the
2051 Zoning Ordinance unreasonable restricts the use of the property as it exists.

2052
2053 Relative the second part of the test, the applicant added a covered front porch and
2054 enclosed the footprint of a non-conforming side porch. He initially did this work
2055 without the benefit of a building permit. When he did obtain a building permit, there
2056 was an error regarding the front yard setback and he expanded the covered side
2057 porch. The result is that both structures violate minimum setback requirements and
2058 go above and beyond the established design and development pattern of the
2059 neighborhood.

2060
2061 Staff finds no equity hardship issues relative to the physical condition of the
2062 property or improvements thereon. Since the applicant does not meet either of the
2063 two conditions of the threshold question, staff is recommending denial of the
2064 applicant's request.

2065
2066 This concludes my presentation. I'll be happy to answer any questions.

2067
2068 Mr. Baka - One question, Mr. Madrigal. The proposed text
2069 amendment for front porches that the Planning Commission and the Board of
2070 Supervisors are currently reviewing that would allow the extension of front porches
2071 into a front yard setback, based upon the case that this Board had on Skipwith
2072 Road near Forest, would that potentially alleviate the issue for the front porch
2073 addition, front setback addition?

2074
2075 Mr. Blankinship - It could, yes.

2076
2077 Mr. Madrigal - It could, yes.

2078
2079 Mr. Baka - Thanks. Other questions from the BZA?

2080
2081 Ms. Harris - Yes. Mr. Madrigal, do any of the neighboring porches
2082 seem wider than six feet?

2083
2084 Mr. Madrigal - No. In fact, I took a couple of pictures of the houses
2085 next door. This is the house immediately adjacent, and then this is one a little bit
2086 further down. They are pretty similar down that block face.

2087
2088 Ms. Harris - I notice in your report that we say granting this will set
2089 an unfair precedent. But I thought that it was our policy to take every case on its
2090 own merit.

2091
2092 Mr. Madrigal - We do. Essentially, we try to consider each case on its
2093 own merits. But in this case, when you have a hard, established setback line along
2094 the entire block face. You have all these homes that have attached side porches

2095 that have been screened or enclosed but don't appear to be expanded. And then
2096 front porches that are similar to these examples. It's difficult not to set a precedent
2097 by the granting of this variance.
2098

2099 Ms. Harris - Look at condition #3. We're talking about things that
2100 should be done to the existing porch. I just felt that was a little inconsistent where
2101 we are not desiring to approve.
2102

2103 Mr. Madrigal - The conditions are in case you decide to approve the
2104 request. Then essentially we would require that the applicant put some lattice at
2105 the base of the porch and the enclosed side porch to screen the framing material
2106 underneath it so it's consistent with the rest of the neighborhood. But again, that's
2107 in case you decided to approve it.
2108

2109 Mr. Baka - Other questions of staff? Thank you, Mr. Madrigal.
2110 We'll now hear from the applicant.
2111

2112 Mr. Parham - Good morning, ladies and gentlemen of the Board. My
2113 name is Kenneth Parham. Last name is P-a-r-h-a-m, just like Parham Road.
2114

2115 Basically, I guess I wanted to give you a little bit of information on what Mr. Allen
2116 and I do. I'm the property manager. He and I have been doing renovations in the
2117 area of 23222, the ZIP code in Henrico. There are several houses with covered
2118 front porches in that area. We actually sold one off of Byron Street. I don't have
2119 any pictures that I can put up on the screen, but if you want to see on my cell phone
2120 where we actually had one that we literally just sold less than a year ago that
2121 actually came with a covered porch. There are several covered porches in the
2122 area, going down that street and less than three blocks away from that street that
2123 we're on.
2124

2125 Now what we do actually is housing and we do get grants and loans from
2126 neighborhood housing services. What we really try to do is find adequate housing
2127 and affordable housing for single mothers and single parents. We actually have
2128 that house under contract by a lady named Ms. Annelle Campbell. She's a single
2129 mother of three, recently divorced. So we actually try to make sure they can get
2130 affordable housing grants.
2131

2132 We work with Housing Opportunities Made Equal, so it's not like we're just going
2133 around trying to renovate stuff and change stuff just to change it. What we try to
2134 do is bring the most use out of a property. Like you can see where we added the
2135 dormers, which actually made more space upstairs for a play area for the kids or
2136 any type of extra storage and stuff like that.
2137

2138 We didn't have anything to do with the actual deck that was on the back that was
2139 already existing. The side porch is consistent with like if you see up there, the
2140 neighbor next door enclosed their side porch as well. The only thing they didn't do

2141 that I guess we felt like was aesthetically more pleasing is we added enough to
2142 come up to the front part of the house so it'll be equal with the rest of the side, just
2143 like a modern day house would be.

2144
2145 Basically, in accordance to what he said, we did have a complaint. But we think it
2146 was from a disgruntled employee that was basically trying to hold off on doing our
2147 job to get to another job. It was kind of one of those things where we figured he
2148 went and got all the property permits and he didn't. So that's why I came in. I want
2149 to give a great thanks to Dave Harris and Josh in the Permit Center. They've
2150 actually been helping us comb through this stuff and try to get all the things that
2151 we needed in place. And like I said, we didn't try to go over the side variance or
2152 anything like that. It was basically due to inadequate information from the former
2153 contractor, which we think he was the one that made the complaint after he was
2154 fired.

2155
2156 We just try to make a house look as best as it can be. This house actually was a
2157 blight on the neighborhood. The previous owner had built chicken coops or pigeon
2158 coops in the back of the house. They were huge and real big, almost the size of a
2159 small mobile home. That house has sat for years. In trying to improve it, we've just
2160 tried to make it the best as possible so you wouldn't actually think about what was
2161 there before.

2162
2163 So there came the making of the side porch, which we were in the actual stage of
2164 where the actual stoop was before. We just enlarged it, which we didn't figure was
2165 a problem. But yes, in retrospect, we may have done something that may not have
2166 been consistent with the plan. But our attempt was good to basically try to bring
2167 something better to the neighborhood.

2168
2169 Our guys actually helped the church across the street put their new roof on. We've
2170 been working with other people in the community to help them move debris and
2171 stuff out of their yard. So when we come around, it's not something that we're trying
2172 to build it for the biggest investment, use it to make money.

2173
2174 We try to get people more loans and grants to get the house paid for with a better
2175 looking home than you would ever get. We actually include every appliance that
2176 you can put in a house—microwave, stove, dishwasher, washer and dryer, a
2177 garbage disposal, anything that we can possible put in there. We actually do
2178 improve every use in the house that we can. We actually took all the old wiring out
2179 of this house and replaced it with new wiring. Not that we had to, but we felt like
2180 hey, the house was built in 1947; what's the chance of this stuff being real good
2181 and not coming back on a single mother to have to replace on her own. So we
2182 actually do try to do more good than to make money off of the house. And the
2183 house is actually under contract.

2184
2185 Mr. Baka - Very good. Questions of Mr. Parham?

2186

2187 Ms. Harris - Mr. Parham, first of all, let me congratulate you on what
2188 you're trying to do because the house is attractive. I guess the community
2189 appreciates that. But since you are the property manager—is that would you
2190 said?—
2191
2192 Mr. Parham - Yes ma'am.
2193
2194 Mr. Berman - —for a lot of other projects, do you secure building
2195 permits for them?
2196
2197 Mr. Parham - Yes. But usually we build in the imprint of the house.
2198 We don't usually go out as we did on this house. Usually we don't have to do as
2199 much. But like I said, this house was kind of like—I don't know if you ever saw the
2200 pictures of what it used to look like, but it was not attractive.
2201
2202 Ms. Harris - Yes. But your experience tells us that you know you
2203 need a building permit.
2204
2205 Mr. Parham - Yes ma'am. And the actual contractor was supposed
2206 to be securing his own permits. In retrospect, that's why he was fired because we
2207 found out he didn't actually do that.
2208
2209 Ms. Harris - Okay. Did you look at other houses in the
2210 neighborhood to see if they had any porches that looked like that?
2211
2212 Mr. Parham - Yes. We actually sold one off of Byron Street, which is
2213 less than three blocks away that actually came with a porch like that. There are
2214 several in the neighborhood exactly like that.
2215
2216 Ms. Harris - That have the full width, like a 35-foot width?
2217
2218 Mr. Parham - Yes. We didn't cover the side porch area; we just
2219 covered the front part of the house. It's actually more useful to do it that way
2220 because we get the gutters to actually flush the water away from the house. If we
2221 did it in the middle, it would have needed another gutter and another gutter, and
2222 we would have had like four gushes of water coming out. Just like in the previous
2223 storm, we didn't get any flooding at all because the house is actually draining right.
2224
2225 Ms. Harris - Are you aware that there are guidelines as to the width
2226 of a porch?
2227
2228 Mr. Parham - Now actually I am, ma'am. I'll be honest with you. I
2229 didn't go into detail in the actual beginning because the contractor was supposed
2230 to be securing his own permits.
2231

2232 Ms. Harris - I see homes with the porch all around. I think senior
2233 citizens and those who are in wheelchairs like that because they go around the
2234 house. But hopefully they got a building permit to do that.
2235
2236 Mr. Parham - Most definitely. Like I say, it's just one of those things
2237 where we're just trying to find the most useful way. The lady that wants to purchase
2238 the house, she said that's one of the main reasons why she wants the house. She
2239 just wants it to when she gets older, she has somewhere to sit and enjoy herself
2240 watching the community. It's a real nice community. Everybody's been happy that
2241 we came and renovated the house. They just wanted to make sure that the house
2242 was a great house for that neighborhood.
2243
2244 Ms. Harris - Did you get a copy of the report that we've been using
2245 with the conditions on it?
2246
2247 Mr. Parham - I think I did, but I don't have it with me today.
2248
2249 Ms. Harris - There were some in the lobby out there. There are
2250 some conditions. For example, you heard Mr. Madrigal say that where you have
2251 an open space under the porch, you would need to put lattice there or concrete or
2252 something.
2253
2254 Mr. Parham - Yes.
2255
2256 Ms. Harris - So I wanted to know if you got that.
2257
2258 Mr. Parham - Yes. We already have part of that lattice already, the
2259 part that was actually—that we thought was already approved. So we already have
2260 the lattice waiting for the variance to finish. Charlie [unintelligible] is our building
2261 engineer. We actually obtained him, and he actually told us exactly what we
2262 needed to do.
2263
2264 Ms. Harris - Are you aware of how many features of this house are
2265 in violation?
2266
2267 Mr. Parham - Not exactly, other than the front porch and the side
2268 porch area.
2269
2270 Ms. Harris - Okay. If you don't get the variance from us or in order
2271 to get the variance from us, do you know what you could do to bring it up to code?
2272
2273 Mr. Parham - We most definitely would try to be in compliance with
2274 anything that we need to do. So whatever we need to do, we most definitely will
2275 take care of it.
2276

2277 Ms. Harris - So you would actually tear down part of your front
2278 porch?

2279
2280 Mr. Parham - We hope we don't have to. Like I said, it kind of would
2281 be a problem with the person that's trying to buy the house. Like I said, we didn't
2282 know we were in violation of that exactly. We just didn't intend on the problem. We
2283 were just trying to solve the problem.

2284
2285 Ms. Harris - Okay. Thank you. I think those are my questions.

2286
2287 Mr. Baka - Yes ma'am. Other questions of Mr. Parham? Thank
2288 you very much for your presentation. Is there anyone else here who would like to
2289 speak to this case? We'll move on to our next case then.

2290
2291 **[After the conclusion of the public hearings, the Board discussed the case**
2292 **and made its decision. This portion of the transcript is included here for**
2293 **convenience of reference.]**

2294
2295 Mr. Baka - What is the pleasure of the Board?

2296
2297 Ms. Harris - I am going to make a motion on this. But before I do
2298 that, I want to make a statement. After studying this case, I really don't see how it
2299 can be fixed. I think there's an expression that says after the chicken has flown the
2300 coup it's too late to enclose the coup. I see that in this particular case.

2301
2302 I can't say that damage has already been done because this improvement shows
2303 you that it's not a damaging situation. It's actually improving the neighborhood. I
2304 know we have our guidelines concerning variances, and I've been examining them
2305 very closely to see just how we can apply those here.

2306
2307 I am going to move that we approve this variance.

2308
2309 Mr. Berman - I second Ms. Harris's motion to approve which is in
2310 conflict with the staff recommendation. But for the reasons Ms. Harris gave, I
2311 agree.

2312
2313 Mr. Baka - Motion's been made and seconded. Is there other
2314 discussion among the Board?

2315
2316 Mr. Bell - You mentioned this falling in line with what the Board
2317 of Supervisors is looking at in terms of the porches over on Rockwood, the case
2318 that we had over there. If we vote to approve this, what effect will it have on that?

2319
2320 Mr. Blankinship - I don't think it affects it at all, Mr. Bell. I think that
2321 process is far enough along now. The Planning Commission has recommended

2322 approval of the draft ordinance. The Board has held a work session and didn't
2323 express any concerns. I anticipate that's going to be adopted as presented.

2324
2325 Mr. Bell - Thank you.

2326
2327 Mr. Berman - I want to understand what Mr. Bell is posing. Are you
2328 saying if the Baka Bill, as it were, is approved would it retroactively approve if we
2329 decide not to approve this?

2330
2331 Mr. Blankinship - It would allow them the opportunity to apply for a
2332 provisional use permit to the Board of Supervisors in order to have the front porch
2333 made lawful.

2334
2335 Mr. Baka - But it would not remove the need for a variance for the
2336 other request before us today.

2337
2338 Mr. Blankinship - The enclosure of the side porch.

2339
2340 Mr. Baka - The side porch.

2341
2342 Ms. Harris - This is why I say with the side porch already being
2343 enclosed, I really don't see how that can be fixed unless you're going to tear it
2344 down. On this Board, sometimes we have to exercise our God-given
2345 commonsense to see if something is working or not working. We have to keep in
2346 mind the code, because that's why we are here. But in situations where the code
2347 is, I should say impractical and not feasible to follow, I think we have that discretion.

2348
2349 Mr. Baka - Very good.

2350
2351 Mr. Berman - So this motion is for two items. It's the side setback and
2352 the front porch projection in width. Correct?

2353
2354 Mr. Blankinship - Yes sir. You could separate them if you wanted to.

2355
2356 Ms. Harris - I do not wish to separate them.

2357
2358 Mr. Baka - Okay. The motion has been made by Ms. Harris and
2359 seconded by Mr. Berman. If there's no other discussion at this point, all in favor
2360 say aye. All opposed say no. The ayes have it; the motion passes.

2361
2362 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.
2363 Berman, the Board **approved** application **VAR2016-00018, JACKIE L. ALLEN's**
2364 request for a variance from Sections 24-95(c)(1) and 24-95(c)(4) of the County
2365 Code to build an addition at 3708 Hargrove Avenue (PLEASANT VIEW) (Parcel
2366 801-735-4375) zoned One-Family Residence District (R-4) (Fairfield). The least

2367 side yard setback, total side yard setback and front yard setback are not met. The
2368 Board approved the variance subject to the following conditions:

- 2369
- 2370 1. This variance applies only to the front and side yard setback requirements to
2371 allow a front porch and enclose and expand a nonconforming side porch. All
2372 other applicable regulations of the County Code shall remain in force.
2373
 - 2374 2. Only the improvements shown on the plot plan filed with the application may
2375 be constructed pursuant to this approval. Any additional improvements shall
2376 comply with the applicable regulations of the County Code. Any substantial
2377 changes or additions to the design or location of the improvements will require
2378 a new variance.
2379
 - 2380 3. No later than November 30, the applicant shall enclose the foundation of the
2381 front porch and side porch enclosure with a continuous masonry wall, lattice,
2382 or other screening approved by the director of planning.
2383

2384

2385 Affirmative:	Baka, Bell, Berman, Harris, Mackey	5
2386 Negative:		0
2387 Absent:		0

2388

2389

2390 **[At this point, the transcript continues with the public hearing on the next**
2391 **case.]**

2392

2393 Mr. Blankinship - This is VAR2016-00019, Brent and Justine Winn.

2394

2395 **VAR2016-00019 BRENT AND JUSTINE WINN** request a variance from
2396 Section 24-94 of the County Code to build an addition at 9601 Cragmont Drive
2397 (TUCKAHOE NORTH SECT) (Parcel 743-736-2416) zoned One-Family
2398 Residence District (R-1) (Tuckahoe). The rear yard setback is not met. The
2399 applicants propose 49 feet rear yard setback, where the Code requires 50 feet rear
2400 yard setback. The applicants request a variance of 1-foot rear yard setback.

2401

2402 Mr. Blankinship - Would everyone who intends to speak to this case
2403 please stand and be sworn in. Do you swear the testimony you're about to give is
2404 the truth, the whole truth, and nothing but the truth so help you God? Thank you.
2405 Mr. Madrigal.

2406

2407 Mr. Madrigal - Mr. Secretary, Mr. Chair, members of the Board.
2408 Before you is a request to waive the rear setback requirement for a single-family
2409 dwelling. The subject property is located in the Tuckahoe North subdivision, which
2410 was developed in 1950. The applicants acquired the property in 2010 and applied
2411 for a building permit for a new dwelling in 2015. The original building permit
2412 indicated a 59-foot rear yard setback where code only requires 50 feet. The

2413 building permit was approved between June 5 and June 9, 2015, by Building,
2414 Planning, and Public Utilities. When it was routed to Public Works, a wetlands
2415 issue was discovered, and plans weren't approved until June 29, 2015.

2416
2417 The location of the house had to be shifted further back on the lot due to a wetlands
2418 issue. Although the plans referred to a 50-foot rear setback, the dimension was not
2419 shown on the revised plans. After the dwelling was completed, an as-built survey
2420 revealed that the southwest corner of the home is approximately 49 feet, 3 inches
2421 from the rear property line instead of 50 feet. Thus, the owners have applied for a
2422 variance to waive the setback requirement.

2423
2424 With respect to the threshold question, the applicants indicate that the Zoning
2425 Ordinance unreasonably restricts the use of the property since they can't obtain a
2426 certificate of occupancy on their new home. This interpretation differs from staff's
2427 understanding of the statute. The Zoning Ordinance allows a one-family dwelling
2428 as a principal use, and the application demonstrates that a substantial dwelling
2429 could have been built within the required setbacks. It is staff's position that there
2430 is no unreasonable restriction on the use of the property.

2431
2432 With respect to the second part of the threshold question, the applicant indicates
2433 that a variance would relieve a hardship due to the physical condition of the
2434 improvements on the property. Although staff agrees with this assessment, we
2435 note that the hardship must apply to the property or improvements at the time of
2436 the effective date of the ordinance as outlined in the statute. The required 50-foot
2437 rear setback has been in effect since 1960, and the dwelling was not built until
2438 2016. While we agree that there is a hardship, staff concludes that it does not meet
2439 the statutory test for granting a variance.

2440
2441 Since staff finds no unreasonable restrictions on the use of the property or a
2442 hardship at the time of the effective date of the ordinance, we recommend denial
2443 of the applicants request for failure to meet either of the two conditions of the
2444 threshold question.

2445
2446 This concludes my presentation.

2447
2448 Mr. Baka - Any questions of staff?

2449
2450 Ms. Harris - I just have one question. Is the property currently
2451 occupied?

2452
2453 Mr. Madrigal - I believe it's under a temporary certificate of
2454 occupancy, so yes.

2455
2456 Mr. Baka - Thank you, Mr. Madrigal. We'll now hear from the
2457 applicant.

2458

2459 Mr. Theobald - Good morning. Mr. Chairman, ladies and gentleman,
2460 my name is Jim Theobald. I'm here this morning on behalf of Mr. and Mrs. Winn.
2461 Mr. Winn is the senior vice president and CFO of the Virginia Home for Boys and
2462 Girls, located not far from here in Henrico County.

2463
2464 The rear corner of the Winn's new home was constructed about nine inches within
2465 the 50-foot rear yard setback without their knowledge. There are really two
2466 possible remedies. You can saw off the back corner from the roof to the foundation,
2467 through the siding, the studs, the sheet rock, the wiring, the duct work. It would
2468 also require removing the rear wall of the home. But it also impacts the placement
2469 of the windows and the electrical receptacles. So the blowup that we had just a
2470 moment ago—Miguel, if you don't mind; thank you—shows that little triangle down
2471 in the corner as the violation.

2472
2473 Here's what's involved just visually. This is very high-tech. The top is the rear yard
2474 setback. What's below it is what extends into the rear yard setback. Less than one
2475 square foot.

2476
2477 Mr. Berman - That's to scale?

2478
2479 Mr. Baka - It's intended to be to scale.

2480
2481 Mr. Theobald - You can ask my paralegal if I was on the floor
2482 measuring it.

2483
2484 The facts are that the lot was purchased in 2010. The Winns first applied for a
2485 building permit in 2015. During that process, Public Works discovered the
2486 possibility of wetlands in the front yard. And it's really the existence of those
2487 wetlands that is the real causal factor in this mistake.

2488
2489 Can I see that site plan and erosion control plan, please? You'll note this is the
2490 front yard. This is the wetlands line all the way over to here. And so all of this in
2491 the front was determined to be wetlands. And as a result of that, the house was
2492 pushed back on the site and then angled a bit, ultimately causing the violation.

2493
2494 While the 50-foot setback was noted on the plans as a note, no dimensions were
2495 drawn to that corner. Can we have the as-built, please, Miguel? Thank you. So the
2496 Winns only became aware of the encroachment after the as-built survey revealed
2497 that there was about a nine-inch encroachment and only at the rear corner. It
2498 doesn't even show the encroachment at this scale on the as-built survey.

2499
2500 I fully understand the concept of imputed knowledge, but that's not referenced as
2501 a disqualifying criteria in your standards for granting a variance. None of us knows
2502 when a contractor unwittingly violates code—in this case, an architect, civil
2503 engineer, surveyor, and a general contractor, all licensed by the state. But when
2504 the result of that is the potential removal of a corner of your home, that's a hardship.

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I believe the ordinance as applied to these circumstances unreasonably restricts the use of the property as the Winns will not be able to obtain a permanent certificate of occupancy. We very much appreciate the County staff working with us to issue a temporary certificate of occupancy allowing the Winns to move in pending the outcome of this hearing.

The hardship alleviated would be the necessity of demolishing the rear of the home. The Winns had no knowledge of this encroachment. The discovery and delineation of wetlands basically caused the house to be relocated, and someone else's negligence has caused the violation, which also contributes to the uniqueness of the situation.

Approval of the variance will not have a negative effect on other owners in the area who have in fact filed letters of support with staff—six in all—representing all of the adjacent owners, save but one who verbally expressed his support (the neighbor across the street).

Your enabling ordinance authorizes you to grant a variance, and I quote, as will not be contrary to the public interest when owing to special conditions of literal enforcement of the provisions will result in unnecessary hardship provided that the spirit of this chapter shall be observed and substantial justice done.

Only you can help the Winns at this point, as noted in the staff report, and they would greatly appreciate it. I respectfully request that you grant the request for a variance. And we would happily accept the one condition that is proposed in your staff report.

I'd be happy to answer any questions.

Mr. Baka - Mr. Theobald, I believe you may have answered one of my first questions. We have a situation where the house extends nine or ten inches into the setback, and it was located about nine or ten feet further back than was originally planned. There was a 59-foot setback proposed in the rear yard.

Mr. Theobald - Yes, that is correct.

Mr. Baka - Fifty feet by code. So let's say you're about nine or ten feet away from where it was. All of that delta, all of that change over the nine or ten feet, is that attributed to the finding of a wetland in the front yard which shifted it back?

Mr. Theobald - Yes sir.

2549 Mr. Baka - And then therefore, about how far is the front of the
2550 home from the edge of that wetland? We drove by. I know it's a low-lying area. It
2551 didn't necessarily seem actively wet.
2552

2553 Mr. Theobald - Right. Can we go back to the—there you go.
2554

2555 Mr. Blankinship - It's farther down. It's the EMS plan. Right below that.
2556

2557 Mr. Baka - There.
2558

2559 Mr. Theobald - Go to the next one. That's a little better. Here we go.
2560

2561 Mr. Baka - About how far are we from that wetlands edge that
2562 caused this push back?
2563

2564 Mr. Theobald - Looks like it goes over to—it's all this over to here. And
2565 I think it goes to the edge of the drive? Is that correct?
2566

2567 Mr. Baka - In other words, the location of that wetland, the
2568 determination of that, caused the house to be pushed back. How far do we have
2569 to be from that wetland to make it a compliant distance from the wetland? Is that a
2570 50-foot requirement?
2571

2572 Mr. Blankinship - I don't know the answer to that question. The Zoning
2573 Ordinance does not require a setback from wetlands. So unless there was a RPA
2574 or an RMA, I think they can build up to the wetland, but they cannot disturb the
2575 wetland.
2576

2577 Mr. Baka - Okay.
2578

2579 Mr. Winn - My name is Brent Winn. W-i-n-n. I'm the owner. That's
2580 exactly correct. We obtained an Army Corps of Engineers DEQ permit to impact a
2581 minimal area of wetlands, less than a tenth of an acre. That is what drove the
2582 placement of the house on the lot.
2583

2584 Mr. Baka - Very good. I had one question for the applicant. Is all
2585 the home construction recent construction in the past year or two starting in 2015?
2586 Or was some of it an addition onto an older—
2587

2588 Mr. Winn - All new.
2589

2590 Mr. Baka - Okay.
2591

2592 Mr. Bell - The lender was one of the reasons the mistake was
2593 discovered. What stage of construction was the house in when the lender notified
2594 the contractor?

2595
2596 Mr. Winn - Actually, one of your planners caught the error or
2597 caught the problem on August 15th. I remember it well. We were loading up the
2598 moving van, and he called me and said you can't move in, we can't issue a
2599 certificate of occupancy.
2600
2601 Mr. Blankinship - Yes. The as-built survey after the house is complete.
2602 After the final building inspection.
2603
2604 Mr. Baka - Other questions of the applicant?
2605
2606 Ms. Harris - Maybe I missed this, but a survey was done before the
2607 construction and after? Is that true?
2608
2609 Mr. Winn - There was an erosion and site disturbance drawing
2610 done, and then the house was pushed back. The actual as-built survey was not
2611 done until the home was complete. It certainly could have been discovered along
2612 the way, it just was not by any of the professionals.
2613
2614 Mr. Baka - If the Board were to find in favor of this case, you are
2615 able to meet the one condition that's proposed in the staff report, correct?
2616
2617 Mr. Winn - Yes sir.
2618
2619 Mr. Theobald - Keep in mind we still have a 49-foot, 3-inch setback to
2620 the rear property line.
2621
2622 Mr. Baka - Thank you very much.
2623
2624 Mr. Winn - Thank you.
2625
2626 Mr. Theobald - Thank you.
2627
2628 Mr. Baka - Is there anyone here who would also like to speak in
2629 favor or in opposition to this case? Seeing none, that concludes the presentation
2630 of our cases. So at this point, we'll move forward with the deliberation and voting
2631 portion of our meeting.
2632
2633 **[After the conclusion of the public hearings, the Board discussed the case**
2634 **and made its decision. This portion of the transcript is included here for**
2635 **convenience of reference.]**
2636
2637 Mr. Baka - I'll go ahead and make a motion for approval of this
2638 variance on the following criteria that I do not believe the case before us is in strict
2639 violation of 15.2-2309, the standard that references that a variance would alleviate
2640 a hardship due to the physical condition of the property. I also concur with Ms.

2641 Harris's comments made just a minute ago that the sentiment of this Board is to
2642 look at the practicality of some of these situations and exercise discretion and good
2643 judgment where needed.

2644
2645 With that in mind, as I read through the five-part variance test in the staff report,
2646 my assertion or my finding would be that it is in compliance with the five-part test,
2647 so I make a motion to approve this variance.

2648
2649 Mr. Mackey - Second.

2650
2651 Mr. Baka - Seconded by Mr. Mackey. Is there any discussion
2652 about this variance?

2653
2654 Ms. Harris - Yes. We are just considering a variance of one foot
2655 near the rear yard. I think one foot is stretching it a bit to decline a case like this.

2656
2657 Mr. Baka - I would concur. At this point, we'll have a vote. All in
2658 favor say aye. All opposed say no. The ayes have it; the motion passes.

2659
2660 After an advertised public hearing and on a motion by Mr. Baka, seconded by Mr.
2661 Mackey, the Board **approved** application **VAR2016-00019, BRENT AND**
2662 **JUSTINE WINN's** request for a variance from Section 24-94 of the County Code
2663 to build an addition at 9601 Cragmont Drive (TUCKAHOE NORTH SECT) (Parcel
2664 743-736-2416) zoned One-Family Residence District (R-1) (Tuckahoe). The rear
2665 yard setback is not met. The Board approved the variance subject to the following
2666 condition:

2667
2668 1. This variance applies only to the rear yard setback requirement for the dwelling
2669 as currently constructed. All other applicable regulations of the County Code shall
2670 remain in force. Any additional improvements shall comply with the applicable
2671 regulations of the County Code.

2672
2673
2674 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
2675 Negative: 0
2676 Absent: 0

2677
2678
2679 Mr. Baka - That concludes the cases for today's agenda. Now
2680 we'll move on to the approval of the minutes of the September 22nd meeting. Any
2681 discussion or comments about the minutes? Seeing none, is there a motion to
2682 approve the minutes?

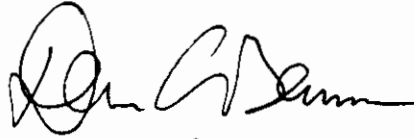
2683
2684 Mr. Berman - I move that we waive the reading of the minutes and
2685 approve them as written.

2686

2687 Mr. Baka - Motion made. Is there a second?
 2688
 2689 Mr. Bell - Second.
 2690
 2691 Mr. Baka - Made and seconded. All in favor of approving the
 2692 minutes as-is, vote by saying aye. All opposed say no. The ayes have it; the motion
 2693 passes.
 2694
 2695 On a motion by Mr. Berman, seconded by Mr. Bell, the Board **approved as**
 2696 **submitted the Minutes of the September 22, 2016**, Henrico County Board of
 2697 Zoning Appeals meeting.
 2698
 2699
 2700 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
 2701 Negative: 0
 2702 Absent: 0
 2703
 2704
 2705 Mr. Baka - Unless there are any other administrative matters of
 2706 the Board, I just have a brief announcement. I have personally enjoyed working
 2707 with this Board of Zoning appeals very much for the past five years. I have been
 2708 asked by a Board of Supervisors' member to consider serving on the Planning
 2709 Commission. I anticipate moving forward with that by submitting a letter of
 2710 resignation to the Clerk of the Court for the Board of Zoning Appeals' seat. We'll
 2711 see what November holds with the Planning Commission from there.
 2712
 2713 It's been a pleasure and an honor to do this. I will say that I did not expect to come
 2714 to the Board or come to the chairmanship just two months ago and leave quickly.
 2715 The timing caught me a little bit by surprise. Perhaps many years from now I might
 2716 have envisioned the transition or something or an interest in serving on a planning
 2717 commission. But I wish you and the entire Board the best. I gave fair warning to
 2718 our vice chairman a month or two ago, hey, I may not be able to attend the
 2719 November meeting. I do believe there will be an opportunity for a member to be
 2720 appointed soon from the Tuckahoe District. I don't know exactly when. Thank you
 2721 very much for your time. It's been awesome.
 2722
 2723 Ms. Harris - Mr. Baka, let me say that it's been a pleasure to have
 2724 you as a cohort on this Board. I didn't realize it had been five years, but they say
 2725 time passes quickly when you're having fun. We wish you Godspeed, the very
 2726 best.
 2727
 2728 Mr. Baka - Thank you very much.
 2729
 2730 Mr. Berman - Our loss will certainly be the Planning Commission's
 2731 gain. Thank you again for all your service. I've learned a lot from you.
 2732

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Mr. Baka - Thanks. All right. At this point, unless there are any other announcements...we stand adjourned.



~~Greg Baka~~ - Dennis Berman
Chairman



Benjamin Blankinship, AICP
Secretary