

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
2 **HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**
3 **GOVERNMENT CENTER AT PARHAM AND HUNGARY SPRING ROADS, ON**
4 **THURSDAY OCTOBER 22, 2020 AT 9:00 A.M., NOTICE HAVING BEEN**
5 **PUBLISHED IN THE RICHMOND TIMES-DISPATCH OCTOBER 5, 2020 AND**
6 **OCTOBER 12, 2020.**

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

15
16 **Also Present:** Benjamin Blankinship, Secretary
17 Leslie A. News, Senior Principal Planner
18 Paul M. Gidley, County Planner
19 R. Miguel Madrigal, County Planner
20 Rosemary Deemer, County Planner
21 Kristin Smith, County Planner
22

23
24 **Mr. Green -** Welcome to the October 22nd meeting of the Henrico County
25 **Board of Zoning Appeals.** Would those who are able please stand and join us in the
26 **Pledge of Allegiance?**

27
28 **[Recitation of the Pledge of Allegiance]**

29
30 **Mr. Green -** Thank you. Mr. Blankinship will now read our rules.

31
32 **Mr. Blankinship -** Good morning, Mr. Chair, members of the Board, ladies and
33 gentlemen. Good morning to those who are in the room with us today. There are also
34 two remote options for participating in this meeting. There is a livestream on the Planning
35 Department web page, and we are hosting a video conference using Webex.

36
37 I would like to welcome everyone who is joining us remotely. If you wish to observe the
38 meeting, but you do not intend to speak, welcome and thank you for joining us. For those
39 of you on Webex, if you wish to speak, we need to know that in advance so we can
40 connect you at the appropriate time. So if you were an applicant or if you have questions
41 or comments on one of the cases, please press the chat button now. It's located in the
42 bottom right corner of the screen.

43
44 When the chat window opens please select Kristen Smith from the list of participants and
45 let her know your name and which case you are interested in. The chat feature is only

46 being used to identify speakers, so please do not type questions or comments into a chat.
47 But please send a chat to Kristen Smith now so we can organize the queue.

48
49 Now acting as secretary I will call each case and then we will ask everyone in the room
50 who intends to speak to that case to stand and be sworn in. There is one appeal on the
51 agenda this morning. And for that case an assistant county attorney will speak on behalf
52 of the Planning Director and then the appellant will present their case. Each side will
53 have a limit of 10 minutes. And then anyone else who wishes to speak will be given the
54 opportunity with a time limit of three minutes. We'll hear from citizens in the room first,
55 and then from those on Webex if there are any.

56
57 For conditional use permits and variances, the rest of the agenda, a member of the
58 Planning Department staff will give a brief presentation and then the applicant will speak.
59 And then anyone else who wishes to speak will be given the opportunity. And, again, we
60 will hear from citizens in the room first, and then from those on Webex. After everyone
61 has had a chance to speak, the applicant and only the applicant will have an opportunity
62 for rebuttal.

63
64 Now this meeting is being recorded, so we will ask everyone who speaks to state your
65 name and please spell your last name, so we get it correctly in the record.

66
67 For those of you in the room, there is a microphone -- well, there will be a microphone in
68 the back. You can see a podium there. The microphone is temporarily down here, but
69 we're going to move it back there after the appeal. So you can speak at the back if you
70 prefer. It makes it a little easier for you to maintain social distancing. You can also use
71 the microphone at the podium if you prefer.

72
73 We do have all five members. And, Mr. Chair, there is one withdrawal from this morning's
74 agenda, and that is the variance, the last case on the agenda, variance 2020 number 22,
75 Liberty Homes of Virginia Incorporated.

76
77 **VAR2020-00022 LIBERTY HOMES OF VIRGINIA, INC. requests a variance from**
78 **Section 24-95(c)(4) of the County Code to build a one-family dwelling at 1358 Cedar**
79 **Lawn Avenue (CEDAR LAWN) (Parcel 803-699-5490) zoned One-Family Residence**
80 **District (R-4) (Varina). The front yard setback is not met. The applicant proposes 30**
81 **feet front yard setback, where the Code requires 35 feet front yard setback. The**
82 **applicant requests a variance of 5 feet front yard setback.**

83
84 Mr. Blankinship - If anyone is here for that hearing that case has been
85 withdrawn. So that case will not be heard this morning. And with that, Mr. Chair, I think
86 we're ready to begin.

87
88 Mr. Green - Thank you. Would you please call our first request?

89
90 Mr. Blankinship - As I mentioned, there is one appeal on the agenda this
91 morning, and that is appeal 2020 number 7, Earl Douglas.

92 **APL2020-00007 EARL DOUGLAS appeals a decision of the director of planning**
93 **pursuant to Section 24-116(a) of the County Code regarding the property at 6108**
94 **Charles City Road (Parcel 850-688-9248), zoned B-3, Business District (Varina).**
95

96 Mr. Blankinship - Would everyone who intends to speak to that case please
97 stand and be sworn in? Raise your right hands, please. Do you swear the testimony
98 you're about to give is the truth, the whole truth, and nothing but the truth so help you
99 God? Thank you. All right. Mr. McChesney, if you will begin.

100
101 Mr. McChesney - Good morning. My name is John McChesney. Last name is
102 spelled M-c-C-h-e-s-n-e-y, and I'm an assistant county attorney representing the Director
103 of Planning this morning with regard to Mr. Douglas' appeal.
104

105 I have just a brief presentation that summarizes what I included in the letter that I
106 understand was provided to the members of the Board regarding this case. First of all,
107 the Board of Supervisors received a complaint about the property at 6108 Charles City
108 Road. In response to that Patrick Weddel, who will speak about his observations
109 momentarily, went out to the site, also reviewed photographs, and came to the conclusion
110 that Mr. Douglas had cleared more than 2500 square feet of land at that address.
111

112 So the question is, did Mr. Douglas clear that amount of land without a plan of
113 development? The Henrico code requires there to be a Plan of Development prior to
114 clearing more than 2500 square feet. If someone does not do that, they are guilty of a
115 misdemeanor under the code. The most relevant portion of the Virginia Code, as quoted
116 in the letter, is a definition of land disturbance. Which is any manmade change to the
117 land service that results in soil erosion or has the potential to change its runoff
118 characteristics including the clearing, grading, excavating, transporting, and filling of land.
119 So, basically, cutting down trees, cutting down vegetation, that is clearing land.
120

121 So the evidence in this case just to start out, the Planning Department has had
122 discussions with Mr. Douglas, I believe, on several occasions over the last six months or
123 so. There is still no application for a Plan of Development that's been submitted. He did
124 submit a drawing, but there's been no application submitted and approved. With regard
125 to the drawing, I would draw your attention to this area here, which is a wooded area
126 which Mr. Douglas has indicated he has cleared.
127

128 That area is present on aerial photographs in this, you can see it here. The red box is
129 2500 square feet. The Planning Staff or the Planning Department prepared this slide. So
130 this red box is 2500 square feet, which would be the limit in the code that you can clear
131 without a plan of development.
132

133 This is 2018. 2020 the same box has nothing in it, no trees, and still 2500 square feet.
134

135 In addition, when Mr. Weddel went to the site, he noticed that there was land cleared
136 around the perimeter of the property. And these are some pictures that he took that he

137 can talk about in a little more detail. But they also indicate that in addition to the red box
138 there was significant square footage cleared around the perimeter of the property.

139
140 The last piece of evidence that I want to point out is simply an email from Mr. Douglas
141 where he talks about the small area at the west end of the property of about 20 trees that
142 he cut down and ground the stumps into a stock grinder and he put the gravel where there
143 was no apparent gravel before.

144
145 So there doesn't seem to be any dispute that he cleared the red box, and the red box is
146 2500 square feet. And also there was additional land around the perimeter.

147
148 So, with that, I would ask the BZA to approve the -- or not disturb the Notice of Violation
149 from the Planning Director issued in this matter. Do you have any questions?

150
151 Mr. Green - Does anyone have any questions?

152
153 Mr. Weddel - Morning, gentlemen. My name is Patrick Weddel, W-e-d-d-e-
154 l. I'm the Environmental Compliance Supervisor for Department of Public Works
155 Engineering and Environmental Services.

156
157 Just to quickly recap, yes. I was asked to go visit the site. I was asked that on March
158 19th. I conducted a site visit per that request on March 20th and identified greater than
159 2500 square feet of land has been cleared including existing vegetation and trees. And
160 what I observed was roughly a 10-foot wide area around the southern, western, and
161 northern perimeter of the property had been cleared in addition to the trees on the western
162 portion of the property that were cleared.

163
164 So I went ahead and contacted Mr. Douglas and I told him of my findings. That was on
165 that Friday, March 20th. We had a discussion that following Saturday, March 21st. I went
166 ahead and issued the stop work order in accordance with the requirements set forth with
167 land disturbance on Monday, March the 23rd. That clearing that I observed appeared to
168 be very recent in nature. Probably done within maybe a week or two before my visit. And
169 that's what I did.

170
171 I looked at aerial photography as well. Compared past aerial photography to what I
172 observed in the field and came to the conclusion that the land disturbance was over 2,500
173 square feet.

174
175 Mr. Green - Any questions of the Board?

176
177 Mr. Johnson - Did anyone from the company see you when you were over
178 there taking the pictures?

179
180 Mr. Weddel - No, sir. There was nobody present on that Friday afternoon.

181
182 Mr. Johnson - Thank you.

183
184 Mr. Green - Thank you.
185
186 Mr. Weddel - Thank you, gentlemen.
187
188 Mr. Bell - So the land disturbance. That was the recent disturbance.
189 Right?
190
191 Mr. Weddel - Yes, sir. In my opinion that disturbance probably took place
192 within a week or two of my visit.
193
194 Mr. Green - Did you determine why that land was cleared?
195
196 Mr. Weddel - No, sir. I did not determine why it was cleared.
197
198 Mr. Bell - Okay. And also did that include anything else that was on the
199 property other than, like, cars and supplies? You said it was closed. Was that newly
200 opened?
201
202 Mr. Weddel - When I conducted my site visit, I really wasn't focused on
203 buildings or cars or gas tanks, per se.
204
205 Mr. Bell - Right.
206
207 Mr. Weddel - I was focused on any clearing of native land that was not
208 currently under stone.
209
210 Mr. Bell - Thank you.
211
212 Mr. Weddel - Any other questions, gentlemen?
213
214 Mr. Green - Any other questions from Board members?
215
216 Mr. Weddel - Thank you.
217
218 Mr. Green - Thank you.
219
220 Mr. Blankinship - John, did you have anything further?
221
222 Mr. McChesney - No.
223
224 Mr. Blankinship - Okay.
225
226 Mr. McChesney - Nothing further on this unless the Board has a question.
227
228 Mr. Blankinship - Mr. Douglas. Oh. I'm sorry. Looking the wrong direction.

229
230 Mr. Green - So we're going to hear from the applicant.
231
232 Mr. Douglas - My name's Earl Douglas. E-a-r-l D-o-u-g-l-a-s. I forget the
233 date that I bought this property, but I checked before I bought it to make sure it was zoned
234 correctly. I didn't know anything about, you know, clearing limits or plan of development.
235 I just thought if you had a piece of property that was zoned correctly, you know, you could
236 use it for what it was zoned for. You know. I'm learning as I go. But I'm not out to get
237 over on anybody.
238
239 I didn't take pictures beforehand and now I wish I did, but I didn't know I was doing
240 anything wrong. And I still don't believe I have according to county code. And I have
241 some pictures over here I could show you all to explain a bunch of things that weren't
242 explained yet. I'll come over here.
243
244 [Speaking from and using document projection equipment.]
245
246 All right. Let's see. So first of all he was talking about the area in that big square that
247 was cleared. That whole square was not cleared. There were four significant trees in
248 that square, and they were cleared. And if you connect those four trees with a line, then
249 it makes a big old square. But that doesn't mean that whole square was cleared. Here's
250 the picture right here. I'm sorry.
251
252 I don't have a picture that shows when the trees were there, but he showed it a few
253 minutes ago. And, if you look, it's just a few trees that were significant trees. The rest of
254 them were little volunteer trees that just pop up if you don't use an area and, you know,
255 stuff just pops up. And that's what happened over the years.
256
257 There was a picnic table inside of that area. The rest of the property was gravel. Oh,
258 hang on. Oh, there we go. Sorry. Yeah, the rest of the property was graveled in. And
259 grass and saplings had grown up through it.
260
261 He said something about there wasn't any gravel on the southern edge of the property,
262 well I'll give you all these pictures when I'm done, because you really can't see the gravel.
263 But all this is gravel even beyond the property line closer to the ditch.
264
265 And you can see gravel in this picture, on the southern edge. Here's the fence line. And
266 if you look down it, there's gravel on both sides of those fence posts all the way to the
267 ditch. I mean, there's gravel all around the perimeter of the property. It was gravel from
268 edge to edge. And when I bought the property, the realtor was showing me that it was
269 graveled in and I would save some money on not having to gravel the swamp.
270
271 Here's an area that I've done nothing to on the northern edge of the property. Just a small
272 area that I didn't get around to graveled. And that's existing gravel everywhere. Here's
273 the main entrance coming in. The old gravel is to the left. It was so much left I didn't

274 even have to sprinkle gravel on top of it. It's my opinion I was maintaining the gravel that
275 was already there.

276
277 And I want to give you all these pictures, so you can look at them better. Here's more
278 gravel all the way down to the southern fence line. That shows it was cleared all the way
279 to the back property line and it was cleared so it could be used as a yard in the past.

280
281 Two or three other companies had parked trucks here before me. This is an entrance on
282 the western edge of the property that's been abandoned. That used to be the truck
283 entrance. Here's a gatepost laying down right where it used to be standing. That was
284 the main truck entrance and there was a gate there and they came in through the western
285 edge of the property.

286
287 This is what it looks like on Charles City Road on the western edge where the truck's
288 pulled in. So it was gravel all the way to the western edge of the property. All the way to
289 the southern edge of the property. And there's plenty more pictures of gravel on the
290 property line. This is old gravel. It's river stone, it's brown, and it's old. It's got asphalt
291 mixed in. The gravel that I brought in is gray granite that was crushed. It's easy to see
292 the difference.

293
294 The extent of clearing that I did, I Bush Hogged the whole property. After I Bush Hogged
295 everything. I had a Harley Rake and I scraped up all of the clippings and the saplings
296 that were Bush Hogged and just laying everywhere and I put them up in a pile.

297
298 On the southern edge of the property close to where the red square was drawn, there
299 was piles of tires and shingles and dirt and concrete that was dumped off. I scooped all
300 of that up to haul away. When I scooped these piles that were dumped, it looked like it
301 was cleared. It was cleared of debris and trash. It wasn't cleared of, you know, woods
302 and vegetation. But yet stuff had been scooped up and hauled away.

303
304 I hauled about six loads of trash off the property. I used my front bucket to drag it back
305 in a pile and scoop it up and load it and haul it to the landfill. And I guess that disturbs
306 the ground, but I don't know how to get up piles of trash that people dump without making
307 it look like that when you're done. I couldn't go down to the level of the existing gravel
308 exactly. I just had to drag stuff in a pile and scoop it up and put more gravel down. But
309 that was not land clearing, in my opinion, that was trash clearing.

310
311 I have lots more pictures here, like I said. I'll give them to you all. Hopefully you have
312 time to look at least a few of them. I could have took better pictures, but I didn't know
313 beforehand I would need them.

314
315 On the northwest -- on the northeast corner of the property it looks like a big area was
316 cleared. That's not even my property there. That was a grassy area. And before I had it
317 surveyed, you know, just driving across it with my loader made that look cleared. But you
318 can see there's a line here. This whole area is grass now. It's up to your knees. It's not

365
366 Mr. Douglas - Yes.
367
368 Mr. Green - You purchased the property and what was the purpose of you
369 clearing it?
370
371 Mr. Douglas - For parking trucks. I have a tree service.
372
373 Mr. Johnson - You said you have a tree service?
374
375 Mr. Douglas - Yes, sir.
376
377 Mr. Johnson - Is that your main business, then?
378
379 Mr. Douglas - Yes, sir. We used to cut up fuel tanks years ago. And since
380 2020 about 99 percent of our work is trees. Probably more. The little bit of tank work that
381 we do is done onsite, on customer property, and the last time I've done tank work has
382 been over a year.
383
384 Mr. Johnson - Yes. While out there I noticed there was a lot of tanks on the
385 back line back there.
386
387 Mr. Douglas - Yes, sir --
388
389 Mr. Johnson - Matter of fact, also my family's right behind you. Right behind
390 that area. And they've been out there for a while.
391
392 Mr. Green - Your family?
393
394 Mr. Douglas - Yes, sir.
395
396 Mr. Johnson - They're the house behind you on Charles City Road. Anyway,
397 there was some differences in what you were saying at least for the last three or four
398 years. There have been some trees out there. That's where I come in, you know, to visit
399 my family.
400
401 And, also, I was just concerned, you know, with the tanks out there. What are you doing
402 with those? Since you were supposed to be doing tree removal.
403
404 Mr. Douglas - Yeah. Well, we've acquired those things over the years. And
405 they were on my agricultural property and I was just saving them because they were good
406 tanks, you know, to either sell or give away. When I had to move everything off my
407 personal property to this location, it's about \$25 a foot to build a fence, so I figured I could
408 use those. I had to get them off my personal property. I had to build a fence at this
409 property for security, and I figured that would save me some money on a fence.
410

411 I also planned on cutting holes in the tanks for storing stuff, since there's no building here,
412 for tires or oil or chainsaws or parts or hand tools or anything. Air compressor. So my
413 intention was to cut some holes in them and use them, you know, for storage. Just to
414 keep stuff out of the weather.

415
416 I now have a man that's going to come buy the tanks, so I figured they'd be gone by now.
417 But I talked to him last week, the tanks are going to be gone no matter what. But, I mean,
418 either way I didn't think that they would play a part in how much land was cleared that
419 we're here for today. But I am going to get rid of the tanks. I just didn't have the time to
420 do it properly before when I was moving everything off of my personal property onto this
421 B-3 property.

422
423 Mr. Bell - Also a POD. Have you put in for that?
424
425 Mr. Douglas - Well that's the whole reason we're here. I'm under the
426 impression that I haven't cleared enough to be required to have a POD. That's the whole
427 reason for this meeting today, I believe.

428
429 Mr. Green - What is the cost of a POD?

430
431 Mr. Johnson - The cost to obtain a POD.

432
433 Mr. Blankinship - Well, the greater part of the cost would be between the
434 applicant and an engineer to do the work. The county fees would be in the, I want to say,
435 the \$500 to \$700 range. I don't have the figure right in front of me.

436
437 Mr. Douglas - I mean, coming up with a plan is the cheapest part. Doing the
438 plan is what is expensive. I mean, paving an area with curb and gutter and handicapped
439 parking spots and a sediment pond, and losing 40 feet of property on one end and 10 feet
440 of property on another end, having a landscape plan, a lighting plan, an environmental
441 plan, that's where all the money comes in. When you do all that, it's more than what I
442 paid for the property.

443
444 If somebody else wanted to pay it, I would come up with a plan and turn it in tomorrow
445 and I'd be happy about it. But then somebody's got to foot the bill to apply all these things
446 and there's just no money for that. I mean, I would guess about \$150,000.

447
448 I mean, I was trying to come up with some kind of compromise just to draw up something
449 without paying an engineering firm to just see if that was good enough and see if we could
450 just come to an agreement without me having to do everything. And that's why I turned
451 that drawing in. And nobody ever said they looked at it. Nobody ever said, This isn't
452 going to work. Nobody ever said, you know, We're still waiting on a plan of development.

453
454 But, anyway, I wasn't trying to ignore anybody. You know, I just wanted to plead my case.
455 I really don't think that I cleared enough to do have to do that. Most of the area was trash
456 that was piled up. The trees that were cleared, I don't think it's fair to connect four trees

457 and make a big square and say the whole square was cleared. You know. The trees
458 were this big around. I just don't think that's fair. And to look at the canopy of a tree,
459 which is huge, from a satellite, and say, That's the area that was cleared. When it only
460 takes up this much space when it goes into the ground, I don't think that's fair.

461
462 There was already gravel all in that area with the picnic table where it was used before.
463 And if you look at these pictures, you can see the fence line was gravel beyond the
464 property line in all directions.

465
466 Mr. Bell - And you also are replacing the fence? Putting a new fence
467 in?

468
469 Mr. Duncan - There was no fence there. I had started on a fence in the front
470 and then I got a stop work order, so I just stopped doing everything because I didn't -- I
471 didn't want to make a 10-foot fence and find out it had to be 8-foot. And I didn't want to
472 put it here and find out it's got to be there. So I just wanted to wait until all this was settled,
473 you know, before I do the wrong thing.

474
475 And I've met with the three people from the county. This gentleman and a couple other
476 people were out there. I've been trying to get things worked out and trying to explain stuff.
477 And, you know, I haven't been belligerent, and I haven't been refusing stuff. I've been
478 trying to explain, you know, how I saw stuff and what was there.

479
480 But, like I said, these three gentlemen back here and some other people that couldn't
481 make it today because they worked, and myself, we were part of this from the beginning
482 and we know what was there. And I just don't think it's fair for somebody to show up later
483 and say what they think was there. And that's what I get stuck with. So anyway, that's
484 why I'm here.

485
486 Mr. Bell - You bought the property when, did you say?

487
488 Mr. Douglas - Probably about two weeks before he came out. From the time
489 I got a violation for having trucks at my house until the time I bought that property was
490 about a week.

491
492 Mr. Bell - Okay.

493
494 Mr. Douglas - And then I immediately started clearing the property,
495 immediately. I mean, I wanted to get in compliance.

496
497 Mr. Bell - When were you aware about plan of development
498 requirement?

499
500 Mr. Douglas - After they came out and said that I've cleared too much and I
501 couldn't do anything else, I needed a plan of development.

503 Mr. Bell - So you weren't aware of it actually before you bought
504 something.

505
506 Mr. Douglas - I never heard of a plan of development. I mean, I don't do real
507 estate. I don't do clearing. I've never heard of it before. I mean, I'm just ignorant when
508 it comes to certain things. And I've never messed with that.

509
510 Mr. Bell - Well it's typical of Henrico County, as you know, to require
511 that now.

512
513 Mr. Douglas - Oh, yes, sir. Well I'm not saying it's not a law. I mean, I
514 understand that. But I just assumed that if you get a piece of property that's zoned
515 properly, then you can do whatever it's zoned for. I mean, I'm not saying I'm right at all.
516 That's just what I assumed. And I assumed wrong. And I'm sorry about that.

517
518 Mr. Bell - Okay.

519
520 Mr. Douglas - I would have been very careful not to clear too much if I knew.
521 Trust me.

522
523 Mr. Johnson - Before you moved to the current location, did you have the
524 same thing at the other location?

525
526 Mr. Douglas - I had been parking the equipment and working out of my
527 house. I had an office at my house. And it started off small and I had one truck and then
528 I had two, and then I had four. And now I've got, you know, six or eight trucks. And over
529 the years, you know, I knew that it wasn't completely legal. I didn't think it was that big of
530 a deal. Nobody complained. I was back off the road. You know I just figured if somebody
531 said something one day I would just have to do something different.

532
533 I didn't intentionally start out that way. That's just how it happened. But, like I said, once
534 I found out I was in violation and somebody complained, it took about one week for me to
535 find this other property and purchase it. You know, I was in a hurry to get in compliance.
536 I get stressed out when there's something over my head and this has definitely been
537 something hanging over my head. I thought I was in the clear and I was excited to, you
538 know, to move on and get everything legal finally.

539
540 Mr. Johnson - So one more concern is about your employees. How many
541 employees do you have?

542
543 Mr. Douglas - Right now like seven.

544
545 Mr. Johnson - Okay. And are they parked on this property as well?

546
547 Mr. Douglas - Yes, sometimes.

548

549 Mr. Johnson - The reason I was inquiring about that is because I noticed on
550 Charles City Road, right behind you, there is a little pull-in right behind the trees on here.
551 And every time I go to the truck --, there're a lot of cars parked there and used to there
552 wasn't any cars at all.

553
554 Mr. Douglas - Yeah. Well that used to be the entrance to this property. That
555 was the entrance for the trucks and it came in on the western edge. And they would enter
556 on that edge and the whole property was gravel. That's how they got over to the building.
557 That's where that gate post was. I don't know if you saw it in the picture.

558
559 The people that have been parked there recently, that's a paving contractor that's paving
560 route 156. They talked to me about using this property to park on and I don't want to
561 cuss, but I said, H no. Because I was already going through all this trouble and it's already
562 too small of a lot, and I don't have room as it is for my stuff. So they worked it out with a
563 state guy, or a county guy, about parking there. That's not me. That was the pavers. I
564 think Slurry Pavers has been parking there for the past few weeks. But that area you're
565 talking about is the old entrance to this property.

566
567 Mr. Johnson - Yes.

568
569 Mr. Douglas - Once the trucks came in, they didn't drive across a muddy
570 field to get to the building. You know. All of that was graveled. And it was a state yard
571 and they get free gravel. So they'd want to gravel it, you know, everything was graveled.
572 It was free. There's no reason for them not to gravel any part of it.

573
574 Mr. Johnson - Okay.

575
576 Mr. Douglas - I probably went over my 10 minutes. But I'll talk some more.

577
578 Mr. Blankinship - Well, in response to questions that doesn't count against your
579 10 minutes.

580
581 Mr. Douglas - Yes, sir.

582
583 Mr. Green - I have a question.

584
585 Mr. Douglas - Yes, sir.

586
587 Mr. Green - Not for you, I mean, but for staff. While it's in the code that,
588 you know, they have to have a POD, when they purchase the property, when someone
589 purchases property, is all that information given to them so they know what they need to
590 do? Or do they have to do their own homework.

591
592 Mr. Blankinship - No, sir. We have no way of knowing every time a piece of
593 property changes hands so that we can notify the applicant of all of their responsibilities.

594

595 Mr. Green - So it could legitimately have been a mistake that was made,
596 you know, and unintentionally.
597

598 Mr. Blankinship - Yes, sir. Yes, sir.
599

600 Mr. Green - Mr. Bell, you said that it's there. But, you know, a lot of rules
601 are out there. At what point do we at the county, let the folks know that they have to look
602 for certain things before they can do other things.
603

604 I guess that's what I'm grappling at. How do they know?
605

606 Mr. Bell - I believe when we went to the beginning of this case, the way
607 it started off, they got to talking and might didn't know, but then he was notified by us
608 several times and still they don't have a plan of development.
609

610 Mr. Green - Right.
611

612 Mr. Johnson - Right.
613

614 Mr. Bell - So there is another issue.
615

616 Mr. Green - Yeah. But I think he said that the plan of development would
617 have cost about \$150,000.
618

619 Mr. Bell - And so we're not going to factor that in that he didn't know to
620 begin with and then a week or so later he knew.
621

622 Mr. Green - Okay.
623

624 Mr. Douglas - Well once I did know, I still feel like it's under that requirement
625 to have the plan of development. If you measure what was where before and measure
626 what's there now to see what was cleared, I still feel that was well under the 2500 square
627 feet.
628

629 Mr. Green - Well that may be your opinion. Is it under or over from the
630 county's perspective?
631

632 Mr. Douglas - I do have people that I brought with me to talk about the gravel
633 that was --
634

635 Mr. Green - No, no, no. You're saying you feel that it's under. But the
636 reality of it is, legally, what is it? Is it over or under?
637

638 Mr. Weddel - It's over.
639

640 Mr. Douglas - Well, I mean, I don't know if that was his opinion he was just
641 saying or --

642
643 Mr. Blankinship - Well Mr. Weddel, his job is to determine the answer to that
644 question. And he determined the answer. So it's more than just an opinion. It's the
645 answer of a professional engineer who's trained and certified in this kind of decision-
646 making.

647
648 Mr. Douglas - I understand it, but he's determined that without knowing what
649 was there before he showed up. That's why I brought people here to explain what was
650 there before he showed up. It's hard to come up with a conclusion without knowing what
651 it started with.

652
653 I mean he's done it, but I don't see how that would hold more weight than somebody who
654 was there before he showed up. That's why I brought three people here to explain what
655 the lot looked like before he showed up. I feel like all he can do is guess what was there
656 before he got there.

657
658 Mr. Green - Well the question before us is not what individuals felt was
659 there before. The question is what we would legally would have to follow.

660
661 Mr. Douglas - Oh, I'm saying, but they're not based on feelings. They were
662 on the lot physically over the past years. One of them worked there. One of them relic
663 hunted there. One of them ground the stumps. And they were physically there. And
664 they're going off memory and not feelings. And he can't go off of memory, because he
665 wasn't there before it was cleared. So they're going off of memory and I feel like he's
666 going off feelings.

667
668 Mr. Green - Could you come back up and re-explain your process,
669 please?

670
671 Mr. Weddel - Yes sir.

672
673 Mr. Green - And provide your --

674
675 Mr. Douglas - You want me to sit back down?

676
677 Mr. Green - Yes.

678
679 Mr. Douglas - Okay.

680
681 Mr. Green - And just, you know, professionally let us know what you do,
682 how you do it. Because this not only applies to his property, but this is what you do
683 county-wide.

684

685 Mr. Weddel - Yes, sir. My assessment was based on areas that I observed
686 where stone was not originally there. I did take into account the old stone that I saw. And
687 I took into account, you know, areas that had been cleared where land that not only had
688 the trees been cleared, but the land had been disturbed as well. So it's a clearing,
689 grubbing, land disturbance. Not only trees cleared.
690
691 This is consistent with the approach county-wide. This is how we do our work. And we
692 do take into account the previously existing conditions.
693
694 Mr. Green - And you've been doing this how long?
695
696 Mr. Weddel - I've been an inspector or supervisor for ten years. I've been
697 a supervisor for five years.
698
699 Mr. Green - And you inspect about how many properties in a given week.
700
701 Mr. Weddel - I'm responsible for over 250 projects countywide.
702
703 Mr. Green - So you're truly qualified to make that determination as to what
704 was there?
705
706 Mr. Weddel - Yes, sir.
707
708 Mr. Green - Yes, sir. Thank you. Okay. Any other questions from
709 --
710
711 Mr. Johnson - He answered all the questions.
712
713 Mr. Green - Thank you.
714
715 Mr. Bell - I've got one real quickly.
716
717 Mr. Green - Yes, sir.
718
719 Mr. Bell - All the pictures that he wants us to look at, the repairs and
720 stuff, have you seen those pictures?
721
722 Mr. Weddel - No, sir.
723
724 Mr. Bell - All right. Okay, thank you.
725
726 Mr. Green - Are there any other questions from the Board or staff? Does
727 anyone else wish to speak in support of this request? Of this request?
728
729 Mr. Fagan - I'll go. Good morning, gentlemen. Good morning, gentlemen.
730 My name is Mark Fagan. I'm a subcontractor for Earl Douglas. I grind all of his stumps.

731 I would say he's probably my fourth biggest customer, so I'm pretty loyal to him and do
732 him a lot of favors. Because he helps feed my children. And he put a copy of my invoice
733 up there. On any other day I would have done this for him for nothing, just to be gracious
734 of all the work he sends us. I mean, three or four of my jobs a week, we're talking to the
735 tune of 30- or \$40,000 a year he sends us.

736
737 I don't know what the rules are. I'm not here to represent him. I just feel like that the area
738 that -- I ground all the stumps on the property and that 2500 square feet -- I don't know if
739 a plan of development is needed to repair something that was existed. So if something
740 was let go and trees grew back, I mean, none of the trees are that significant. They were
741 only 20 or 30 years old, maybe. But, I know he just walked through the property. I'm not
742 saying he didn't see what he saw.

743
744 But when I ground those stumps, I charged him \$350 for a bucket of carbide teeth. That's
745 what that invoice is for. Because when I went in there and ground teeth, it cost me that
746 much to repair. Every stump I ground there was gravel and rocks all over it. Like, that
747 had always been a gravel lot until somebody abandoned it and the trees grew back. Every
748 place that I ground it was like, carbide's expensive to me. It's one of my largest expenses
749 other than payroll. And even more so than fuel. And everything that I ground was gravel.
750 I mean, there was stuff everywhere.

751
752 So, I mean, just when I went in there, he had already cut the trees down and to the point
753 where I had a shovel and a rake pulling stuff out to try and save teeth. It was grass grown
754 up through gravel all the way to the edge of the stump. Like, when the trees started
755 growing opportunistically, nobody ever planted them there it wasn't cleared and re-
756 seeded. Those trees grew up in gravel through it, and it -- when I chased the roots out
757 and everything. It was just a pile of crap and it cost a lot of money in teeth. That's the
758 only reason I sent him an invoice.

759
760 Mr. Green - Excuse me just, I'm sorry. Mr. Blankinship, did we swear in
761 all of the witnesses?

762
763 Mr. Blankinship - Yes. Yes, he did raise his right hand.

764
765 Mr. Fagan - I mean, this is, like I said, Earl gave me a load of firewood. I
766 mean, we do each other favors all the time. This would've been a favor. We do a lot of
767 money -- work for him. He was like, Send me an invoice for your teeth. I mean, this is --
768 right hand of God this is what happened. I mean these trees weren't there before -- these
769 trees were there after there was already gravel down. I mean, you go out there, you take,
770 I mean, if you want to go out there and take a shovel, I'll show you where I did it. You dig
771 down there's old gravel under new gravel. So God's honest truth. So that's all I've got to
772 say.

773
774 Mr. Green - Thank you.

775
776 Mr. Fagan - Yes, sir. Thank you, gentlemen.

777
778 Mr. Green - Any questions? Any questions from the Board? Thank you.
779
780 Mr. Fagan - Yes, sir.
781
782 Mr. Green - Could you give us your name and spell it?
783
784 Mr. Beasley - Yes. Kevin Beasley, B-e-a-s-l-e-y. As Mr. Douglas has
785 stated, I have relic hunted that property. And you don't relic hunt a piece of property like
786 that long before you realize you can't dig holes through the gravel. That whole place is
787 full of gravel. Brush had all grown through it. That's basically it.
788
789 Mr. Green - Any questions from the Board? Thank you.
790
791 Mr. Johnson - And what caused this was they said it was an eyesore, the
792 property was an eyesore?
793
794 Mr. Beasley - I can't hear you, sir.
795
796 Mr. Johnson - Did this come up as being an eyesore for the neighbors. I
797 think that's what caused all this because of everything now that we are looking at.
798
799 Mr. Beasley - I wouldn't consider it an eyesore. I mean, it's just brush is all.
800 Brush is going to grow everywhere.
801
802 Mr. Johnson - Okay. All right, thank you.
803
804 Mr. Green - We've just got one more witness.
805
806 Mr. Hare - Good morning, gentlemen.
807
808 Mr. Johnson - Good morning.
809
810 Mr. Hare - I worked for Brooks Hill Electric from --
811
812 Mr. Blankinship - Tell us your name, please.
813
814 Mr. Hare - Oh. Pat Hare, I'm sorry, H-a-r-e. I worked for Brook Hill
815 Electric from 2008 till 2010. I know it's gravel all over there, because I used to weed eat
816 every inch of that property. The trees that's in question, the picnic table was at. We used
817 to eat lunch there, me and my coworkers. I know that was gravel. I mean, that's basically,
818 you know -- I kept everything clean when I was there. So any questions?
819
820 Mr. Green - Any questions from the Board? Thank you.
821
822 Mr. Hare - Thank you.

823
824 Mr. Blankinship - All right, Mr. Chair, we do have either one or two speakers
825 connecting on WebEx this morning. Staff, have we got the Webex participants ready?
826
827 Mr. Green - Are they speaking in support or opposition?
828
829 Mr. Blankinship - I don't know that. I think in opposition.
830
831 Ms. Deemer - Mr. Chairman.
832
833 Mr. Green - Yes.
834
835 Ms. Deemer - We are going to unmute Ms. Ellen Snead, she will be our first
836 speaker.
837
838 Ms. Snead - Can you hear me?
839
840 Mr. Blankinship - Yes. Ms. Snead, you are live.
841
842 Ms. Snead - Hello?
843
844 Mr. Blankinship - Yes. Yes, ma'am. We are waiting to hear from you.
845
846 Mr. Johnson - Is she muted at all?
847
848 Ms. Snead - I don't --
849
850 Mr. Blankinship - Yes.
851
852 Ms. Snead - I thought that was the case number.
853
854 Mr. Blankinship - Yes.
855
856 Ms. Snead - So do I wait until --
857
858 Mr. Blankinship - We can hear you now.
859
860 Ms. Snead - Okay. This isn't the case that I was wanting to speak about.
861 I don't know how that happened, I apologize.
862
863 Mr. Blankinship - Okay.
864
865 Mr. Green - Okay. Thank you.
866
867 Mr. Blankinship - In that case, Mr. Chair, I believe the public hearing is
868 complete.

869
870 Mr. Green - The public hearing is now closed, and a motion would be in
871 order. What is the pleasure of the Board?

872
873 Mr. Johnson - I move that we confirm the decision of the Director of
874 Planning. That the staff had clearly researched the facts and the laws and the appellant
875 has not yet met the burden of proving that the staff applied the code incorrectly.

876
877 Mr. Green - There's a motion by Mr. Johnson. Do I hear a second?

878
879 Mr. Bell - I second the motion.

880
881 Mr. Green - The motion was seconded by Mr. Bell. Is there any discussion
882 among the Board? All in favor to the motion say aye. All opposed say nay. The motion
883 passes.

884
885 On a motion by Mr. Johnson, seconded by Mr. Bell, the Board **affirmed the decision of**
886 **the director of planning and denied the appeal.**

887

888

889 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5

890 **Negative:** 0

891 **Absent:** 0

892

893

894 Mr. Blankinship - All right, Mr. Chair. That is the only appeal on this morning's
895 agenda. We do have six conditional use permits. The first is conditional use permit 2020
896 number 35, Liam G. Martin.

897

898 **CUP2020-00035 LIAM G. MARTIN requests a conditional use permit pursuant to**
899 **Section 24-52(a) of the County Code to allow a private noncommercial kennel at**
900 **6417 Elko Road (ELKO MEADOWS) (Parcel 855-703-2888) zoned Agricultural**
901 **District (A-1) (Varina).**

902

903 Mr. Blankinship - Would everyone in the room who intends to speak to this
904 case, please stand and be sworn in. Do we have an applicant? Mr. Liam Martin. Okay,
905 thank you. The applicant is on Webex. My mistake. All right.

906

907 Mr. Green - I would like to make an announcement. As we hear the cases,
908 we vote on them. Once we vote on them, those who are in favor, and the applicant, and
909 those opposed are free to leave once we vote. We've changed our process, so you don't
910 have to wait until the end to hear our position.

911

912 Mr. Blankinship - All right. And with that, Mr. Madrigal will present the staff
913 report on Conditional Use Permit 35.

914

915 Mr. Madrigal - Thank you, Mr. Secretary. Good morning, Mr. Chair,
916 members of the Board.

917
918 Before you is a request to allow a non-commercial kennel in an agricultural district. The
919 subject property is a 1.368 acres in area and is improved with a two-story, 1,680-square-
920 foot colonial-style home built in 1925 with a detached 4-car garage.

921
922 The applicant purchased the property in 2019. Although the property is over an acre in
923 area, it does not meet the distance requirements outlined in the code, as it abuts two lots
924 on either side improved with one-family dwellings.

925
926 Mr. Martin currently has four cats and intends on getting a fifth cat. In conversation he
927 shared that all of the cats are spayed and neutered, and range in age between 1 and 11
928 years of age. They are all indoor cats and have access to a screened side-porch, which
929 you can see here. They are all family pets, and he does not intend on breeding them or
930 fostering any other cats.

931
932 The subject property is zoned A-1 and is designated rural residential on the land-use map.
933 A one-family dwelling is consistent with both of these designations. The zoning ordinance
934 allows up to three pets by right as an accessory use. Additional pets may be allowed
935 through the approval of a CUP.

936
937 The property is over one acre in area as an -- and is in a semi-rural area of the county.
938 To the east and west it abuts residential lots of one and three acres in area. To the north
939 is a 10-acre parcel used for farming. This parcel here. To the south is a 1,276-acre tract
940 of land zoned industrial that is owned by the county. The closest home is to the east and
941 sits approximately 140-feet distant. It is partially screened from view by trees and fencing,
942 which you can see here.

943
944 The cats are kept indoors and generate little noise as compared to dogs. Also, staff is
945 not aware of any complaints against the property. Because of the large size of the lots,
946 the distance between homes, and the semi-rural nature of the area, staff does not
947 anticipate any substantial detrimental impacts if this request is approved.

948
949 In conclusion, the subject property is over one acre in area, and it is in a semi-rural area
950 of the county. The surrounding properties range in size between 1 acre and over 1200
951 acres. The two adjacent homes on either side of the applicant are over 100 feet distant
952 and would not be affected. Five indoor cats will generate little noise as compared to dogs,
953 and staff does not anticipate any significant detrimental impacts to adjacent or nearby
954 property. Based on these facts, staff recommends approval subject to conditions.

955
956 Staff has received one letter in support of this request, which his part of your packet. This
957 concludes my presentation. I'll be happy to answer any questions you may have.

958
959 Mr. Green - Thank you. Are there any questions from the Board? We'll
960 now hear from the applicant.

961
962 Mr. Blankinship - All right. We have the applicant, Liam Martin, on Webex.
963
964 Mr. Martin - Good morning, gentlemen, one and all. Thank you very much
965 for hearing my case. I had the pleasure of meeting Mr. Madrigal and his associate a few
966 weeks ago. I just want to clear one thing. I have currently four cats. We may get a fifth.
967 I just included that -- I just want to be, for legal reasons, to say I don't want to act -- may
968 not actually get one. But, nevertheless, I'm in excess of three and not wanting to be in
969 violation of county code I've proactively applied for a conditional use permit.
970
971 Mr. Madrigal and his associate were so gracious as to come out and inspect the property.
972 We had a great conversation. And I don't think that I should be causing any trouble to
973 anybody. And in -- I'm in the middle of nowhere. We keep the cats, for the most part, on
974 the porch or in the house. And other than that we would just like to, as a technicality,
975 apply for this permit to have more than three and less than five.
976
977 Mr. Green - Thank you. Other than the letter of support that we have, does
978 anyone else wish to speak in support of this request?
979
980 Mr. Blankinship - There is no one else on Webex and I don't see anyone else
981 in the room.
982
983 Mr. Green - Does anyone wish to speak in opposition of this request? The
984 public hearing is now closed, and a motion would be in order. What is the pleasure of the
985 Board?
986
987 Mr. Johnson - Mr. Chair.
988
989 Mr. Green - Yes.
990
991 Mr. Johnson - Although the regulations is that a household would have three
992 pets, because of the area, it's larger now, that -- and they have five pets. If they maintain
993 the five and by attrition as well, then I would recommend -- I move that we approve the
994 conditional use permit subject to the conditions recommended by the staff and that the
995 property is zoned agricultural and the nearest dwelling is 100 feet away and the applicant
996 has agreed to -- not to operate a shelter to foster cats. Which is one of the things. And
997 also keep five pets. That would not be a detrimental impact for the neighborhood. I would
998 recommend that.
999
1000 Mr. Green - There is a motion by Mr. Johnson, do I hear a second?
1001
1002 Mr. Reid - I second.
1003
1004 Mr. Green - Seconded by Mr. Reid. The motion was seconded by Mr.
1005 Reid. Is there any discussion among the Board? Since there's no discussion, all in favor
1006 of the motion say aye. All opposed say nay. The motion passes.

1052 Her property taxes are mailed to her California address, and her Airbnb listing explains
1053 that she is a film professional working in Los Angeles. A CUP is required because the
1054 property will be offered for un-hosted stays more than 60 days a year and exceeds the
1055 six-guest limit.

1056
1057 The property is zoned R-1 and is designated environmental protection area on the Land
1058 Use Map. Although the home is nonconforming due to its location entirely within the 100-
1059 year floodplain, it is consistent with both designations.

1060
1061 The code allows short-term rentals only in a property-owner's primary residence. The
1062 applicant has indicated that the subject property is her primary residence and that she
1063 lives there a minimum of 185 days a year. This is difficult for staff to verify as her county
1064 property taxes are mailed to her California address and she works in LA. This
1065 discrepancy should be clarified at this public hearing. Unless the applicant resides in the
1066 dwelling at least 185 days per year, the application cannot be approved.

1067
1068 The property is at the end of a cul-de-sac and adjoins a 2.2-acre parcel on the west, a
1069 7.7-acre tract on the east, and a 5.7-acre lot on the north. All improved with one-family
1070 residences.

1071
1072 The applicant has been renting the home on the Airbnb platform for over four years as an
1073 un-hosted rental. The listing indicates that the home caters to large groups and families
1074 visiting the area, stating that the provider's sleeping arrangements can lodge up to 12
1075 guests. Although it appears that the house can accommodate that number, it is more
1076 than what the county code allows. The standards allow no more than two guests per
1077 bedroom. According to the tax records, there are a total of three bedrooms, which would
1078 allow no more than six guests.

1079
1080 Based on the lack of complaints and the applicant's status as a Superhost, it appears that
1081 she manages the property in a responsible manner. Although there have been no
1082 complaints, staff is concerned with the potential number of people in the home and their
1083 impact on the neighborhood. This concern is augmented because the property owner
1084 lives out of state and must rely on her neighbor or her parents to address any issues or
1085 concerns that may arise during the rental.

1086
1087 In conclusion, although the home is legal, nonconforming with respect to the 100-year
1088 floodplain, it is consistent with both the zoning and comprehensive plan designations.
1089 The property is part of an older and well-established neighborhood. Staff's primary
1090 concerns are the number of people that would be -- that would be allowed to rent the
1091 home, and the applicant's ability to respond to complaints as well as ensuring that the
1092 home is the applicant's primary residence.

1093
1094 The home has been rented as an un-hosted short-term rental over the last four years. It
1095 does not appear to be the applicant's primary residence based on her statements that it
1096 is her second home, and that she works in LA. Additionally, her county property taxes
1097 are mailed to her California home. These circumstances lead staff to believe that it's not

1098 her primary residence as required by code. Based on this conclusion staff recommends
1099 denial of this application.

1100
1101 Two letters of opposition have been received and four letters of support have also been
1102 received. Those are part of your packet. And that concludes my presentation.

1103
1104 Mr. Green - Mr. Madrigal, we're dealing with the -- this on a -- on a regular
1105 basis. The last time we dealt with it, one of the applicants of -- we approved it. But one
1106 of the concerns I had, their standards were so high in that if I had wanted to rent that
1107 person's property on -- I couldn't because of a lack of being an Airbnb user or profiler.

1108
1109 Moving forward I would ask and request that we get the conditions and standards by
1110 which the individuals would like to rent to folks. Because I can see this thing going in
1111 multiple directions. One, although we approved the last one on Patterson Avenue, it could
1112 easily be determined that if I went and tried to apply to rent that facility and was denied,
1113 you know, was it based on race? What was it based on?

1114
1115 And I'd like to -- I think all of these individuals who are trying to do this need to spell out
1116 clearly in their rules and we need to see their rules by which they are attempting to rent
1117 their Airbnbs. Because if that particular person on Patterson Avenue, if I read the -- had
1118 the rules in front of me and was able to read them, I would understand why I would be
1119 denied. But what I'm seeing is that I'm seeing a lot of these come up, but I don't see the
1120 rules that folks determine in which of these Airbnbs or these short-term rentals are being
1121 made.

1122
1123 And I think in order for me to make a proper vote, I would like to know what their rules
1124 are. So, if possible going forward, I would like to see the rules that the owners put in
1125 place as it relates to how they rent their property. Because I could see this becoming
1126 somewhat problematic.

1127
1128 Mr. Madrigal - Yes, sir.

1129
1130 Mr. Johnson - Also, I would like to -- relating to this project is that the person
1131 who's working in Los Angeles, how often are they at home? That's one of the things that
1132 concerned me about that.

1133
1134 Mr. Blankinship - Is the applicant here?

1135
1136 Mr. Green - She -- the applicant (indiscernible) let her address that.

1137
1138 Mr. Madrigal - Right. I believe the applicant should -- would be able to
1139 address that.

1140
1141 Mr. Green - Is the applicant here?

1142
1143 Mr. Madrigal - Yes.

1144
1145 Mr. Green - Okay.
1146
1147 Mr. Blankinship - With that --
1148
1149 Mr. Green - Thank you. Well, let me ask you another question.
1150
1151 Mr. Blankinship - Oh. I'm sorry.
1152
1153 Mr. Green - How difficult would it be to get those rules as part of our
1154 package so we can see what the requirements are before we make a decision?
1155
1156 Mr. Blankinship - I don't know how difficult it'll be, Mr. Chair, but we'll certainly
1157 start asking.
1158
1159 Mr. Green - Would you please.
1160
1161 Mr. Madrigal - Yeah. In some instances the applicants, or the hosts, do post
1162 their house rules on their listings. So in those instances it would be pretty simple to just
1163 copy those and present those to you. Otherwise we might have to just start asking the
1164 applicants to provide those house rules to us.
1165
1166 Mr. Green - All right. Thank you.
1167
1168 Mr. Blankinship - All right, Ms. Shirey.
1169
1170 Mr. Green - Would you give us your name and spell it.
1171
1172 Ms. Shirey - Good morning.
1173
1174 Mr. Green - Good morning.
1175
1176 Ms. Shirey - Good morning? Hello?
1177
1178 Mr. Blankinship - Morning.
1179
1180 Ms. Shirey - My name's Katy, Kathryn Shirey. And I live at 237 Ross Road.
1181 I -- my dad's here with me as well. I grew up in Henrico. I went to Tuckahoe Elementary,
1182 Tuckahoe Middle Freeman, and the -- all the schools that the neighborhood is zoned for.
1183 My house is in the neighborhood for, so I'm very familiar with the area.
1184
1185 As he mentioned, I work in the film industry. That does not mean I always work in Los
1186 Angeles. In fact, right now I'm actually working on Dopesick, a Hulu presentation. Sorry,
1187 I'm so nervous.
1188
1189 Mr. Bell - You're fine.

1190 Ms. Shirey - Usually I'm behind the cameras. I'm not used to this --. So it
1191 takes me all over the place. You know. I work wherever the job takes me. I worked on
1192 Little Women in Massachusetts. Kind of like a traveling doctor. You go where they need
1193 you, but less important than a traveling doctor --
1194
1195

1196 Anyway also I actually earlier this year disposed of my LA home and this is the only
1197 primary residence that I own currently. So just to clarify that. Obviously, I do go to work
1198 in LA when needed, because that is a hubub of Hollywood and TV shows and whatnot.
1199

1200 Oh. What I do want to say about your question, sir, about renting to people. It's very
1201 important to me because this is my home, and I love Richmond, and I want people to
1202 appreciate it as well. I'm very careful on my three questions I ask my guests. I don't have
1203 instabook [sic], so they have to request it from me. You can't just book it immediately and
1204 check in.
1205

1206 And some of the instabook [sic] questions require certain things that are just stipulated.
1207 So to clarify that. So I -- my first question is, What brings you to Richmond? Like, what's
1208 your business here? If you're visiting family, or if you're here for a family wedding.
1209

1210 I had actually you know, I've had the Chef Jason Alley, who stayed in my home for three
1211 months because his house was being renovated. So he and his family were there.
1212

1213 I had a family from Germany that were relocating here for -- he was in the Department of
1214 Defense. So I definitely ask, you know, who -- what their -- what brings them here, what
1215 they plan on doing. And I also make sure I ask who's staying on the property. Because
1216 I don't want it to be a party.
1217

1218 As you see, I have a low-lying house. I am in the flood plain. You can't -- my house isn't
1219 -- you can't have a party there. You'll be in the mud. It'll ruin the grass. It's, you know,
1220 it's just not meant to be -- have more than, you know, 12 people at a time. Also I am -- I
1221 -- the reason I live at the end of a cul-de-sac, because I like it to be quiet. I like the, you
1222 know, I like, you know, it's kind of in the country I feel like. And there's also -- I do have
1223 a park -- a large parking area for anyone who is at the house. And I, you know, I don't
1224 want people parking in front of my house either. So I definitely am very cautious about
1225 who is coming to the house, what they're doing, what the effects are on the neighborhood,
1226 and all that stuff.
1227

1228 Other than that, I don't really care who comes. You know. I've had -- I've had international
1229 visitors. I've had U of R families. I've had, you know, local people who are moving to the
1230 area and their house is in escrow and they need a place to land. Anyway, so that's kind
1231 of my reason for doing it.
1232

1233 And also, because I do travel, I love staying in Airbnbs. I don't like to stay in a hotel. I
1234 wanted to create a house where people felt comfortable and, you know, you enjoy your

1235 time better. So that's kind of what gave me the idea to do it was because I've enjoyed it
1236 myself. So I'd like to share that.

1237

1238 Let's see here. The other concern was the capacity. The previous homeowners had
1239 taken down a wall. It's a 1950s house, so the house -- the rooms are real small. And
1240 they took down a wall between two of the bedrooms, so it's like this weird long one. So I
1241 had talked to Mr. Madrigal about if I wanted to put the wall up I'd have to do the building
1242 permit, go through that, to have the tax county redo it for a four-bedroom house. So I've
1243 spoken to him about that. And then also my 400-square-foot basement that I do use as
1244 a rec room. I understand that I would not be able to use that as a place to host guests
1245 because it's not a bedroom.

1246

1247 And I think the other thing is, too, I reached out to my neighbors that I, as you can see on
1248 my property, I only see -- I really can only see three houses for my house. My next-door
1249 neighbor, Mr. Carleton, is amazing. And I'm always in contact with him. And he wrote --
1250 I hope you pay attention to his letter.

1251

1252 He's super concerned because there seems to be a mix-up between my house and the
1253 big house. I call it the big house. It's the seven-acre property that has a long driveway
1254 you can't see from the street. It's real hidden. And they recently applied for a permit for
1255 weddings and hotels. And they actually did host a wedding there. And I think people in
1256 the neighborhood are confusing my house with that house, because people talk and, you
1257 know. So -- because he said, I've never -- I -- someone asserted in a letter that I had a
1258 wedding there and a girl's camp or something. That has never happened. So he thinks
1259 they're mistaken by the big -- what I call the big house. Because they have a pool and a
1260 big area. So I just wanted to point that out. That I just try not to bother my neighbors.
1261 And do my thing at the end of the street. Which nobody goes down.

1262

1263 So -- oh. And then my house manager, the concern when I am out of town is -- my father
1264 is here. They live a mile away, like, three stoplights away. So they're kind of my
1265 -- if I need someone there in a second, which they have. I've had, you know, something
1266 wrong with the lock, he's there, you know. He's actually played cornhole with some
1267 people that came. You know. So they're definitely, besides my neighbor and my parents
1268 and my friends in the neighborhood, I have eyes and ears at any time while I'm not there.

1269

1270 Mr. Green - Can you prove through change of address, voter registration,
1271 that you are a resident of that property? I can see, you know, it's fine to own a house in
1272 California, but --

1273

1274 Ms. Shirey - Right.

1275

1276 Mr. Green - The question is that are you there. Can you -- how do -- how
1277 do you verify that?

1278

1279 Ms. Shirey - So it --

1280

1281 Mr. Green - 185 days.
1282
1283 Ms. Shirey - 2020's been a year of not planning anything. It's been awful.
1284 So I changed my address regularly and it -- really I've done it so many times at the post
1285 office, I really got into a pickle with that. That -- so I decided recently, or like a year ago,
1286 because when I do the mail forwarding they cancel your voter registration, so then you
1287 have to prove it. And we obviously have a big election this year and I didn't want to mess
1288 anything up. And I didn't know where I would be. So I actually -- my voter registration
1289 has always been at Richmond, but at the end of last year, before I knew that COVID was
1290 happening, I switched it to LA, because Virginia had withdrawn mine. So I was like, Okay,
1291 let me do this here. But, I mean, I can -- I still have all my property taxes. I have to pay
1292 -- I'm getting my first paycheck in a week or two. So -- in six months. So I have a
1293 paycheck, a paystub, and a building -- I mean, it's the only property I have. So. Other
1294 than that.
1295
1296 Mr. Blankinship - So we -- so if this were approved --
1297
1298 Ms. Shirey - Right.
1299
1300 Mr. Blankinship - Whatever happened in 2019 or 2020, in 20201, how many
1301 days would you live in this house?
1302
1303 Ms. Shirey - Oh. I mean, six months, 185.
1304
1305 Mr. Blankinship - Okay.
1306
1307 Ms. Shirey - You know. This is my house. So unless, I mean, I up -- I can't
1308 tell you where I'll work, you know, but this is, you know, this is where I live. So that's six
1309 months per this, you know, the new permit. You know.
1310
1311 Mr. Pollard - When you are out of town for work, how --
1312
1313 Ms. Shirey - I'm sorry.
1314
1315 Mr. Pollard - When you are out of town for work, how long is the -- a job
1316 usually last?
1317
1318 Ms. Shirey - It depends. You know. Filming often takes three months
1319 sometimes. Or depending on how big it is. It could be, like, this show that I'm working
1320 on now goes from -- I -- it just started and it goes until April. So they can be very long.
1321 You know, because I work in the art department. And so you have to build all the sets.
1322 And I do all -- I work in that design department. And so you can oftentimes be eight or
1323 nine months on a location. So, you know, that's, I mean, this time I'll be -- I'm fortunate
1324 that there is work here. So I am able to take work and be here. And that I'm grateful for,
1325 because it's the best of both worlds.
1326

1327 Mr. Blankinship - But if you're on a location for eight or nine months, then you're
1328 not going to be living in this house for six months. That --

1329
1330 Ms. Shirey - Right. But that's -- I mean, and some projects are three
1331 months. Some are, you know, I can always make an exception or tell them that I need to
1332 come back. You know, it's -- you know. As soon as I -- as soon as I finish a job and I --
1333 I'm fired and I have to go find another job.

1334
1335 Mr. Blankinship - Right.

1336
1337 Ms. Shirey - So it's hard for me to say that, you know, I could work for two
1338 weeks. I could work for a month. It's like, it depends on what the job is. I guess I'm
1339 saying nine months would be, like, the longest, and that would be an extreme case of
1340 something. So I just wanted to give you a span.

1341
1342 Mr. Bell - Regardless of --

1343
1344 Mr. Johnson - Yes, go ahead.

1345
1346 Mr. Blankinship - Go ahead.

1347
1348 Mr. Bell - Regardless of your work, how many days in one year do you
1349 stay at this address? That you physically stay at this address?

1350
1351 Ms. Shirey - Well six months.

1352
1353 Mr. Bell - So you're going to be there at least six months.

1354
1355 Ms. Shirey - Yes, sir.

1356
1357 Mr. Reid - Ms. Shirey, if you are out of town and all this length of time,
1358 who's going to take care of a problem if you've been -- if there is a problem?

1359
1360 Ms. Shirey - Well I all -- I also want to make a note that this year I have
1361 also added the doorbell video just so I can keep track to make sure that no one's been in,
1362 you know, falsifying what they're doing at the house. Not that I've had a problem with
1363 that, just as a, you know, safety concern too just I added it to my house. But my father is
1364 here and he's also three stoplights away. So --

1365
1366 And, to be honest, I had a power outage one time, because the power goes out all the
1367 time down there. If you know who I can talk to about getting our lines buried that'd be
1368 great. And Roger came over, you know. Although I have a supply thing, he came and
1369 knocked on the door and was like, You guys okay? You know. Because it was a --
1370 whatever. And they were like, Fine. So, you know, it's been very -- I haven't had a
1371 problem, but if I do, I have, you know, setup.

1372

1373 Mr. Pollard - How many guests -- go ahead.
1374
1375 Mr. Bell - Did they --
1376
1377 Mr. Pollard - How many guests do you intend to rent to?
1378
1379 Ms. Shirey - How many guests?
1380
1381 Mr. Pollard - Mm-hmm.
1382
1383 Ms. Shirey - Well it depends on today. I have -- I have nothing on the
1384 books. I've been -- I haven't accepted anything until I --
1385
1386 Mr. Pollard - What's the maximum, I guess I should say.
1387
1388 Ms. Shirey - I'm sorry?
1389
1390 Mr. Blankinship - The maximum at one time.
1391
1392 Ms. Shirey - Well, the maximum per the code would be six. So unless I put
1393 up a wall and -- or create a bedroom in the basement, that's the only way I could have
1394 more. So at this point it's six.
1395
1396 Mr. Green - Mr. Johnson.
1397
1398 Mr. Johnson - Yes. The regulation is that you have to be in the house at
1399 least 185 days. Also the thought is that when someone is there -- you need to have
1400 someone there in case of an emergency at that time. If you are out of town, sorry, you
1401 can't do that. But we -- the regulations we have to have someone that would be able to
1402 address anything that happens at the facility, that you need someone there in it for
1403 emergency.
1404
1405 Mr. Green - She said her father.
1406
1407 Mr. Blankinship - Yeah. Perhaps you should just introduce yourself.
1408
1409 Mr. Green - At the mic. Could you give us your name and spell it, please.
1410
1411 Mr. Shirey - Good morning, gentlemen. My name is William Shirey, S-h-i-
1412 r-e-y.
1413
1414 Mr. Green - Okay.
1415
1416 Mr. Shirey - And this the appropriate time for me to speak in favor? Or
1417 would that be later?
1418

1419 Mr. Blankinship - Yes.
1420
1421 Mr. Shirey - Okay. So, as Katy mentioned, she grew up in Tuckahoe
1422 Elementary, Middle, and Freeman High School District. We live in the same house. We
1423 lived there since 1985, about a mile, maybe a mile and a quarter from 237 Ross Road.
1424
1425 So we're close by and I'm available. I have access to the house. Katy's done a wonderful
1426 job of setting up systems. For example, electronic doorbells so that when people arrive
1427 she gives them the code and she knows who's coming and going and she can monitor
1428 that via the internet or whatnot. The same with the HVAC systems.
1429
1430 As she probably didn't make clear, she is working on a Hulu series that's being filmed in
1431 Virginia, so she's actually working in Richmond now. I think that's her first project this
1432 year. So she's been in -- out of work most of the year. And that's continuing on, like you
1433 said, until April or so.
1434
1435 You know, occasionally she's been -- what she's doing now is no different than what she
1436 has been doing for four years. You'll see there in your packet there's four letters of
1437 support. There's two negative letters. So the two negative letters, one is from a neighbor
1438 a couple streets over, or a couple blocks, who's against anything changing. I don't think
1439 they know Katy or the situation at all.
1440
1441 The second negative is from a person on the -- further up the street, and who by a letter
1442 she -- clarification she submitted yesterday acknowledges she was just passing on
1443 something she heard. So it's not firsthand problems.
1444
1445 The letters of support are all neighbors who are closer to Katy. Next door or two houses
1446 up or three house -- the people closest. And they haven't noticed any problem or activity,
1447 increase in traffic. There won't be an increase, because nothing's going to change from
1448 what's been happening.
1449
1450 So I'd ask you to take a close look at the letters of support and how she's managed the
1451 property. I think she's a little bit in transition, because she's just closed the house in LA,
1452 so now this is her primary residence. Which, of course, her parents are happy with. Then
1453 we'll get, maybe, get to see her more often. And I think, you know, she decides what
1454 project she wants to take, so she can control when she's looking for work how long that
1455 project's going to be.
1456
1457 I don't know, I'm not aware of any project she's been on for nine months. But -- and most
1458 of her work in the past has been TV commercials, which as you know go two or three
1459 weeks. So it's amazing how these people keep working when they only have a job for
1460 three weeks and then they're on -- have to look for work. So any questions?
1461
1462 Let me -- I'll say, one example when we did have a problem, when she was out of town,
1463 the people couldn't get the door open the electronic lock, and it's pouring down rain. And
1464 she's called me and I was just getting rained out of the tennis match and I drove over, I

1465 was able to get the -- it took me about 15 minutes. And able to get the people into the
1466 front door and settled and they were pleased and relieved. So other than that it's usually
1467 changing batteries in the smoke alarm and things like that.
1468
1469 Mr. Johnson - So what would be happening exactly? Emergency come up
1470 she would contact who to go over, rather than (indiscernible).
1471
1472 Mr. Shirey - Yeah. So she would text me or call me or call my wife. So,
1473 yeah. And, like I said, one of us is -- since we live there and we work here, we're always
1474 close by.
1475
1476 Mr. Green - Is there --
1477
1478 Mr. Johnson - Is there any -- come up?
1479
1480 Mr. Pollard - That's okay.
1481
1482 Mr. Green - Any other comments?
1483
1484 Ms. Shirey - I would just like to ask if you have any more questions about
1485 -- I appreciate your concern about being able to rent on Airbnb. I just didn't -- and you
1486 had asked that to be included in the packet in the future. I just didn't know if you had any
1487 more questions about that.
1488
1489 Mr. Green - Do you require pictures of individuals that rent from you?
1490
1491 Ms. Shirey - No. No. In fact, Airbnb has been really proactive about that,
1492 because it is -- it, unfortunately, it is an issue. So I -- to me, I love the diversity of
1493 Richmond and I think it needs to be, you know, embraced and encouraged. And so Airbnb
1494 doesn't allow that, and I don't allow that.
1495
1496 I mean, I allow it -- they show it to you once you rent to them. So once I accept a
1497 reservation. Because I want to know, if something happens, I want to be able to pick
1498 them out of a, you know, whatever. So, but it doesn't -- that doesn't have a basis. The
1499 basis that I rent on is what their business in the house is.
1500
1501 Mr. Green - We've heard -- thank you. We've heard -- we have letters in
1502 support, and we have letters against. Mr. Blankinship, are there any persons on -- out
1503 there who want to speak in favor or against this?
1504
1505 Mr. Blankinship - No, sir. There are not.
1506
1507 Mr. Green - With anywhere.
1508
1509 Mr. Blankinship - Not for this case. No, sir.

1511 Mr. Bell - Mr. Chairman.
1512
1513 Mr. Green - Yes, sir.
1514
1515 Mr. Bell - I don't really think (indiscernible) but if they have a
1516 (indiscernible) a real quick question to ask to you. It looks like I can see, I mean, we're
1517 developing this bed and breakfast I can see a couple of things here. For instance,
1518 electronics. That's got to be handled, obviously, because it's getting more and more. And
1519 also the person actually having to stay here versus the person who says they will stay
1520 here, and the third one might be, I will -- I will -- I will make it -- I will guarantee to stay
1521 here 185 days regardless if it's March through June or whether it's in December. But sort
1522 of like a conditional use paragraph in there might be nice to have.
1523
1524 Mr. Blankinship - Yeah.
1525
1526 Mr. Bell - But I don't think we want to put anything in a conditional use
1527 permit at this time. All right?
1528
1529 Mr. Blankinship - I'm not sure I understood your last statement. But we are all
1530 learning together about that -- the best way to handle these.
1531
1532 M. Bell - Okay.
1533
1534 Mr. Blankinship - And which questions we need to make sure we get clarified
1535 up front. There is a form that they fill out and it does have the statement, I will live in the
1536 house 185 days next year. Now maybe they didn't live in it 185 days last year, but that's
1537 not relevant. It's whether they live in it next year is the question. So that's what -- we're
1538 looking at the future and it's difficult for any of us to certify what's going to happen next
1539 year.
1540
1541 Mr. Bell - Okay. Thank you.
1542
1543 Mr. Reid - I don't think that form was included in this -- in this conditional
1544 use permit. I didn't -- I didn't see it. And in the statement it said whether or not she'll live
1545 in the house 185 days.
1546
1547 Mr. Green - She said yes.
1548
1549 Mr. Blankinship - I will make sure it is in the future, Mr. Reid.
1550
1551 Mr. Green - Mr. Reid and Board members, one thing I'm beginning to see
1552 is that I think we need -- we're going to need further clarification as to how the -- this whole
1553 regulation changed as it relates to Airbnb.
1554
1555 We are forced now with having to give conditional use permits on them, but I don't think
1556 we fully have been given a package of the new rules and so we can read so we can -- we

1557 can follow them. So I'm going to ask that we -- that we be given a special session on --
1558 on this whole Airbnb situation.

1559
1560 Mr. Blankinship - We'd be happy to do that, Mr. Green.

1561
1562 Mr. Green - Because they -- the Board of Supervisors passed it, but I have
1563 yet to see the specifics of what we have. And then if anybody has, then I'd -- I would like
1564 to see that. And so we're going into this somewhat blind. And I don't want to do that. I
1565 want to -- I want it to be -- having had as many facts as we possibly can have.

1566
1567 The public hearing is now closed, and a motion is in order. What is the pleasure of the
1568 Board?

1569
1570 Mr. Reid - I move that we deny the conditional use permit. We have
1571 heard from two of the neighbors that are opposed to bringing strangers into the
1572 neighborhood. There is also a complaint in the past regarding a party in this house. While
1573 the house is somewhat secluded at the end of the cul-de-sac, that means renters will
1574 drive by every other house in the neighborhood on the way to find this bed and breakfast.
1575 Based on comments from the neighbors, I think the proposed use would be detrimental
1576 to the nearby property.

1577
1578 Mr. Green - There's a motion by Mr. Reid to deny. Do I hear a second?

1579
1580 Mr. Pollard - Have discussion?

1581
1582 Mr. Green - No. We need a second. He's made a motion. Is there a
1583 second? There is a motion by Mr. Reid to deny, do I hear a second? Absent of that I will
1584 make the second. The motion was seconded by Mr. Green. Is -- now we can move into
1585 discussion.

1586
1587 Mr. Pollard - I'm leaning in favor of it. I think the rule surrounding short-
1588 term rentals are new and so, having heard the applicant, I'm confident that she can take
1589 the rules and come in compliance with them. How long -- remind me if the -- this use
1590 would be -- would it last for a year?

1591
1592 Mr. Blankinship - That would be up to the Board. There is no necessity that it
1593 be -- that there be any time limit, or you could put whatever time limit on it you believe is
1594 reasonable.

1595
1596 Mr. Pollard - I think it's -- I would like to see it approved with a time limit on
1597 it.

1598
1599 Mr. Bell - Can we do that a condition with a time limit put on it as a
1600 condition and just go ahead and add the time?

1601
1602 Mr. Blankinship - Yes, sir.

1603
1604 Mr. Bell - All right.
1605
1606 Mr. Pollard - And my -- go ahead. Go ahead.
1607
1608 Mr. Bell - So that's -- if that's what we're going to do, then
1609 (indiscernible). How it will be put under a conditional use permit in addition and no other.
1610
1611 Mr. Johnson - Okay. I agree with that. But my also concern about making
1612 sure that there are contacts in case of an emergency. And those are the things that
1613 usually would happen in these Airbnbs. Especially when an emergency comes, we want
1614 to make sure that they are taking care that that situation is resolved quickly.
1615
1616 Mr. Green - My concern is staff has given us a recommendation, and they
1617 have investigated the situation. They do not feel that the applicant has been in the house
1618 185 days. And given the scope of work that the applicant does, while it is okay to have
1619 someone there to fix the problem, the rule states that the applicant has to be in the house
1620 185 days. And I'm not -- I am not convinced that that is the case. But we can now move
1621 to a -- is there any other discussion?
1622
1623 Mr. Blankinship - Mr. Chair, I'll just say that even though we recommend denial
1624 in this case, we did prepare conditions in case the Board decided to approve it. So I have
1625 just distributed those to you and to the applicant the conditions that have been drafted by
1626 the staff prior to the hearing. Of course we would need to add, if it is part of a motion, we
1627 would need to add the -- Mr. Pollard's suggestion of an expiration date.
1628
1629 Mr. Green - Mr. Reid, since you made the motion, the conditions for
1630 approval as well as the additional requests to add a condition, what is -- what is your
1631 pleasure?
1632
1633 Mr. Reid - Expiration date.
1634
1635 Mr. Green - Expiration date. Are you still in -- opposed to it? Or what --
1636 are you receptive to these changes?
1637
1638 Mr. Reid - I'm receptive to what they're saying.
1639
1640 Mr. Green - To the changes? Or --
1641
1642 Mr. Reid - To the changes.
1643
1644 Mr. Green - With an expiration date.
1645
1646 Mr. Reid - With an expiration date.
1647
1648 Mr. Green - Which would be -- so a condition 5 would read what?

1649
1650 Mr. Blankinship - How about, This use permit shall expire on October the 22nd,
1651 2021.
1652
1653 Mr. Reid - Okay.
1654
1655 Mr. Green - So, Mr. Reid, do you want to change your motion, or do you
1656 want to maintain it?
1657
1658 Mr. Reid - I'll just make a motion that we approve it.
1659
1660 Mr. Green - Is there a second?
1661
1662 Mr. Reid - These things are popping up all over town. They're going to
1663 be in every neighborhood in the county. I think that people on this Board, Mr. Blankinship,
1664 I don't think we want B&Bs in our neighborhood. And they're going to be popping up all
1665 over the place. I'm basically opposed to them. I don't want them in my neighborhood.
1666 I'm sure most of you don't. So.
1667
1668 Mr. Blankinship - Well, your motion to deny is on the floor. So if you don't want
1669 to amend the motion then we can call the question on the motion.
1670
1671 Mr. Green - I think I'll continue to second it if you --
1672
1673 Mr. Reid - Then I make a motion that we deny.
1674
1675 Mr. Green - And I'll continue to second. My concern is that, as with Mr.
1676 Reid, these things are popping up all over the place. This board is being asked to make
1677 decisions. We don't have all of the facts as it relates to the rules and regulations. While
1678 the Board of Supervisors approved it, I would like to see more specific facts. I would like
1679 to see terms that the applicants put in place. And, as I stated before, we did one.
1680
1681 And as a person who lives in the county, who work -- I live in the county, who works, you
1682 know, there was a property that I would not -- I would not, or none of us who have never
1683 stayed in a B&B [sic], would qualify to stay in. And that could, to me, be problematic.
1684 Because I could take that -- not to say that others could take that. I could take that as
1685 just discriminatory. Because we saw pictures and you saw (indiscernible) these
1686 requirements that they, you know, have to have had that we need to know that.
1687
1688 And there's no proof that the individual -- and no offense to the applicant -- there's no
1689 proof that the individual is there 185 days. And I too, like Mr. Reid, am very concerned
1690 about the prevalence of B&Bs.
1691
1692 With that said, we'll go ahead and vote. The motion was made by Mr. Reid to deny and
1693 was seconded by Mr. Green. We've had discussion. All in favor of the motion to approve
1694 to deny say aye. All those approved --

1695
1696 Mr. Blankinship - Opposed to the motion to deny.
1697
1698 Mr. Green - Approves to the motion to deny say aye. There were two of
1699 us. All those in favor to approve say -- well all those in motion to approve the motion say
1700 aye.
1701
1702 Mr. Blankinship - I believe what you need to call, Mr. Chair, is anyone who
1703 wants to vote against a motion to deny.
1704
1705 Mr. Green - Anyone who want to vote against a motion to deny please say
1706 -- let us know who you are. Mr. Johnson.
1707
1708 Mr. Johnson - Abstain.
1709
1710 Mr. Green - Abstain. Mr. Bell.
1711
1712 Mr. Bell - I don't understand the question. What?
1713
1714 Mr. Green - Two of us have voted to deny it.
1715
1716 Mr. Bell - Right. You and --
1717
1718 Mr. Green - Mr. Johnson is abstaining. So.
1719
1720 Mr. Pollard - I'm abstaining.
1721
1722 Mr. Green - You're abstaining? Motion fails.
1723
1724 Mr. Bell - Yeah.
1725
1726 Mr. Blankinship - Mr. Chair, I wonder if we schedule a work session for next
1727 month. We have a very light agenda for next month. I wonder if we should schedule a
1728 work session for next month and I wonder if the Board might want to defer this case and
1729 the next one until after that work session.
1730
1731 Mr. Johnson - Let's do that. Yes.
1732
1733 Mr. Bell - I think that'd be a good beginning.
1734
1735 Mr. Green - I think -- yeah. Ms. Shirley?
1736
1737 Ms. Shirey - Shirey.
1738
1739 Mr. Green - Shirey, it's not that we, you know, are trying to -- trying to beat
1740 you up. But you got to recognize that this is relatively new and we need more information.

741 And so these things are popping up all over the place and we need -- we need to be better
742 informed so we can verify.

1743
1744 You know, when I hear professional staff who we rely on say that they did not, you know,
1745 would recommend denial based on residency. I don't think they're just making that up. I
1746 think that they have reason to do that. And so I think that if you are receptive to bringing
1747 this back, having us bring this back, then, we will -- withdrawing it, then we can reconsider
1748 it.

1749
1750 Ms. Shirey - Yeah. I understand. Yeah. And, you know, I guess -- I guess
1751 the permit for this, just to clarify, is for less than 30 days. So it's weekend visitors or two-
1752 week visitors. So it's just for that. But, yes, I accept. I understand that it is a, you know,
1753 you need to be regulated because you don't want to have a party on your street. I get
1754 that. So I respect the Board in their -- in that. Yes.

1755
1756 Mr. Pollard - So do we need to make a motion to defer?

1757
1758 Mr. Green - So is there a motion --

1759
1760 Ms. Shirey - So -- oh. What was the question? I'm sorry.

1761
1762 Mr. Blankinship - I believe they were just taking your temperature. It'll be up to
1763 the Board to decide.

1764
1765 Ms. Shirey - Oh. So it's supposed to be a withdrawal? I'm --

1766
1767 Mr. Blankinship - No, no. No --

1768
1769 Mr. Green - To defer.

1770
1771 Mr. Blankinship - Just to understand the need -- the Board's desire to defer.

1772
1773 Ms. Shirey - Oh. I do. Okay.

1774
1775 Mr. Green - As it stands now if we vote it will be voted down.

1776
1777 Ms. Shirey - Right. Okay.

1778
1779 Mr. Green - And if we get more information there's a chance that it could
1780 be a different vote.

1781
1782 Ms. Shirey - Okay.

1783
1784 Mr. Green - So what we're going to ask is if you'll allow us to defer it for 30
1785 days.

1786

1787 Ms. Shirey - Yes, sir.
1788
1789 Mr. Green - Would it be 30 days, Mr. Blankinship?
1790
1791 Mr. Blankinship - Well, approximately. It would be November the 19th.
1792
1793 Mr. Green - Yeah. 30 days.
1794
1795 Ms. Shirey - Okay. Sounds good.
1796
1797 Mr. Green - And you're also recommending that there's an additional
1798 Airbnb who's coming before us. Do we need to hear that? Or do we need to ask that
1799 individual to defer as well?
1800
1801 Mr. Blankinship - I think we should hold the public hearing, Mr. Chair, and then
1802 decide after that public hearing if you want to -- how you want to handle that case.
1803
1804 Mr. Green - Okay. We'll do that. So --
1805
1806 Mr. Blankinship - I think you need a motion to defer at this point, Mr. Chair.
1807
1808 Mr. Green - Is there a motion to defer?
1809
1810 Mr. Bell - So moved. I move that we --
1811
1812 Mr. Reid - I make a motion that we defer until the -- such time as the --
1813 as the members of this Board can gain further training about the impacts of Airbnbs on
1814 Henrico County's Ordinance.
1815
1816 Mr. Green - Is there a second?
1817
1818 Mr. Johnson - Second.
1819
1820 Mr. Bell - Second
1821
1822 Mr. Pollard - I second.
1823
1824 Mr. Green - Who second? I need a second.
1825
1826 Mr. Blankinship - Everyone has a second. Terrell Pollard.
1827
1828 Mr. Green - Yeah. I heard all three. Okay. I'll give it to Mr. Pollard. All in
1829 favor say aye. All those opposed, nay. The motion is deferred.
1830
1831 On a motion by Mr. Reid, seconded by Mr. Johnson, the Board **deferred until November**
1832 **19, 2020** case **CUP2020-00036 KATHRYN SHIREY's** request for a conditional use

1833 permit pursuant to Section 24-12(h) of the County Code to allow short-term rental of a
1834 dwelling at 237 Ross Road (BRIARFIELD) (Parcel 756-730-8852) zoned One-Family
1835 Residence District (R-1) (Tuckahoe).
1836
1837

1838	Affirmative:	Bell, Green, Johnson, Pollard, Reid	5
1839	Negative:		0
1840	Absent:		0

1841
1842
1843 Mr. Blankinship - And just as a matter of parliamentary procedure, in case
1844 anyone's curious, I'm going to record that as a motion in the nature of a substitute for the
1845 original motion on which there was never a vote.
1846

1847 Mr. Green - Yes, sir.

1848
1849 Mr. Blankinship - Which brings us to conditional use permit --
1850

1851 Mr. Green - No. I'm going to call a five-minute recess.
1852

1853 Mr. Blankinship - Yes, sir.
1854

1855 **[Break in Audio]**

1856
1857 Mr. Green - I'd like to call the Board of Zoning Appeals back into session.
1858

1859 Mr. Blankinship.

1860 Mr. Blankinship - Mr. Chair, we have a slightly shorter case. It's Conditional
1861 Use Permit 2020 number 37, this is Robin Michie.
1862

1863 **CUP2020-00037 ROBIN MICHIE requests a conditional use permit pursuant to**
1864 **Section 24-12(h) of the County Code to allow short-term rental of a dwelling at 201**
1865 **Walsing Drive (DORSET WOODS) (Parcel 744-734-5176) zoned One-Family**
1866 **Residence District (R-1) (Tuckahoe).**
1867

1868 Mr. Blankinship - Would everyone who intends to speak to this case please
1869 stand and be sworn in? Raise your right hands, please. Do you swear the testimonies
1870 you're about to give is the truth, the whole truth, and nothing but the truth so help you
1871 God? Thank you. Mr. Gidley.
1872

1873 Mr. Gidley - Thank you, Mr. Secretary. Good morning, Mr. Chair,
1874 members of this Board. The subject property is located at the corner of Walsing Drive
1875 and Hollyport Road. Or Erlwood actually, up to this point. Then it becomes Hollyport. It
1876 contains a single-family dwelling built in 1957 along with an accessory apartment that I
1877 believe was built around 1977.
1878

1879 And this is a picture of the guest house right here. The applicant has recently rented this
1880 out as a short-term rental. That said, an accessory apartment has never been a permitted
1881 use on the property. However, a guest house that does not contain cooking facilities is a
1882 permitted use.

1883
1884 The applicant is requesting two conditional use permits today. One is to allow the rental
1885 of the guest house on a short-term basis and, second, is to allow the rental for a period
1886 exceeding 60 days per year. And this is an aerial of the property here. I'll zoom in. And
1887 this is the guest house right here behind the home.

1888
1889 In evaluating this request, the property is zoned R-1, One-family Residence District, and
1890 is designated Suburban Residential on the Land Use Plan. A one-family dwelling is
1891 consistent with these designations. As I indicated, however, an accessory apartment is
1892 not allowed, but a guest house containing no cooking facilities would be permitted.

1893
1894 The applicant has rented up to four people, however only two guests are allowed per
1895 bedroom, and with one bedroom that would limit it to two guests.

1896
1897 As far as detrimental impact on nearby property, as of the close of business yesterday at
1898 4:30 this case had generated quite a bit of comment. We'd received 20 emails. 19 of
1899 those 20 opposed it with 1 in favor. Those who were opposed expressed concern about
1900 the precedent this would set for a single-family neighborhood. One where they believe
1901 such a use, especially for over 60 days, is harmful.

1902
1903 The property itself is roughly 3/4 of an acre and contains on-site parking space for a
1904 guest's car. The nearest neighbor whose comments are on your staff report -- she lives
1905 over here actually -- she called and expressed concern over the guest house being
1906 roughly 12 feet off her property line, and the affect that has on her and her husband's
1907 privacy. And also, in the past, parking spilling over onto the road.

1908
1909 And this is the guest house here on the left, and the lady who wrote in lives right here.
1910 And you can see it is quite close to her property.

1911
1912 In conclusion, the guest house is located roughly 12 feet off the nearest property line with
1913 a direct view into the neighbor's yard. Staff believes the guest house could be used on
1914 an occasional basis without significant impact on nearby property. However, as the use
1915 increases beyond 60 days, it is less in keeping with the single-family neighborhood,
1916 impacting on the tranquility and privacy of adjacent property. As a result, staff
1917 recommends approval of the request to use the guest house for short-term rental, but
1918 recommends denial of the request to do so for more than 60 days per year in accordance
1919 with the conditions in your staff report.

1920
1921 So, again, we would allow use of the guest house, but we would not allow its use for more
1922 than 60 days. This concludes my presentation and if you have any questions, I will be
1923 happy to answer them.

1924

1925 Mr. Green - Yeah. I have a question. So if someone's in there for 30 days,
1926 how are they eating? Are they eating out every day?

1927
1928 Mr. Gidley - Yes, sir. That's a question I received from some of the
1929 opposition. The answer is they would have to eat out. And, obviously, it's less attractive
1930 as a rental if you don't have eating facilities in it. Whereas if someone rents out their
1931 house, like the previous applicant, then, you know, they utilize the kitchen that's in the
1932 main house.

1933
1934 Mr. Green - Right.

1935
1936 Mr. Gidley - And then that begs the question, What do we do? You know,
1937 do we make them remove any cooking facilities, such as a stove, but what's to keep that
1938 from coming back in, in the future, you know, particularly when that's an essential
1939 component to an extent for an Airbnb rental, as you point out.

1940
1941 So that's a concern. The applicant, to his credit, asked what would we expect. And I said
1942 at a minimum the cooking facilities would have to be removed. I noted a stove requires
1943 a 240-volt outlet, and as part of the certificate of occupancy we could go ahead and say,
1944 all your outlets in the kitchen have to be converted to the standard 120-volt to make it less
1945 likely the stove would come back in sometime in the future. But that's something this
1946 board may want to address what are you looking for if you decide to go ahead and
1947 approve the use of the guest house.

1948
1949 Mr. Green - So a person can rent a house and use the kitchen?

1950
1951 Mr. Gidley - Right.

1952
1953 Mr. Green - But they can't rent a guest house that has a kitchen in it and
1954 us that in the same capacity? I don't understand at all.

1955
1956 Mr. Gidley - Yes, sir. A guest house -- an apartment, which is what it is
1957 now, is not a permitted use. And there were actually notes in the file when an earlier
1958 zoning administrator had noticed it was being rented as an apartment and spoke to the
1959 prior owner and told them, Look, you can't have an apartment there. It can only be a
1960 guest house. And by definition a guest house may not have cooking facilities.

1961
1962 Traditionally the idea behind a guest house is if your brother came to town, or a friend of
1963 yours from college, they could stay in the guest house, but they would come in and eat
1964 with you in your house or go out and eat with you and your family. The guest house would
1965 just be a bedroom and a bathroom.

1966
1967 And so when the Board of Supervisors amended the code, they made that clear that a
1968 guest house does not contain cooking facilities. And because it essentially is an
1969 apartment now with cooking facilities, they would need to remove those cooking facilities

1970 in order for it to just be a guest house. Which then, you know, as you said, where would
1971 the people eat? And that's a good question. That makes it less likely to be rented.

1972
1973 And staff's original recommendation on the ordinance would not have allowed it in a guest
1974 house at all, because, you know, again, where are people going to eat then?

1975
1976 Mr. Johnson - Also with the regulation it says that because that house is on
1977 the same property, then that makes it a guest house. But if it was on a different property,
1978 then it would be allowed to have kitchen facilities and all if it wasn't the same property. Is
1979 that right?

1980
1981 Mr. Gidley - I think what you're saying is correct. Let me just summarize
1982 again.

1983
1984 Mr. Johnson - Okay.

1985
1986 Mr. Gidley - It's a single-family residential neighborhood, or one-family
1987 zoning, which allows one dwelling per lot.

1988
1989 Mr. Johnson - Okay. Yes.

1990
1991 Mr. Gidley - And the main house is a dwelling, which is a place to eat,
1992 bathe, and to cook. That's a dwelling. What you need to survive. Having a second unit
1993 on the same lot that's also a dwelling, namely an apartment with a place to eat, sleep,
1994 and bathe, that makes it two dwellings on one lot, which is not allowed.

1995
1996 A guest house, though, is not a dwelling because it does not contain cooking facilities.
1997 So if the applicant were to convert this from the apartment to a guest house without the
1998 cooking facilities, then they could rent it out as a guest house.

1999
2000 Mr. Green - I have a hypothetical. I know of someone who built a house
2001 and they took their -- it was in Twin Hickory. And they took the basement and they
2002 converted the basement to multiple bedrooms and put a kitchen in the basement. What
2003 did that consider -- is that -- could they rent that out? They couldn't rent that out. Or could
2004 they?

2005
2006 Mr. Gidley - It would depend on the specifics of the circumstance, Mr.
2007 Green. What they couldn't do is have two separate dwellings. And so if they rented out
2008 to somebody who has their own key and comes in, say, a back door in the basement and
2009 doesn't utilize the main house, then that would be a problem.

2010
2011 I've seen homes like in Wyndham with a second kitchen, because they do a lot of
2012 entertaining, and the second kitchen is central to the house and it's clearly not a second
2013 unit there.

2014
2015 Mr. Green - Right.

2016
2017 Mr. Gidley - It's just more room to cook additional food for all your guests.
2018 But if they set this up, in your case, where the basement is kind of its own separate
2019 dwelling independent from the main dwelling, then that could be a problem. Yes.
2020
2021 Mr. Green - What about in-law suites? I know because you see a lot of
2022 folks build these little because they want their mother-father to come, and put a minimal
2023 amount of, you know, a small kitchen, you know, in the basement or another portion.
2024
2025 Mr. Gidley - Yes.
2026
2027 Mr. Green - What is that?
2028
2029 Mr. Gidley - You know, again, we look at these on a case-by-case basis
2030 when we come in and see the building permit. If someone wants their mother-in-law to
2031 live with them, then the mother-in-law really needs to be part of the household.
2032
2033 Mr. Green - Right.
2034
2035 Mr. Gidley - If they want, like, when I lived in our house in high school, I
2036 had my own basement bedroom and bathroom down there and I have a lot of privacy.
2037 And if the mother-in-law wanted something like that, that would be fine.
2038
2039 Mr. Green - You'd miss the parties.
2040
2041 Mr. Gidley - Yeah. But, you know, I was part of the family. I had access
2042 to the whole house, and I ate with the main family. Now that doesn't mean, you know,
2043 the mother-in-law might not want to have a cup of coffee down there in the morning or
2044 something, but most of her meals would be in the main kitchen with the main family.
2045
2046 Mr. Green - Okay.
2047
2048 Mr. Gidley - Either you're part of the family or you have a second family
2049 there, basically.
2050
2051 Mr. Green - Any other information you'd like to present?
2052
2053 Mr. Gidley - No, sir. I'm just here to answer any questions you have, if that
2054 makes sense.
2055
2056 Mr. Green - Any questions from the Board?
2057
2058 Mr. Gidley - Okay.
2059
2060 Mr. Green - We'll now hear from the applicant. Would you spell your
2061 name, please?

2062
2063 Mr. Michie - Yes, sir. My name is Bob Michie, M-i-c-h-i-e. Chairman,
2064 members of the Board, thank you all for the opportunity to speak with you this morning.
2065 Again, my name is Bob Michie. My wife, Robin, is here with me. We've lived at 201
2066 Walsing Drive for the last almost 15 years. Be 15 years in March. 16 years in March.
2067 Excuse me. We bought this house, and this is where the previous conversation --
2068 interesting around this, because we bought this house in 2006. I wanted my mother who
2069 lived in Alexandria at the time to come live with us. She was in late '70s. And it was a
2070 perfect setup for that.

2071
2072 That house, again, was built -- I, frankly, thought the guest house was really not much out
2073 there. I thought it was built within a few years of the main house in '57, but it sounds like
2074 it was built in '77. But, nonetheless, 40 plus years ago. And, so anyway, it was a perfect
2075 setup for that. She had her independence, which it was very important to her. She lived
2076 with us for not quite 12 years before she passed away. And after she passed away, that's
2077 when this whole idea of the short-term rental came up.

2078
2079 You know, and when we bought this house, certainly when that guest house was built,
2080 the concept of a short-term rental didn't even exist. So we did not buy this with this in
2081 mind. We did not build it, obviously, with that in mind. So I think this was a perfect
2082 example of what we call the new shared economy. Right? Different technology, in this
2083 case, presents opportunities to do things. And in this case a new use of this, if you will.

2084
2085 So I'll be brief in my comments and I've probably added a few things based on what I've
2086 heard this morning. But we've been in front of the county before on this during the
2087 county's process around adopting STVR regulations and we were recognized at the time
2088 for doing this the right way. And so that in my mind, and certainly in my efforts and Robin's
2089 efforts, we were big proponents of regulation. Because if you do it right and you don't
2090 impact people, then there really shouldn't be an issue. And so, again, we were big
2091 proponents of that.

2092
2093 But, you know, well let me just say this and we'll come back to a few things. Given the
2094 fact that we've been, with county knowledge, doing -- hosting stays under this STVR,
2095 short-term vacation rental platform, the last two and a half years without complaint, I'm
2096 not aware of any complaints to us or to the county. And if that's different I believe I would
2097 have known by now, but if not, please correct me. But I don't believe there is.

2098
2099 Given that our successful hosting over these two and a half years without issue or
2100 complaint has now been brought under fire by the introduction of our request for permit.
2101 In other words when that sign goes up -- which it should. At that point you want people
2102 to be aware of what's going on. They have a right to weigh in.

2103
2104 I would say given that approximately 19, I think we did hear a number of 19, of about 94
2105 who are on a neighborhood email that went out regarding the request felt compelled to
2106 write in opposition despite the many, what I would consider inflammatory, notions and
2107 erroneous information that were being distributed. And given that this combination of

2108 what I would deem overreaction -- if you will -- I don't understand and therefore I oppose,
2109 reaction. Which is a natural thing for all of us to do.

2110

2111 But nonetheless there are concerns from our neighbors, and I think that's valid, and I
2112 appreciate that, and I sent an email in response to my neighbors with that and said that I
2113 would respect their decisions nonetheless. I just want their decisions to be fully informed.

2114

2115 Given the fact that many of our neighbors are in full support or simply don't have an,
2116 excuse me, an opinion, because they recognize that they are not being impacted by this.
2117 And given that we have had the opportunity to host and meet wonderful people. I'm telling
2118 you wonderful people. People I would have and invite in my house. People we've gotten
2119 to know, just lovely, wonderful people. We have not had any bad experiences in that two
2120 and a half years.

2121

2122 So I was very vocal to many of our neighbors around us and said, Hey, this is a great
2123 thing. And many of our neighbors have used it when their family comes to town. So to
2124 me I just -- I think probably, and I'll say this, in ignorance did not think this was going to
2125 be an issue. Because we hadn't seen any issues. And we have seen it as a positive
2126 thing and not an impact on anyone.

2127

2128 So I will add one additional point. But, I guess, let me back up a little bit. But so it is our
2129 request the staff recommendation of 60 days per year limit subject to the attached
2130 conditions be approved by the Board. So we agree with that.

2131

2132 You know. I'd like to do it more than 60 days, but the world's about compromise. You
2133 know. I'm not sure the world today's about compromise, but certainly I understand that
2134 and appreciate that. And so I think that's a fair. I think that's a fair ask.

2135

2136 I would like to add one additional point as you ponder this. And it's actually a letter sent
2137 yesterday evening by our neighbor who, aside from my rear neighbor, I believe is best
2138 suited, in my estimation, to gauge any impact brought or inconvenience brought about
2139 by our actions. And it's from Dave and Anette McKelvey.

2140

2141 Dear County of Henrico -- I'm going to read this if you -- if you don't mind. It's not long.
2142 We are writing in support of the subject application of Michies to continue using their guest
2143 house as a short-term rental. We live at 9200 Erlwood Road. I don't think we have it up
2144 on the map. But it's directly across from their backyard and the guest house. So they
2145 have a very -- that's almost, essentially, the look they have. They're just further over to
2146 the left.

2147

2148 We -- directly across from their backyard and the guesthouse on an elevated lot such that
2149 we have a view of the front of the rental and the backyard. They have been renting the
2150 space for, we believe, approximately two years and in that time we have never witnessed
2151 any misbehavior by guests, or indeed heard any noise at all.

2152

2153 There is a designated parking spot on the driveway for guests that ensures that a car is
2154 rarely parked on the street. Because it is a one-bedroom unit and the price charged for
2155 it is not inexpensive, guests seem to have typically been few in -- over and on the reserved
2156 side. While we understand that some neighbors might be concerned, given our two-year
2157 track record of not witnessing any negative impacts, we have no concerns with the use
2158 of the guesthouse as a short-term rental, be it for 60 days per year or the requested 365
2159 days per year. Thank you, respectfully, Dave and Annette McKelvey.

2160
2161 So I think that's an important one. You're going to hear, I think, shortly from Mrs. Snead
2162 who is our back neighbor who is quite upset by this. We have never spoken about it.
2163 We've spoken. We don't speak often. There've been no issues prior to this. But you can
2164 see those two are where it says to allow short-term rentals, that's the house under that.
2165 So it's directly across from there, if you will. I'll pause there. Any questions?

2166
2167 Mr. Pollard - Does the guesthouse have a kitchen?
2168

2169 Mr. Michie - It does currently and has since its inception. So how that
2170 happened in 1977 I can't speak to that. I didn't own the house. But I bought it for that
2171 reason, for I think what is going to be a very, you know, popular thing. Which is in-laws.
2172 Right? It was my mother in this case. What a wonderful way to be able to do that. That
2173 worked out perfectly. So I think that it was a good use for it at the time. Right.

2174
2175 Mr. Green - So for two years you've been renting this out with the --
2176

2177 Mr. Michie - Two and a half.
2178

2179 Mr. Green - Two and a half years, rented this out with the kitchen, and
2180 what is the longest stay that you've had?
2181

2182 Mr. Michie - So maybe two to three weeks. And there are a set of
2183 grandparents I think they've actually written a letter in support of this. It's a doctor and
2184 his wife in Kansas City that we've gotten to know quite well. Lovely people. And who their
2185 children and grandchildren are two blocks, two neighborhoods away. I believe they're in
2186 Gaslight. I might be mixing that up with another grandparent who comes and does the
2187 same thing. And they like it because they, you know, they can stay longer with their
2188 grandchildren and not be on top of them and with them. So it works out quite well.
2189

2190 Mr. Green - And in the two and a half years that you've been doing this,
2191 have you had any complaints?
2192

2193 Mr. Michie - No. None that I am aware of. None. Not until the sign went
2194 up, and then I -- what I would call if -- in all due respect to, you know, FUD, right? Fear,
2195 uncertainty, and doubt. The challenge I have with that is if we hadn't done it, then you
2196 could -- you -- it would be easy to see that. But if we have done it and we haven't had
2197 these issues, then I take issue with that direction, if you will.
2198

2199 Mr. Green - So, hypothetically, you could have continued to do this without
2200 going through an approval process and --

2201
2202 Mr. Michie - I suppose hypothetically. But we actually reached out. And
2203 I'm glad you brought that up. Thank you. Yeah. We reached out two and a half years
2204 ago when this came to mind and said to the county, can we do this? And of course the
2205 county at that time was grappling, like most localities are, with, how do we do this? Right.
2206 How do you balance the rights of property owners both ways? Right?

2207
2208 And in our case what we want to do here and, equally so, and I've said this publicly before,
2209 the rights of those that could be impacted. In this case I don't think they were impacted.
2210 And so, yes, we reached out and basically this was a little bit of a source of contention at
2211 the time, but, you know, the county was trying to do the right thing. We're not going to
2212 just lock it down because we don't know, and we don't know about it. We're going to let
2213 it happen unless there are issues.

2214
2215 And so we went forward under the premise that as long as there were no issues, then we
2216 were fine. There's a whole issue of legality around this, and I think that planning -- I
2217 believe it was the Planning Commission at the time that we spoke to. There was a lot of,
2218 again, the county was trying to do the right thing. Right? Let's figure out what challenges
2219 we have. How does this -- every community is different. If you're in a beach community,
2220 you know, or a town that lives on tourist dollars, this happens a lot. Right? Because you
2221 -- it's just the nature of the beast. I just don't see this as happening in Dorset Woods
2222 probably any more than us.

2223
2224 I think this house is unique. It was the first house built in the neighborhood. And I don't
2225 see others doing it by any stretch. And so the other concern was property values. I think
2226 it was a big concern. I just -- frankly, in these tourist areas, the property values go up,
2227 because -- but it also has other repercussions that are good and bad. In this case I just -
2228 - it's just not going to be a trend one way or the other. It could have been already. Right?
2229 People could have been doing it for -- young lady earlier had been doing it for four years
2230 in the neighborhood, you know, two or three miles away and I believe she's probably the
2231 only one there would be my guess.

2232
2233 Mr. Green - When you say sign you're talking about zoning.

2234
2235 Mr. Michie - Zoning sign. Yeah.

2236
2237 Mr. Green - Zoning signs.

2238
2239 Mr. Michie - And that may be another misnomer. You know. There were
2240 comments around motel and transients. I took great issue with that. There is no sign that
2241 says, Airbnb, or Bed and Breakfast, or anything like that. Right? That's not how this
2242 works. So it's very discrete and no one really, unless they're impacted, you know, would
2243 know. And clearly in the last two and a half years that's not been the case.

2244

2245 Mr. Green - Any questions from the Board?
2246
2247 Mr. Reid - Mr. Michie, did you say a minute ago that you've never had
2248 any complaints of your facility?
2249
2250 Mr. Michie - Not that I'm aware of, sir, no.
2251
2252 Mr. Reid - Well then we've got a whole group of letters and emails in here
2253 with this request that are all opposed to what you want to do.
2254
2255 Mr. Michie - And that is precisely my point, sir. That until that sign went up
2256 and the emails went out with what I would consider, you know, inflammatory comments,
2257 I would use motel and transient as inflammatory in this case given our past experience.
2258 So until that letter went -- those emails went out, no one had a complaint. So I, point of
2259 clarification, as of this week, yes. But those complaints are not based on any impact. Am
2260 I making my -- does that make sense? I don't want to confuse that. But prior to this, no
2261 one complained.
2262
2263 Mr. Green - Mr. Reid, that's the point that I was trying to make. Apparently
2264 they have been renting this property out for two and a half years. No one complained.
2265 When the sign went up then the complaints started. So because of the zoning sign, that's
2266 why I asked what sign. But before that -- and, Mr. Blankinship, and you all -- can you all
2267 tell us, had we had any complaints on this property prior to that sign?
2268
2269 Mr. Blankinship - No, sir. There are no complaints. There have been no
2270 complaints about any impacts from this Airbnb being operated over the last two years.
2271
2272 Mr. Michie - If I could add, also, I have met with other direct neighbors, the
2273 one to the, you know, that faced our house to the right, so it would be below that red line.
2274 The one diagonally across the street, the folks next to the McKelveys, and I believe that's
2275 it. As well as, you know, just having mentioned this to folks over the last couple years,
2276 none of those are in opposition. And, you know, I think there're, other than this needs,
2277 you know, are the closest to this. Most of these 19 are folks that I, you know, aren't even
2278 close. And we are at the front of the neighborhood.
2279
2280 I can't see where traffic's an issue. We're talking about one car parking, you guys. And
2281 so I don't see where that -- and that was the other complaint. Too much traffic, or
2282 something about that.
2283
2284 Mr. Green - Any other questions from the Board?
2285
2286 Mr. Johnson - We have regulations on that, you know, that's I guess what's
2287 changed then --. But also there have been instances that people that have family staying
2288 there, they are not paying anything, they just come in for a week or two. You know. And
2289 there is no (indiscernible). That's, you know, family and you are not getting paid for it.
2290 This, however, is kind of another facility.

2291
2292 In addition to that, that was one of the reasons, probably, you didn't hear that much about
2293 this situation. You know, because most of the time it was family that's staying. But this
2294 is an issue that's coming up. Because we have -- the Board has regulations on, you
2295 know, distance, on times, and stuff like that.
2296

2297 Mr. Michie - Right. I'm not sure, I couldn't quite hear you well enough, but
2298 let me try to clarify. For my own understanding, are you saying that this hasn't been an
2299 issue to date because we've only had families staying there and not paying?
2300

2301 Mr. Johnson - I mean, your family in years past.
2302

2303 Mr. Michie - No. For the last two and a half years --
2304

2305 Mr. Johnson - Not for you. I'm talking about in general.
2306

2307 Mr. Michie - Not in our particular case, or in our case.
2308

2309 Mr. Johnson - Not you. I was talking about in general.
2310

2311 Mr. Michie - I'm sorry, sir. Okay. But, no. We've been doing this under
2312 the two platforms that are predominant. So Airbnb and Vrbo or Verbo, as they like to be
2313 called. And, no. These folks are paying and have -- and remember also about -- and
2314 you'll learn this as you all go into your session on this, but short-term rentals have a
2315 wonderful check and balance. So we, as hosts, you know, if we don't provide a nice
2316 facility, and we are at 4.8 or 4.9 out of 5, and 5 out of 5, then people don't want to stay
2317 there. Right? You see it in hotels or any other, restaurants or anything that you consume.
2318 Right?
2319

2320 And likewise if someone stays at an Airbnb and they leave it a mess or they, you know,
2321 just have created issues, then that host has the opportunity to rate them as well. And so
2322 it's a good check and balance to make sure that, you know, folks are going to be respectful
2323 one way or the other.
2324

2325 Mr. Green - Do you have posted rules for staying in the Airbnb? Do you
2326 require folks to have stayed in Airbnbs and have been rated?
2327

2328 Mr. Michie - So there are requirements. It's all part of those platforms and
2329 they're stated in those platforms. They're stated in the specifics for this -- you know -- as
2330 you stay, you know, here. We call it the Dorset. And so, yes, there is.
2331

2332 Mr. Green - I've never stayed in an Airbnb. Would I qualify to stay in your
2333 Airbnb?
2334

2335 Mr. Michie - Absolutely. Let me ask a question. What would make you
2336 think that you would not be?

2337
2338 Mr. Green - We had an applicant a couple of months ago who mentioned
2339 that there is a feature on the platform that they could reject automatically any applicant
2340 who did not have a profile already established on Airbnb.
2341
2342 Mr. Michie - Okay. I understood the question. So Robin does most -- my
2343 wife, Robin, does most of that. I think that you can do that if you do that all the time. I
2344 think that creates issues. And these platforms are very sensitive to that.
2345
2346 So I might have been a little hasty to say, Yes. Because I'm looking at you now and we're
2347 having a conversation and I feel comfortable that you being part of the county would take
2348 care of the place. But, you know, but that's the way that that platform works.
2349
2350 But there are many, many times when we have, you know, had folks without previous --
2351 they say, Hey, we're here for -- we're parents, and we're, you know, there's a soccer
2352 tournament in Glen Allan and we're going to bring our kids and stay. That's why there's
2353 been four in the past and it looks like we're going to need to keep that to two. So it's two
2354 -- it's been two parents and two children. So, yeah, hopefully that answered the question.
2355
2356 Mr. Green - No the only reason I asked that is because I just want to
2357 understand the rules. If the rules are clearly stated, then I can follow and understand the
2358 rules that folks outline. Because that is your property. But if they're not, then I don't want
2359 it to be misinterpreted. And I felt that I've been discriminated against.
2360
2361 Mr. Michie - Right. Right. And importantly so. Understood.
2362
2363 Mr. Pollard - And which platforms do you use?
2364
2365 Mr. Michie - Oh. Right. So Airbnb and Vrbo. And I believe we just started
2366 with Lodgify as well. Which is a platform that --
2367
2368 Mr. Pollard - What was the third one you said just started with? I'm sorry.
2369
2370 Mr. Michie- I didn't hear the question.
2371
2372 Mr. Pollard - The third one you said you just started with?
2373
2374 Mr. Michie - Lodgify. But it really kind of brings both those platforms
2375 together so you can keep the calendar straight. Just an easier thing to manage if you
2376 will. But I think if you look at this from the view of Airbnb or Vrbo, that's very representative
2377 of what this is about and how it works. And I would recommend that you all, as part of
2378 your process, if you have an opportunity -- and, by the way, during COVID people are
2379 gravitating towards this -- matter of fact, -- one of the couples that are here to see their
2380 grandchildren had been staying at a hotel at the Jefferson and, you know, with COVID
2381 didn't feel comfortable with that. And I'm sure that when that, you know, changes with

2382 COVID they will go back. But, you know, that was one of the reasons they've been so
2383 popular.

2384

2385 Mr. Green - Any other questions from the Board?

2386

2387 Mr. Johnson - Other than the county does have a 60-day limit for the year.
2388 So that's one of the regulations, you know.

2389

2390 Mr. Michie - We're fine with that.

2391

2392 Mr. Green - We'll now hear from opposition.

2393

2394 Mr. Blankinship - Okay. Sorry? Oh. Okay.

2395

2396 Mr. Gidley - If I could, my understanding is you agree to basically withdraw
2397 the request for more than 60 days is what you're saying.

2398

2399 Mr. Michie - I mean, if the Board would consider it, I would love it. But I
2400 also --

2401

2402 Mr. Gidley - Okay. I'll --

2403

2404 Mr. Michie - But I'll obviously respect the Board's decision. I mean, we've
2405 been doing it for, you know, 300 -- obviously it's not used 365 days a year.

2406

2407 Mr. Green - Right.

2408

2409 Mr. Michie - I did look. Out of last two and a half years there were 53
2410 reviews on one platform and 43 on the other. I have got that number here. Anyway, it's
2411 -- if you look at two and a half years -- and reviews are very important. Right? If you don't
2412 write a review as a guest, then, you know that you're not working with the process well,
2413 and vice versa.

2414

2415 Again, there's a good checks and balance. So over that two and a half years, that's the
2416 number of folks that have stayed there.

2417

2418 Unknown Speaker - (indiscernible)

2419

2420 Mr. Michie - Although there is that whole thing about dropping the mic.

2421

2422 Mr. Blankinship - All right, Mr. Chair, I believe there's nobody else in the room
2423 who wishes to speak. Are you ready to go to the Webex?

2424

2425 Mr. Green - Yes.

2426

2427 Mr. Blankinship - All right. Let's have the first speaker on Webex then, please.

2428
2429 Ms. Deemer - Mr. Chairman, we have someone in support. Mr. Crowser is
2430 going to be unmuted now.
2431
2432 Mr. Crowser - Thanks, Rosemary and members of the Board. And, Bob and
2433 Robin, I thank you for the opportunity to speak in support of the property. My name is
2434 Nate Crowser. I currently live and work in the City of Miami and I travel back once a
2435 month to visit with my eight-and-a-half-year-old daughter who still lives in Richmond,
2436 Virginia.
2437
2438 Obviously, you know, coming back to visit her in Richmond is my highest priority as I've
2439 made it that for the last two and a half years since moving down to Miami. What was
2440 most important for me in coming back: I am on a limited budget, but wanted to find a
2441 property for continuity. I didn't want to bounce around from, you know, hotel to hotel or
2442 even Airbnb to Airbnb.
2443
2444 You know, with an eight-and-a-half-year-old, I wanted to find a safe and quiet property in
2445 a neighborhood that she and I could, you know, ride bikes or take walks. There has been
2446 a huge emotional impact on both of us to be able to stay in the same property every time
2447 I come back to Richmond. The neighborhood itself, we love it. We love the property. It
2448 provides remote key entry, a place that I can cook a meal for her every night that I'm in
2449 town just as I would when she visits me here in Miami.
2450
2451 Just, again, the property itself, you know, Bob and Robins, you know, just demeanor and
2452 hospitality and, you know, it means the world to me. I realize that this is a bit of an
2453 emotional plea, but certainly is one of their regular renters it's something that the
2454 continuity is really, really important, and has really boded well for my daughter, who is at
2455 a pivotal age in her life. So, again, thank you for hearing me out. I appreciate the
2456 opportunity.
2457
2458 Mr. Green - I have a question for you. Hello.
2459
2460 Mr. Crowser - What's that?
2461
2462 Mr. Green - I have a question.
2463
2464 Mr. Crowser - Yes.
2465
2466 Mr. Green - You stay in the property about how long?
2467
2468 Mr. Crowser - I think the first time I stayed there was in the spring of 2018.
2469
2470 Mr. Green - No. I mean how many days on average.
2471
2472 Mr. Crowser - Oh. When I come in it's usually, you know, five, six days at a
2473 time.

2474
2475 Mr. Green - And you realize now that if this thing is approved that kitchen
2476 would have to be taken out. So that means you would have to eat out with your daughter
2477 on a daily basis.
2478
2479 Mr. Crowser - Yeah. I mean, for me the continuity and in that specific
2480 neighborhood is still an appeal. You know. It would be a bit of a bummer, but at the end
2481 of the day that property is, I mean, that's been my favorite property. I travel all over the
2482 world and so it's very homey. And, again, it's safe. It's quiet. And there's other aspects,
2483 to the property than just the kitchen. Although the kitchen is definitely something that is
2484 a nice little value-add for us.
2485
2486 Mr. Green - Mr. Blankinship.
2487
2488 Mr. Blankinship - Any further questions?
2489
2490 Mr. Green - No more questions.
2491
2492 Mr. Blankinship - All right. Sorry?
2493
2494 Mr. Green - No other questions.
2495
2496 Mr. Blankinship - Okay. Thank you very much, Mr. Crowser.
2497
2498 Mr. Crowser - Thank you. Appreciate the time.
2499
2500 Mr. Blankinship - Thank you. I believe that is the only speaker in favor. So now
2501 we will take speakers in opposition.
2502
2503 Mr. Green - How many do we have?
2504
2505 Mr. Blankinship - I believe three.
2506
2507 Mr. Green - Three.
2508
2509 Ms. Deemer - Mr. Chairman, we are going to unmute Ellen Snead.
2510
2511 Ms. Snead - Can you hear me?
2512
2513 Mr. Blankinship - Yes, ma'am.
2514
2515 Ms. Snead - My name is Ellen Snead, S-n-e-a-d. And my husband and I
2516 live next door to the Michies. I would like to state our objections to both exemptions being
2517 requested. Well, now I guess it's just one.
2518

2519 We discovered that the Michies were renting about two years ago, evidenced by all the
2520 activity next door. We could see and hear the tenants. I haven't complained to the county
2521 because I assumed it was illegal and that the county would catch up with them, or I was
2522 hoping that they would just get renter fatigue and be done with it.

2523
2524 Then a few months later, in August of 2019, I was diagnosed with cancer. Since then I
2525 have had three surgeries, many rounds of chemo, and weeks of radiation, and am now
2526 preparing for another surgery in two weeks. Frankly, I have been too sick and my
2527 husband has been too busy between work and caring for me to deal with this activity next
2528 door. But I can assure you that we knew and have been quite upset about it. Then when
2529 the sign went up in their yard, I knew it was my opportunity to have my voice heard.

2530
2531 As you can see from the photo, our house is very close to the guest house. You may not
2532 understand this unless it happens to you, but it is both stressful and unsettling to live in
2533 such close proximity to a cottage being used as a motel. And by definition of a motel it
2534 is, you pull up in your car, you get your suitcase out, you roll it across the patio, and you
2535 enter the apartment.

2536
2537 It is stressful never knowing what stranger is inches from your backyard with a panoramic
2538 view into our sunroom. I implore the county to protect our rights to privacy and security.
2539 The same rights the rest of the neighbors enjoy. I would think that if a guesthouse
2540 exemption is ever granted, it should be for one more appropriately situated as to cause
2541 no harm.

2542
2543 Among other concerns, I am told the county has hired a company to monitor public rental
2544 platforms for owner compliance but there is no way to track private transactions. So
2545 adherence to the 60-day limit is based on good faith, as is ensuring compliance with the
2546 hosted stay only provision. So if a neighbor suspects or knows of noncompliance on any
2547 of these issues, their only recourse is to file a complaint. That puts an unfair onus on
2548 neighbors to do the monitoring. These are issues that are too significant in the
2549 guesthouse situation to be left to self-regulation.

2550
2551 The theory that guesthouse visitors should have to use the main house kitchen for the
2552 dwelling to be legal only means, in this case I am told, that the kitchen can stay minus the
2553 stove. That would mean the owners can substitute a countertop model and still have a
2554 very nice full-sized kitchen. Just look on Airbnb.

2555
2556 How this is following the spirit of the law -- how is this following the spirit of the law? It is
2557 still two independent dwellings on one lot, and one is nonconforming. The compromise
2558 should be that they be allowed to keep the cottage for personal use rather than requiring
2559 them to tear it down.

2560
2561 The guesthouse rental decreases the value of both adjacent and surrounding homes
2562 while increasing the value of the Michie property. Potential buyers shopping in this area
2563 would be shocked to discover a motel and will certainly go elsewhere. It is also favoring
2564 one homeowner over another. What entitles the Michies to be the exception?

2565
2566 Approval of this permit sets a precedent. If you grant this one, how can you not approve
2567 them all? There are many outbuildings and garages in this area that could be converted.
2568 And then what would you be doing to the neighborhood? I realize this is a new endeavor
2569 for the county and, as such, there will be glitches to be worked out. For that reason,
2570 perhaps, special exemptions as impactful as this one should be saved for a later date
2571 after the kinks have been identified and resolved. Thank you.

2572
2573 Mr. Green - Mr. Blankinship.

2574
2575 Mr. Blankinship - Yes, sir.

2576
2577 Mr. Green - Next.

2578
2579 Mr. Blankinship - All right. There are no questions.

2580
2581 Mr. Green - No questions? Okay.

2582
2583 Mr. Blankinship - Are there any other speakers on Webex? We may not have
2584 any. I may have misspoken before.

2585
2586 Ms. Deemer - We have no one else.

2587
2588 Mr. Blankinship - Okay. Thank you very much. Mr. Chair, that completes the
2589 public hearing.

2590
2591 Mr. Michie - Can I make one comment, or is my time up?

2592
2593 Mr. Green - Yes.

2594
2595 Mr. Michie - All right. Just one thing on -- I believe the Sneads removed
2596 the landscaping there. And I believe they did it for a reason, which is they're putting a
2597 shed there. So I think the view you have now is not the view that it was not too long ago.
2598 And Ms. Snead can speak to that. But I also believe that one of the provisions is that we
2599 would put in landscaping, and we would be responsible for that, putting landscaping up
2600 there so that there is not a privacy issue there.

2601
2602 Mrs. Snead also mentioned that, in her letter, that house space is hers and the people
2603 inside the house can see inside their house. I took pictures. I don't have them here. But
2604 I did send them to her. But, you know, with the whole frame window and you're not looking
2605 into her house. If you're out on the patio you are, but if we put screening up, I don't think
2606 that's going to be an issue. That's all. Thank you.

2607
2608 Mr. Green - We are about to close. But -- the public hearing is now closed
2609 and we're going to be entertaining a motion. And as was in the last case, we deferred
2610 until we could get better clarification on how we would like to handle this. Would you

2611 prefer us to go forward with the vote, or would you accept deferring this off until we can
2612 get some more clarification and have it brought back?
2613

2614 Mr. Michie - I would -- and, Robin, let me know if you disagree, but I would
2615 prefer that you defer it. Because I think one of the challenges that you all have right now
2616 is a knowledge of this platform. And I think if, and I mean this with all due respect to
2617 everyone involved, I think that lack of knowledge lends itself to not wanting to accept this
2618 because of the fear and uncertainty and doubt about what some of the challenges are.
2619 And I think in this case we've proven that those challenges are not -- they're just not there.

2620
2621 And it's unfortunate that the Sneads did not say something to us. We could have done
2622 any number of things earlier. But if people don't communicate, then it's very difficult. And
2623 so I take issue with how that was conducted. But, no, I would -- Robbin, do you agree?
2624 We would prefer deferring. And I'm more than happy to lend any other details about the
2625 platform. I think we've gotten to know it quite well. And I think we are good stewards of
2626 being in Henrico and other, you know, neighbors as well and how we've conducted this.
2627 So.

2628
2629 Mr. Blankinship - If I can just chime in, Mr. Chair, that would also give you the
2630 opportunity to communicate with these other 19 people who have expressed opposition.
2631 And perhaps you can come to terms with them on some other conditions that would allay
2632 some of their concerns.

2633
2634 Mr. Michie - Agreed. Agreed.

2635
2636 Mr. Green - And point of clarification.

2637
2638 Mr. Blankinship - Yes, sir.

2639
2640 Mr. Green - It's not that we don't understand it. It's that we want to see the
2641 specific rules and regulations as they apply to law. The ordinance, or the information,
2642 that's been passed by the Board of --

2643
2644 Mr. Blankinship - Supervisors.

2645
2646 Mr. Green - -- Supervisors as well as the Planning Commission. So we
2647 fully understand it. We just want to be well versed in having before us the particulars.

2648
2649 Mr. Michie - Okay. Understood.

2650
2651 Mr. Green - Because the staff -- I have to complement the staff of the
2652 Board of Zoning Appeals. They do an excellent job of providing us full packages
2653 explaining everything that we need. But in this particular instance we just needed
2654 additional information as it relates to something that was charged to them which is now
2655 being given to us. So we're asking them to go back and get us additional information. So
2656 we understand that, and we're going to be dealing with it. But we want to deal with it in a

2657 -- we don't want to deal with it in a haphazard way where we approve one over here and
2658 not one over there. Do this and do that. We want to be solid in our decision making,
2659 consistent and fair.

2660
2661 Mr. Michie - Understood and appreciate it and thank you for that
2662 clarification. And if I could clarify my point as well, which is the actual, you know, Airbnb
2663 or the short-term rental platform, if you'd not stayed in one or not looked at, you know,
2664 going out and looked at properties and just done those kinds of things. I think that would
2665 help alleviate some of those concerns. But agreed and thank you, sir.

2666
2667 Mr. Green - Thank you.

2668
2669 Mr. Johnson - But just to remind you that the 60 days is still -- will be in effect.

2670
2671 Mr. Green - Yeah. He agreed to that.

2672
2673 Mr. Michie - Meaning from this day forward? So let's clarify it. So this day
2674 forward, going through now, on -- we're ending the year. So we've got next year. I don't
2675 know when we'll meet back again for the deferral, but -- okay.

2676
2677 Mr. Blankinship - Yeah.

2678
2679 Mr. Michie - But we have -- okay. I'll clarify that with staff. Thank you.

2680
2681 Mr. Green - Yeah. Because you would also have to take that kitchen out.

2682
2683 Mr. Johnson - Right.

2684
2685 Mr. Green - And so that would impact you as well.

2686
2687 Mr. Michie - Okay. I'll work with staff on that. So, the finer details.

2688
2689 Mr. Green - Okay. That's it. Is there a motion for deferral?

2690
2691 Mr. Reid - I move that we defer the application until a later date, until we
2692 have time for the applicant to respond to the objections that we've been -- that've been
2693 raised by the neighbors. And also to allow the members of this board to get more up to
2694 speed on Airbnbs.

2695
2696 Mr. Green - Is there a second?

2697
2698 Mr. Pollard - I second.

2699
2700 Mr. Green - There's a motion to defer by Mr. Reid, and a second by Mr.
2701 Pollard. All in favor say aye. All opposed say nay. The motion is deferred.

2702

2703 On a motion by Mr. Reid, seconded by Mr. Pollard, the Board **deferred until November**
2704 **19, 2020** case **CUP2020-00037 ROBIN MICHIE's** request for a conditional use permit
2705 pursuant to Section 24-12(h) of the County Code to allow short-term rental of a dwelling
2706 at 201 Walsing Drive (DORSET WOODS) (Parcel 744-734-5176) zoned One-Family
2707 Residential District (R-1) (Tuckahoe).

2708
2709

2710	Affirmative:	Bell, Green, Johnson, Pollard, Reid	5
2711	Negative:		0
2712	Absent:		0

2713
2714

2715 Mr. Blankinship - All right. Next case.

2716

2717 Mr. Johnson - Would that deferral be un till next month?

2718

2719 Mr. Blankinship - November 19th. Conditional use permit 2020 number 38,
2720 Michael Thorpe.

2721

2722 **CUP2020-00038 MICHAEL THORPE requests a conditional use permit pursuant to**
2723 **Section 24-95(i)(4) of the County Code to build an accessory building in the side**
2724 **yard at 3500 Waverly Boulevard (EAST HIGHLAND PARK) (Parcel 798-735-5827)**
2725 **zoned One-Family Residential District (R-4) (Fairfield).**

2726

2727 Mr. Blankinship - Would anyone in the room who intends to speak to this case
2728 please stand and be sworn in? Okay. We do have the applicant on Webex so, Mr.
2729 Madrigal, you can begin.

2730

2731 Mr. Madrigal - All right. Thank you, Mr. Secretary. Mr. Chair, members of
2732 the Board, before you is a request to build an accessory building in a side-yard of a one-
2733 family dwelling. The subject property consists of a single 45-foot-wide lot totaling 5,670
2734 square feet in area. The property is improved with a two-story, 1,880-square-foot home
2735 with open parking built in 2006. The home required a variance from lot area, lot width,
2736 and street-side yard setback requirements when it was built.

2737

2738 The applicant purchased the property in 2009. He would like to construct a one-story,
2739 432-square-foot detached family room with an attached 50-square-foot shed in the rear
2740 yard. He applied for a building permit in July that was rejected due to the required
2741 setbacks not being met.

2742

2743 The property is a reverse corner lot, so a detached accessory building must provide a 48-
2744 foot street-side setback as required by code. Because of the narrow width of the lot, it is
2745 impossible for the applicant to meet this requirement. He has requested a CUP to allow
2746 an accessory structure in the side yard.

2747

2748 The property is zoned R-4 and is designated Suburban Residential 2 on the Land Use
2749 Map. A one-family dwelling is consistent with both designations. Although the proposed
2750 structure would be in the rear yard, it does not meet the street-side setback requirement
2751 for a reverse corner lot. In this instance the code requires a 48-foot setback from the
2752 street-side property line. The existing home has a 16-foot street-side setback and the
2753 proposed structure should not be any closer to the street than the existing home.
2754

2755 The narrow width of the lot and the shallow rear yard would require the applicant to reduce
2756 the size of the proposed structure and eliminate the attached shed. The proposed
2757 building would also have to comply with a 10-foot rear-yard setback from the alley and
2758 maintain a 10-foot distance from the home. This would result in a structure that is
2759 approximately 18 feet deep by 21-feet wide as opposed to his proposal.
2760

2761 The general design of the structure could follow the proposed floor plan and elevations
2762 submitted by the applicant but would have to be reduced in size to meet the required
2763 setbacks. The exterior of the proposed building should match the home in color and
2764 materials for consistency. It should also be oriented toward Whatley Street. If the
2765 applicant adheres to these requirements, staff does not anticipate any detrimental
2766 impacts to adjacent neighbors or nearby properties.
2767

2768 In conclusion, the applicant is requesting permission to construct a detached recreation
2769 room in the street-side yard. Because the property is a reverse corner lot, it is subject to
2770 enhanced street-side setback that can't be met due to the narrow width of the property.
2771 To comply with code the applicant will have to reduce the overall size of the building and
2772 eliminate an attached shed. To ensure consistency with the existing home and adjacent
2773 neighbors, staff has developed specific conditions of approval to mitigate any detrimental
2774 impacts.
2775

2776 As long as the applicant adheres to the proposed conditions, staff recommends approval
2777 of this request. This concludes my presentation.
2778

2779 Mr. Green - With that, can I hear from the applicant?
2780

2781 Mr. Blankinship - All right. We have Mr. Leon Ford, the applicant's
2782 representative.
2783

2784 Mr. Ford - Good afternoon. So I'm the client's contractor and he is
2785 definitely willing to remove the existing shed and comply with the size.
2786

2787 Mr. Blankinship - All right. Thank you. Can you tell us a little bit about what it
2788 is he wants to build and what he's -- intends to use it for?
2789

2790 Mr. Ford - Well, he wants to use this for his family as a detached
2791 recreation room. It is not going to be used as a rental. It will not have any type of closet
2792 on the inside. It's not going to be -- it's not going to have any type of kitchen function or

2793 any type of aspects like that. It's just -- it's just a recreation room separate from his house
2794 that he plans on viewing movies and music. Things like that.

2795
2796 Mr. Johnson - Mr. Chairman.

2797
2798 Mr. Blankinship - Are there any questions from any Board Members?

2799
2800 Mr. Green - Mr. Johnson.

2801
2802 Mr. Blankinship - All right. Thank you very much Mr. Ford.

2803
2804 Mr. Ford - Thank you.

2805
2806 Mr. Green - Anyone have a question?

2807
2808 Mr. Blankinship - There is no one else to speak on this case.

2809
2810 Mr. Green - So that concludes our public hearing.

2811
2812 Mr. Blankinship - Yes, sir.

2813
2814 Mr. Green - And a motion would be in order. What is the pleasure of the
2815 Board?

2816
2817 Mr. Pollard - I move that we approve the conditional use permit subject to
2818 the conditions recommended by the staff. The proposal doesn't even allow for the -- it
2819 will be allowed in a rear-yard if this was not a reverse corner lot. (indiscernible) the new
2820 designs, to (indiscernible) fit in the available space, but if the building is set back as far
2821 as the existing house and it meets the other setbacks for 10 feet from the house, 10 feet
2822 from the alley, and 7 feet from the side lot line, it will be a -- be an appropriate addition to
2823 the neighborhood.

2824
2825 Mr. Green - Do I hear a second?

2826
2827 Mr. Johnson - Second.

2828
2829 Mr. Green - The motion was seconded by Mr. -- the motion -- the motion -
2830 - there's a motion by Mr. Pollard to approve, and the motion was seconded by Mr.
2831 Johnson. Is there any discussion? Hearing no discussion, all in favor of the motion say
2832 aye. All opposed say nay. Motion passes.

2833
2834 On a motion by Mr. Pollard, seconded by Mr. Johnson, the Board **approved** case
2835 **CUP2020-00038 MICHAEL THORPE's** request for a conditional use permit pursuant to
2836 Section 24-95(i)(4) of the County Code to build an accessory building in the side yard at
2837 3500 Waverly Boulevard (EAST HIGHLAND PARK) (Parcel 798-735-5827) zoned One-

2838 Family Residential District (R-4) (Fairfield). The Board approved the request subject to
2839 the following conditions:

2840
2841 1. This conditional use permit applies only to a detached accessory structure in the street
2842 side yard. All other applicable regulations of the County Code shall remain in force.

2843
2844 2. Only the improvements shown on the plot plan and building design by Parker Unique
2845 Designs, as amended by these conditions, may be constructed pursuant to this approval.
2846 Any additional improvements shall comply with the applicable regulations of the County
2847 Code. Any substantial changes or additions to the design or location of the improvements
2848 shall require a new conditional use permit.

2849
2850 3. The proposed structure shall adhere to the following setbacks: 16 feet street side
2851 setback (to match the existing dwelling), 7 feet interior side setback, 10 feet rear setback
2852 (from the alley), and 10 feet from the principal dwelling.

2853
2854 4. The new construction shall match the existing dwelling as nearly as practical in
2855 materials and color. No windows or doors shall face the adjacent neighbors to the north
2856 or west.

2857
2858 5. All exterior lighting shall be shielded to direct light away from adjacent property and
2859 streets.

2860
2861 6. The applicant shall remove the existing detached storage building from the property
2862 prior to requesting a final building inspection for the proposed detached recreation room.

2863
2864 7. The applicant must obtain a building permit for the proposed accessory structure by
2865 October 24, 2022, or this conditional use permit will expire. If the building permit is
2866 cancelled or revoked because construction was not diligently pursued, this conditional
2867 use permit will expire at that time.

2868
2869
2870 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5
2871 **Negative:** 0
2872 **Absent:** 0

2873
2874
2875 Mr. Blankinship - All right, Mr. Chair, the next case is conditional use permit
2876 2020 number 40, The East End Landfill, LLC.

2877
2878
2879 **CUP2020-00040: The East End Landfill, LLC requests a conditional use permit**
2880 **pursuant to Section 24-116(d)(3) of the County Code to operate a construction**
2881 **demolition debris landfill at 1790 Darbytown Road (Parcels 809-707-1585 and 808-**
2882 **706-6679), zoned B-3, Business District and M-2, General Industrial District**
2883 **(Varina).**

2884
2885 Mr. Blankinship - Would everyone who intends to speak to this case please
2886 stand and be sworn in? You're going to speak?
2887
2888 Mr. Schmidt - Yes.
2889
2890 Mr. Blankinship - Right. Yeah. Okay. We usually, since you're kind of giving
2891 evidence, we usually have the attorney swear as well, if you don't mind.
2892
2893 Mr. Schmidt - (indiscernible)
2894
2895 Mr. Blankinship - Okay. Right. You raise your right hand? Do you swear the
2896 testimony you're about to give is the truth, the whole truth, and nothing but the truth so
2897 help you God?
2898
2899 Mr. Gilbody - I do.
2900
2901 Mr. Blankinship - Thank you.
2902
2903 Mr. Green - I didn't hear what he said, Mr. Blankinship.
2904
2905 Mr. Blankinship - He said he's here to advocate a position. So he declined to
2906 take the oath. Mr. Gidley, would you like to begin?
2907
2908 Mr. Gidley - Yes, sir. Thank you, Mr. Secretary. Good morning again
2909 members of the Board. The subject property is located off Darbytown Road opposite of
2910 its intersection with Oakland Road. The application includes two parcels that were
2911 purchased by The East End Landfill, also known as TEEL, back in 2006. And they were
2912 purchased by them from Simons and S.B. Cox. They received conditional use permit
2913 approval to consolidate these sites for continued use as a construction, demolition, and
2914 debris landfill.
2915
2916 In 2010 Teel began depositing coal ash on the site in violation of the use permit. The
2917 county spent the next two years working to make TEEL comply with the terms of their use
2918 permit. This was the first in a long list of violations which are outlined in more detail in
2919 your staff report.
2920
2921 In 2012 TEEL was bought by a new group of investors that promised to repair the damage
2922 done by the original owners. The new owners received a new conditional use permit to
2923 expand the landfill. The owners, however, failed to diligently pursue the required
2924 approval, so the conditional use permit to expand the landfill expired.
2925
2926 In 2016 at the county's request the BZA revoked the conditional use permit to operate the
2927 landfill. TEEL appealed this decision to the circuit court. The circuit court upheld the
2928 BZA's decision to revoke the use permit. TEEL subsequently appealed to the State
2929 Supreme Court of Virginia and the state supreme court decided not to review the decision

2930 by the circuit court. Rather than closing the landfill TEEL has applied for a new conditional
2931 use permit in order to continue its operation.

2932
2933 In evaluating this request with regard of the zoning ordinance and comprehensive plan,
2934 the property is zoned M-2, General Industrial District, and is designated Planned Industry
2935 on the Land Use Plan.

2936
2937 The use of the property for a landfill was consistent with both of these designations. Over
2938 the last 10 years, however, the landfill has consistently been operated in violation of the
2939 zoning requirements.

2940
2941 And as far as substantial detrimental impact on nearby property. The surrounding
2942 neighborhoods were developed in the 1990s and early 2000s. Mainly to the west here.
2943 The early owner, Simons and S.B. Cox, used the landfills for low-level intensity, mainly
2944 local construction projects. After those neighborhoods were established the new owners,
2945 namely TEEL, expanded the intensity of the operation and started bringing in waste from
2946 other markets, including Northern Virginia and Tidewater.

2947
2948 Because of this increased use, increased noise, and increased truck traffic, the landfill
2949 began to have a substantial detrimental impact on these nearby property owners at that
2950 point.

2951
2952 In addition, the neighbors have had to live with persistent violations of state law and the
2953 conditions placed on the permit by the county. This history is outlined briefly in the staff
2954 report and in the letter from the County Manager included in the staff report.

2955
2956 TEEL has filed a 335-page response, which was provided to you electronically. They
2957 may disagree with the county's characterization of the history of the site, but after
2958 reviewing the facts, this Board revoked their use permit for good cause. The circuit court
2959 affirmed that decision and the Supreme Court of Virginia refused their appeal.

2960
2961 So, in conclusion, while the construction, demolition, and debris landfills were operating
2962 on the property for a number of years, the changes in ownership and operation that have
2963 taken place since 2006 have had a substantial detrimental impact on nearby property.

2964
2965 The state and county have worked diligently to obtain compliance with both state law and
2966 the terms of the conditional use permits but time and again the operators have
2967 disregarded the regulations and endangered the neighborhood. This Board revoked the
2968 use permit and the circuit court and the state supreme court have supported that decision.

2969
2970 It is time for this use to cease. Therefore, staff recommends denial of this request. If you
2971 have any additional questions, I will be happy to answer those. Thank you.

2972
2973 Mr. Green - Any questions from the members of the Board? We'll now
2974 hear from the applicant.

2976 Mr. Blankinship - Yes, sir.
2977
2978 Mr. Schmidt - Good morning. My name is Paul Schmidt. I'm here to
2979 represent The East End Landfill.
2980
2981 Mr. Green - Excuse me. Excuse me. Excuse me. Mr. Schmidt. I thought
2982 all -- you have to swear in everyone. You refused to be sworn in?
2983
2984 Mr. Schmidt - Rules of procedure say that you're swearing in witnesses. I'm
2985 not a witness, I'm an advocate. I'm a licensed attorney in Virginia. And those are the
2986 conditions under which lawyers represent clients.
2987
2988 Mr. Green - Mr. Blankinship.
2989
2990 Mr. Blankinship - I am not a lawyer or a judge. I don't know the answer, Mr.
2991 Chair. Normally, you know, you've been here long enough. You've seen quite a few
2992 lawyers come and raise their right hands and take the oath. But I have had lawyers before
2993 question that. But after questioning it, they've just shrugged and gone with it. So they --
2994
2995 Mr. Johnson - We can't force --
2996
2997 Mr. Blankinship - I think it's a rule that the chair can rule on.
2998
2999 Mr. Schmidt - This has been a -- I mean, those are the conditions under
3000 which we came last time in appearing before this Board.
3001
3002 Mr. Green - We've just asked all persons to swear in. And if you choose
3003 to do that, that's fine. If you choose not to do that, then we'll take that under consideration.
3004 What is your choice, sir?
3005
3006 Mr. Schmidt - I would prefer not to. Thank you, your honor.
3007
3008 Mr. Green - I'm not a your honor.
3009
3010 Mr. Schmidt - Chairman. Old habits. Chairman. Sorry, sir. Yes. My name
3011 is Paul Schmidt, P-a-u-l S-c-h-m-i-d-t. I'm here to represent The East End Landfill on this
3012 conditional use permit application.
3013
3014 We do take issue with characterization of the history provided by the county. Number
3015 one, this landfill's been in business for decades. This Board had found it to be in the best
3016 interest of the county to approve this CUP in this location on multiple occasions. We're
3017 here today to ask to fill the remaining air space. We're not here asking for the expansion.
3018
3019 If you grant, this county will maximize the use of its landfill capacity and minimize the need
3020 for additional landfill construction. If you deny, you close the only competition in the

3021 county for Republic Landfill. It is in the public interest a landfill's capacity is fully utilized
3022 before you construct additional landfills.

3023
3024 Landfills are permanent structures. The physical structure of that landfill will be there in
3025 perpetuity. It's going to be there until the end of time. There is unused air space
3026 remaining at that landfill. There's capacity to continue to fill that thing for the next three
3027 years. Again, if you deny, all this construction, demolition, and debris waste that would
3028 otherwise go to TEEL is going to end up going to the Republic Landfill next door.

3029
3030 Republic Landfill. It's built, contained, municipal solid waste, that's your household
3031 garbage. Those things cost twice as much to construct as a C&D landfill. It will be the
3032 only landfill open to the residents and businesses of this county and, therefore, the
3033 residents are going to have to charge whatever rate Republic decides to charge them.

3034
3035 If we deny, we prematurely fill that premium air space at the Republic Landfill and that's
3036 just going to create need to either expand that one or build a brand-new landfill. If you
3037 grant, we're going to be able to close the landfill as designed.

3038
3039 So how did we get here? Again, we've held a permit for decades. The county violated
3040 us for not obtaining expansion permits quickly enough, even though the landfill is still
3041 operating. And the county referred to that. Before the appeal could be heard by this
3042 Board, the county violated the landfill for using alternative cover material under condition
3043 20 of the conditional use permit.

3044
3045 The Planning Director told the court that TEEL was forbidden from even using clean dirt
3046 as cover material. That's how convoluted condition 20 was. He insisted that TEEL could
3047 only use construction, demolition, and debris waste to cover their construction, demolition,
3048 and debris waste. That doesn't make any sense. The court ruled that the county was
3049 wrong about needing to get those expansion permits, but the court did let the Planning
3050 Director find that we could not use dirt as cover material.

3051
3052 So where are we now? Again, the county's waste, it's going to Republic. Republic has a
3053 post-agreement with the county. They pay the county \$2 a ton and yearly benefits
3054 approaching 2-million. The county stands to gain money in the short-term. The residents
3055 are going to lose that county landfill capacity that they will be hosting until the end of time.
3056 They will be losing that in the long term.

3057
3058 The landfill is designed to be closed at full capacity. If we close prematurely, that's not in
3059 accordance with the state plan. We're here on an application for a new conditional use
3060 permit, but we -- the county is treating this as a violation. They've provided you with a
3061 number of documents in which they make comments about problems out at the site. So
3062 let's talk about what they're -- what they're referring to. The fire, notices of violations from
3063 the DEQ and sewer.

3064
3065 The county knows that when it says fire, everybody's going to pay attention. This landfill
3066 has had subsurface fires burning at low levels for years. This is not unheard of.

3067 Occasionally they flare up, we cooperated with the county fire department over the
3068 summer, we put out a flare. County came instead, digged [sic] us up, sprayed water on
3069 it. We did that. We put everything back on. Both the fire marshal and the DEQ have
3070 been out there afterwards, looked at the landfill, no evidence of smoke or fire.

3071
3072 The county was out there flying a drone with an infrared sensor about two weeks ago and
3073 they told our employees that they couldn't find any hotspots. So the fire seems to be well
3074 under control.

3075
3076 Then -- for the DEQ. Number one, there's no founded violations at the site. Okay? The
3077 county knows that notices of violations, NOVs, not findings of fact that a -- are not a finding
3078 of fact or a finding that the violation has occurred.

3079
3080 Under state law agencies decide violations have occurred with something called a case
3081 decision under state law. Virginia Code 2.2-4003. None of the NOVs mentioned by the
3082 county have become final case decisions. In fact, the DEQ denies it's made a case
3083 decision. This county doesn't enforce state regulations, the DEQ does.

3084
3085 The sewer issues. We've got a permit. We're discharging our leachate to the county
3086 sewer system. We've been discharging the same leachate to that sewer system for years.
3087 County says we failed to calibrate our flow meters. Our permit says you calibrate them
3088 for the factory recommendations. We called the factory, they said they don't need
3089 calibration once they leave the factory. Their permit, calibrations, intervals recommended
3090 by manufacturer. Provided that proof to the county. There's our letter, Ryan Smeltz the
3091 public utilities. We reached out to Badger. We reached out to GPI, no calibration
3092 requirements.

3093
3094 So let's talk about what we are asking for. Okay. This is what we think the way forward
3095 should look like. We have proposed replacement conditions to eliminate the confusion of
3096 the old Condition 20. The alternative daily cover. State law requires landfills to cover
3097 their waste on a regular basis. We want to make it absolutely clear we're going to use
3098 only clean dirt as cover. Here is the old condition 20, and this is where we were getting
3099 into issues. The landfill should only take construction, demolition, and debris waste. And
3100 then we start talking about the things that you can use for fill or cover material. And this
3101 is what we ended up fighting with the county about.

3102
3103 So we're going to clean up that language. It's clear. The applicant shall utilize clean fill
3104 material for use as daily cover. We will not use any alternative daily cover material not
3105 approved in advance by the DEQ and the county.

3106
3107 Mr. Pollard - Excuse me, sir. Could you go back one slide?

3108
3109 Mr. Schmidt - Absolutely.

3110
3111 Mr. Blankinship - I think if you right -- yeah.

3112

3113 Mr. Schmidt - There we go.
3114
3115 Mr. Pollard - I'm good.
3116
3117 Mr. Schmidt - Okay.
3118
3119 Mr. Pollard - Thank you.
3120
3121 Mr. Schmidt - We make it clear. The landfill shall take only those solid
3122 wastes approved by the DEQ and their solid waste permit. We are only asking to fill the
3123 remaining air space. We are not asking for the expansion that was given in 2013. We
3124 retain all the prior restrictions on what we can and can't take, what we can and can't do
3125 at the site. And we think that's in the best interest of the county.
3126
3127 The county recommends approval to allow the landfill to use its full capacity and generate
3128 the revenue necessary for us to operate and close that landfill. And that's what we're
3129 asking you to do.
3130
3131 If you deny, the business is going to close, personnel and equipment that are on site,
3132 they're not going to be there anymore. The county's going to fill up that Republic Landfill
3133 sooner than necessary, and they're going to be right back here in front of this board
3134 saying, Hey, can we have an expansion, or can we build a brand-new landfill?
3135
3136 The residents are going to have no choice but to use that Republic Landfill, and the
3137 county's going to be deprived of an opportunity for the productive reuse of that property.
3138 So, again, for those reasons we would ask the Board to approve. Thank you.
3139
3140 Mr. Green - Any questions of the Board members?
3141
3142 Mr. Johnson - I have one.
3143
3144 Mr. Green - Mr. Johnson.
3145
3146 Mr. Johnson - There have been --
3147
3148 Mr. Green - Go ahead, Mr. Johnson.
3149
3150 Mr. Johnson - I noticed there have been a lot of violations that was never
3151 taken heed in the past. And, also, the changing of leadership in the TEEL. That -- and
3152 even after that they still have the same process of regulations being violated as well.
3153
3154 Mr. Schmidt - And, again, if I could just sort of revisit some of the points that
3155 I read. Those are notices of violation. Okay? That's the inspection report and the DEQ
3156 says, hey, you may have a problem. Okay? But that is not a -- finding that a violation
3157 has occurred, okay, that is how all -- under state law, so Virginia Administrative Process

3158 Act makes it clear that any determination of a violation of law or regulation is done in case
3159 decision under 2.2-4003.

3160
3161 Before you can do that, you have to have a fact-finding process. You either do an informal
3162 fact-finding conference under 2.2-4018, or you go to a formal hearing. Those haven't
3163 occurred in any of those violations. In fact, the February 2020 one that was referred to
3164 by the county attorney's office, DEQ hasn't -- we had a conversation with DEQ to explain
3165 what was going on out there. They said, Oh, you've got industrial waste.

3166
3167 No. That's a pile of road salt that we are going to use on our landfill road over the winter.
3168 It's not industrial waste. It's road salt. We haven't had the DEQ call us back on that issue.
3169 We responded within 30 days, they hadn't set up anything to go with us further.

3170
3171 As far as we understand the matter. DEQ's done with that particular notice of violation.
3172 All the other ones that they had have either been handled the exact same manner, or
3173 we're in the process of resolving with the agency, or we've appealed it to court.

3174
3175 And, in fact, I've got two appeals pending and in both of them, on these types of issues,
3176 the DEQ has turned around and said, We didn't issue a case decision, you should dismiss
3177 this case because it's not properly before the court. Because we haven't gotten to the
3178 final step. Okay?

3179
3180 So that's the confusing part between a notice of violation and an actual determination that
3181 a violation has occurred. There's all those intermediate steps. There's all of that
3182 conversation with the department. There's all that argument about what these regulations
3183 mean and what the facts are. And that's where we are with all of them.

3184
3185 Mr. Pollard - Would you mind telling me which two violations are in court?

3186
3187 Mr. Schmidt - One second. [Gathering information] And I'm going to give
3188 this to Mr. Blankinship. But the two case numbers are filed in the city of Portsmouth are
3189 CL-20-3504 and 3503 attachment enter where the DEQ denies that they have made a
3190 case decision. 3503, as I believe, is the April 2, 2020 letter from Kyle Winter Ivars, the
3191 direct -- deputy director of the Piedmont Regional Office.

3192
3193 And what happened in that case is the Director said that we met the mandatory closure
3194 requirements under the solid waste management regulation citing, and I can't remember
3195 exactly which subsection it was, but there was an A and a B. And he said, you meet A.
3196 And we said, Yeah, but we don't meet B. So under that we can still proceed forward
3197 under B and/or a couple of other methods under the regulations that would keep us from
3198 triggering the mandatory closure requirements.

3199
3200 We also appealed on the basis that they hadn't done any fact-finding before they made
3201 this bold decision that we had to close pursuant to their interpretation of that regulation.
3202 That's when they turned around and filed their motion saying, please dismiss. That wasn't
3203 actually a case decision. We deny that we've ever decided that issue. Because they know

3204 that they failed to have an informal fact-finding conference, or a formal hearing. So that's
3205 what's going on there.

3206
3207 Now they're trying to trigger something called a notice of intent proceeding, which they
3208 think will then give them the formal hearing that's required under the APA as sort of a
3209 work-around to excuse themselves under that particular violation.

3210
3211 Mr. Johnson - You are referring to state regulations then versus what the
3212 county regulations as well?

3213
3214 Mr. Schmidt - Well, correct. Because the notice of violation that are
3215 identified, those are all coming from the DEQ, not the county. The county doesn't enforce
3216 the state solid waste management regulation. The Virginia Department of Environmental
3217 Quality does. So -- and that's why I don't really think that they're properly before the
3218 Board, because we don't have a conditional use permit with a condition saying that the
3219 county has got the authority to come in and regulate us on those issues. That's the state
3220 issue. The county --

3221
3222 Mr. Johnson - Even though it's a county facility.

3223
3224 Mr. Schmidt - I don't think that the county can exempt itself from regulation
3225 by the DEQ just simply because it's a county-owned facility. They're still subject. I mean,
3226 the sovereignty is the state -- it's going to be the state. You get to rule everybody.

3227
3228 Now, again, they could -- they could ask for a condition. They could ask this Board for a
3229 condition that would give them some ability to go out there and oversee these issues, but
3230 they haven't done so yet.

3231
3232 Mr. Pollard - So you're saying you're three years out from closure, and the
3233 county's saying you're at closure now?

3234
3235 Mr. Schmidt - Let me try and be a little more precise. So what Mr. Winter
3236 has said, is that he thinks that we may have triggered the mandatory closure requirements
3237 of the solid waste management regulation. We said that you have failed to take into
3238 account various other portions of that salt waste management regulation and that you've
3239 just picked the one with the shortest timing. We then appealed that. The DEQ has since
3240 turned around and filed a motion to dismiss saying, you can't take this on appeal, because
3241 that's not really a case decision. Because they've made that filing in circuit court, I'm not
3242 100 percent certain that they can leave the April 2, 2020 letter, that case decision. I don't
3243 see how they keep that out there.

3244
3245 In other words, if you're going to say it's not a case decision, but you're not going to retract
3246 it, then I think you're going to have to explain that a judge. And I think that's what the
3247 DEQ problem is with that particular case.

3248
3249 Mr. Pollard - Thank you.

3250
3251 Mr. Schmidt - Now the other one, the other one is about financial
3252 assurances. This was a slightly different issue. So there's some regulations that deal
3253 with financial assurances for solid waste facilities. Okay. And that says that you have to
3254 post some sort of financial mechanism in a substantial amount to close under your closure
3255 plan so in case, say, the company should go bankrupt or something like that, there's a
3256 bond or whatever and the county, or the DEQ, could say, Okay, they're out of business.
3257 You come in, you pay. You're the backstop. You're the guarantee to make sure that a
3258 closure system gets installed. Okay?

3259
3260 What they do is every so often they increase the amount based on some inflation factor.
3261 Okay? And so we got a letter and it said, oh, hey, we're going to increase the amount
3262 that you're going to have to do, because inflation. So if you look at the financial
3263 assurances regulation, it clearly says that you can meet that by a combination of
3264 mechanisms. So what we had is a payment or performance bond. Okay.

3265
3266 We then said, well, we will combine that with a corporate guarantee. There's a special
3267 division inside the -- that deals with these financial assurances for solid waste facilities.
3268 What they are saying is, well, hey, because it's a performance bond, you can't combine.
3269 Otherwise it'd be borrowing. And we say, but ours isn't a performance-only bond, It's a
3270 payment or performance. So it's not something that calls for solely the performance issue.
3271 It is a performance or payment. And so, therefore, we think we can combine with a
3272 corporate guarantee. And that's the issue that's going forward on the other appeal.

3273
3274 Coincidentally enough, the DEQ is denying that the letter from the bureau, or the Financial
3275 Assurances Division, they're denying that that's a case decision either. So in both of
3276 those matters they're saying, Wait a second. You may have NOV's, you may have
3277 correspondence from us saying you've done things incorrectly, but those weren't a case
3278 decision, so you can't appeal them yet. And so that's the problem we have if we're going
3279 to rely on things like what got said in an NOV.

3280
3281 Mr. Pollard - Thank you.

3282
3283 Mr. Green - Any other questions from the Board? Mr. Johnson.

3284
3285 Mr. Johnson - The regulations that ETD set forth, even though they have
3286 been presented to you through the county, they are not fully met by your -- by the landfill
3287 there.

3288
3289 Mr. Schmidt - Okay. I'm sorry. I want to make sure I understand exactly
3290 what you're asking me so I don't answer --

3291
3292 Mr. Johnson - DEQ is one of your governing bodies through the state.

3293
3294 Mr. Schmidt - Absolutely.

3295

3296 Mr. Johnson - And also all of the regulations that they put out. The county
3297 also has just, you know, which is the county that's really providing this landfill for
3298 everybody. Now if you're not fulfilling all of the DEQ regulations, and then we are still --
3299 you're trying to -- and the county is the one overseeing it now, you know, because it's
3300 there -- it's what's going to impact the people here. You know, the people in the county.
3301

3302 Because now when, you know, it's been time, it's been years, since this been going on.
3303 Houses has this been building the area? You have all of those closing in. Now you have
3304 regulations that not totally meeting the county requests. But you're taking another stand,
3305 you know, saying, well, we can take a little part of this and say, look, we are meeting the
3306 regulations of DEQ, but we don't need to do all of this stuff that the county is saying.
3307 That's where I'm looking at all these regulations here. That's what I'm -- I get when I'm
3308 reviewing some of these -- all these pages that I've been looking at for the last two or
3309 three days.
3310

3311 Mr. Schmidt - Yeah. And I apologize. I know, I know it's a large packet. I
3312 know it's a lot to read. But the county submitted and said, hey, we want to talk about
3313 some of the history of the site. Some of the stuff. So some of the stuff's necessary for
3314 context. Okay. And I think I understand what you're saying which is, of course, why I
3315 want to go on and on about the notice of violation not being a final determination by the
3316 agency.
3317

3318 Because we're still in the process of figuring out if we're actually in violation. And, if we
3319 are, which particular regulation we might be in violation of. And, if we are, what is the
3320 appropriate penalty? Because with these things comes the DEQs enforcement power,
3321 which is the consent, or they have their own set of things that they can do to the landfill.
3322 Okay. So we answer to this Board on the conditional use permit. We answer to the DEQ
3323 on those things that are a violation of the DEQ's regulations.
3324

3325 Okay. In the prior action, it was not a violation of the solid waste management regulation
3326 that was ultimately at issue. It was the Director of Planning's interpretation of condition
3327 20. And, in particular, the first sentence of condition 20 says, The landfill shall only take
3328 construction, demolition, and debris waste. It then goes on to talk about things that you
3329 could or could not use as fill or daily cover. Okay.
3330

3331 We had a big conversation about whether we might fall into one of the exceptions for
3332 being used as daily cover, but ultimately what the Director of Planning said is, I don't care.
3333 It says construction, demolition, and debris waste only. That's the only thing you can put
3334 in that landfill. We say cover isn't part of that. It's something separate. It's not the waste.
3335 What the Director of Planning told the judge was, it ends up in the landfill, so therefore it's
3336 waste, and therefore the deputy -- or the Director of Planning is clearly saying, you can
3337 only use garbage as waste.
3338

3339 There was a sidebar issue when we were talking about using dirt or fill material. Okay.
3340 And in that case he did say, Well, it is possible that under that particular condition you
3341 might be able to use clean dirt that is already on site. Like, we could dig up dirt from our

3342 property and use that as daily cover, but we couldn't bring in anything from off-site. Okay.
3343 And I've attached some portions of his testimony at the trial so that you could see where
3344 he made those statements. Okay. But that was a county requirement and that's what
3345 the county enforces. Okay. That's why we're here asking you for a conditional use permit
3346 under what conditions this Board might deem are appropriate.

3347
3348 Left to its own course, county simply isn't empowered to enforce those state regulations.
3349 That's left to the DEQ. If the county wants to seek some sort of additional concessions
3350 out of the applicant vis-a-vis state regulations, then they are certainly -- can ask that the
3351 Board entertain such a motion or include such a condition that might give them whatever
3352 it is that they would like. But right now we don't have a conditional use permit, so we have
3353 no conditions.

3354
3355 Well, we're here. Please let us fill our landfill. That's all we're asking for. If you think that
3356 the county needs that power, let the county stand up and tell you what it is that they think
3357 they want.

3358
3359 Mr. Johnson - Well, because these landfills really affect the public health and
3360 also the safety and welfare of the people in the neighborhood, too, so we need -- want to
3361 make sure that we have some kind of control on, you know, what we are doing to our
3362 people in the neighborhood.

3363
3364 Mr. Schmidt - Exactly. And you should. I mean, they're big issues. They're
3365 big issues wherever you put that. That's why we think that you want to fill this one all the
3366 way up before you turn around and say, Hey, I'm going to build a new one somewhere
3367 else. And, guess, what, all of those neighborhoods are going to have to deal with the
3368 exact same thing in a new spot. Let's fill this one, get as much use of it as we can, before
3369 we create that condition somewhere else.

3370
3371 And, again, this landfill, it's been there for significant periods of time. It was there before
3372 some of these regulations even existed. It's got some old municipal solid waste from the
3373 old City of Richmond landfill out there. We've still got things that we're going to have to
3374 move around to make sure that that waste makes it onto the portions of that landfill that
3375 have lye on them.

3376
3377 So, yes, that is an absolute critical thing that I think this Board needs to be aware of. And,
3378 again, that's why I would ask that you let us fill it out, get the revenue stream for the last
3379 three years, and let us close in the ordinary course.

3380
3381 Otherwise, we just stop. And then we're scrambling to do what we can to get this thing
3382 closed in accordance with the closure plan. But our closure plan says, you're going to fill
3383 it to full capacity.

3384
3385 Mr. Johnson - So we're going back to make sure that the land used has been
3386 used to the point that if the citizens are getting a benefit out of it.

3387

3388 Mr. Bell - Mr. Johnson, I want to go over something here. Just a little
3389 history that I remember since I been here. You don't just leave out those two. You also
3390 got a place to -- with our (indiscernible). You have -- I've seen them bring trucks up from
3391 Northern Virginia where they are clearing a big building and put heavy concrete in it and
3392 they bring that up and then dump that as their waste and then scrape it and pound the
3393 other stuff together.

3394
3395 I've seen it was so muddy. You know the underpass that's down there? It's one lane. It
3396 was so muddy that you almost had to slow down to zero miles an hour and creep through
3397 that, because trucks would be going through all day long and it's been raining.

3398
3399 A lot of that stuff has been taken care of. But, whenever I get involved with these
3400 (indiscernible) I give a lot of thought to it, because it does not just mean this code, that
3401 law, this law, doesn't just lead there. It means actual physical work the county does if the
3402 law don't work. And that's been the past. Hopefully it's not the future. This type of
3403 procedure is what brings that, to my mind, that are going to have nothing to do with
3404 (indiscernible) for the record. Most of -- most of this (indiscernible) job about it.

3405
3406 Even when the lines along the Darbytown Road, by lines I mean ditches, were filled with
3407 water and then to find out trucks was parking on the side they would get stuck and hold
3408 up traffic coming back. Even though there's not a lot of traffic there, they (indiscernible)
3409 more backed up. And this is in the past. So I want to give just a history. This is public
3410 record for everybody.

3411
3412 Mr. Schmidt - And that was part of 2013 conditional use permit that the
3413 Board previously approved where there was a significant amount of verbiage devoted to
3414 traffic flow, flagmen, cleaning up the road, who was going to be responsible for stuff like
3415 that. And this application retained all that.

3416
3417 Mr. Bell - Okay.

3418
3419 Mr. Schmidt - And just FYI, I mean, as I'm sure you know, I mean, you go to
3420 our rear property line, there's a railroad track and on either side of the railroad track is the
3421 Republic Landfill. So it's not like trucks and solid waste isn't going to continue to be moved
3422 in the immediate area on those county roads. It's just going to be headed to a different
3423 gate.

3424
3425 Mr. Green - Any other questions?

3426
3427 Mr. Johnson - Yes.

3428
3429 Mr. Green - You do?

3430
3431 Mr. Johnson - Also in there, so they was talking about different materials
3432 goes to a different parts of the landfill. Some of the violations I was looking at saying that
3433 -- in one material being put in an area that shouldn't be in that area, --

3434
3435 Mr. Schmidt - I'm not --
3436
3437 Mr. Johnson - I can't go back where I was looking at that at. But --
3438
3439 Mr. Schmidt - I'm not, again, I'm not 100 percent positive exactly which issue
3440 you're speaking to. I think you may be talking about some wood chipping that was going
3441 on onsite, and they wanted it moved to a different location on the facility. We did
3442 accommodate that.
3443
3444 There was some discussion that there were some roll-off containers that were on-site.
3445 Those were ultimately headed off to, I believe, the Shoosmith Landfill. So, I mean, there
3446 were some things that have happened. But, as to the notices of violation, again, we have
3447 either resolved those issues or appealed those issues or are in the process of dealing
3448 with the DEQ on all of those issues. And, again, I would note that the DEQ is denying
3449 that some of those were actual decisions.
3450
3451 Mr. Johnson - Okay.
3452
3453 Mr. Green - Anyone else?
3454
3455 Mr. Blankinship - Here.
3456
3457 Mr. Green - I mean on the Board was the question.
3458
3459 Mr. Blankinship - Oh. I'm sorry.
3460
3461 Mr. Green - Next. Thank you, sir.
3462
3463 Mr. Schmidt - Thank you.
3464
3465 Mr. Green - Are you for or against?
3466
3467 Mr. Gilbody - Against. Mr. Chairman, members of the Board, my name is
3468 John Gilbody. I am an Assistant County Attorney. I'm here representing Joe Emerson
3469 as the Zoning Administrator. And I'm here in opposition to granting this application.
3470
3471 And, members of the Board, as I said, my name is John Gilbody. Myself and Mr. Tokarz,
3472 who was then deputy, now County Attorney, were in opposition to TEEL in a previous
3473 lawsuit where -- when they appealed this body's revocation of their conditional use permit.
3474 And I don't think that the way it was characterized is necessarily accurate.
3475
3476 The primary issue in that revocation was that TEEL accepted industrial waste into the
3477 landfill in violation of both the conditional use permit and DEQ regulation. One of the
3478 things Mr. Schmidt who is -- and I want to be clear, also. They are before you having had
3479 a conditional use permit revoked. This body does not make that kind of a determination

3480 lightly or often. And they are coming to you after that having occurred asking for a brand-
3481 new permit. And the only person that they've sent is someone who won't offer any
3482 testimony under oath. Let's be clear about that. That should tell you what's going on
3483 here and it should be very clear.

3484
3485 But getting back to the previous conditional use permit and why it was revoked. It was
3486 because they were accepting industrial waste into the landfill. And one thing that Mr.
3487 Schmidt didn't mention is that when he talked about consent decrees with DEQ, well in
3488 2019 TEEL resolved it through a consent decree with DEQ that very violation for
3489 accepting industrial waste into the landfill. So that has been addressed by DEQ.

3490
3491 Now -- and we call it TEEL. TEEL's had a very troubled history of regulatory violations.
3492 It goes back to the fly ash around 2010. There was a conditional use permit that was
3493 granted in 2013. Importantly, I think, and this goes to what Mr. Schmidt was talking about
3494 in terms of the needed space. Well they went to the Central Virginia Waste Management
3495 Authority back in 2014 and the authority said, It's not part of the plan, it's not needed. It's
3496 just simply -- It's not a blip on the screen.

3497
3498 Another kind of a tell there when Mr. Schmidt was talking, he talks about how all the waste
3499 would have to go to the Republic Landfill, but then he just said, Oh, we dumped it off at
3500 the Shoosmith Landfill. Which is where they dump things off. It might not be in Henrico
3501 County, but it's close by. The idea that somehow there's a dearth of CD landfills in this
3502 area and that we really need the TEEL landfill is not true, and he's admitted it to you.
3503 Because they don't use it. They don't go to Republic Landfill, they go to a different one.

3504
3505 Now the Virginia Department of Environmental Quality has issued a number of NOV's.
3506 And the way Mr. Schmidt was describing it is not exactly accurate. And I want to explain
3507 what's really going off. DEQ issues an NOV and says, here are problems. We'd like you
3508 to fix them. Because that's how most responsible companies act. They fix the problems
3509 and everybody gets along.

3510
3511 But what TEEL will do, is they won't do anything and they won't fix the problem. And then
3512 when DEQ says, look, you really need to fix the problem. Then TEEL will come along
3513 and say, that's a case decision. We're going to appeal that to the circuit court so you
3514 can't do anything else. You can't take any other regulatory actions against us.

3515
3516 And then they park it in that court. And in this case it went all the way down to Portsmouth
3517 Circuit so that the Assistant Attorney General then has to drive down there and deal with
3518 that case. It's a way of parking -- you take a regulatory problem, you turn it into a legal
3519 problem, and you park it there. It's gamesmanship. That's all it is. That's what they're
3520 doing. Make no mistake.

3521
3522 They have issued a number of regulatory violations. And he can say they're not case
3523 findings. They're not. But it's really funny. Because I want to show you some things
3524 today from these NOV's. But they're called pictures. And he can't argue with pictures. I
3525 mean, he can't say that somehow that picture isn't real, because there was no fact-finding.

3526 It's a picture and it shows. It's taken by a person. And it shows what's going on at the
3527 landfill.

3528
3529 Mr. Pollard - Excuse me. I hate to interrupt. I'm not sure if that's the
3530 standard and I'm not sure if you're familiar with that, but I noticed that before they would
3531 issue an NOV it would be, like, multiple inspections of. And when one situation was five
3532 inspections and they still have one NOV. So.

3533
3534 Mr. Gilbody - Yes, sir.

3535
3536 Mr. Pollard - Okay.

3537
3538 Mr. Gilbody - And the NOVs were all attached to the letter provided by the
3539 County Manager. And if you read that correspondence, they recount all of that. And,
3540 yes, in some of the pictures you'll see there've been numerous inspections of this facility.
3541 All of which has ostensibly hurt since the landfill shut down. Which, as we indicated, or I
3542 think I indicated in my letter to the Board, we have some where we're not entirely sure
3543 that that is correct. That indeed it has been closed and they haven't offered any evidence
3544 to the contrary. And we have concerns that are well-founded.

3545
3546 Now the other thing I want to mention. Obviously, there's the fires. The fires occurred
3547 the end of October of last year. They were ongoing through December and they kept
3548 smoldering at least through April of last year. They say that they've fully cooperated with
3549 Henrico County. They cooperated with Henrico County to help put out the emergent fire
3550 as it was happening. As soon as there was no longer an emergency, they didn't want
3551 Henrico anywhere near there. And they would tell the fire officials to leave if they came
3552 onto the property.

3553
3554 So make no mistake, they're not working hand in glove with the Henrico Fire Division at
3555 all. Now there's also an issue that we're going to talk about very briefly, and that is there's
3556 ongoing issues with -- and this is DEQ, has noticed -- has put the support in their NOV's,
3557 but we're having problems with them as it relates to their discharge into the county
3558 sanitary sewer system and their leachate, because it's causing scaling.

3559
3560 And they've been charitably less than forthcoming about that scaling and what's causing
3561 it. Because we have looked at our portion of the pipe and it's plain that there is -- there're
3562 clogs that are occurring because of chemicals. And back in, I think, about around January
3563 or February of hits year Jason Whitewright or Whiteman, I forget which it is, who is the
3564 manager of the landfill, indicated they were having that same problem with their leachate
3565 management system on site.

3566
3567 Subsequent to that there was a letter that Mr. Schmidt showed you where they completely
3568 walked that back and said that there was never such a problem. But, in point of fact, and
3569 in one of the exhibits that I provided with my letter, shows that the person that the
3570 company that they had doing the cleaning actually found exactly that scaling. So the

3571 letter he showed you is incorrect. And it's, frankly, again I'm not sure if the person writing
3572 that letter was being candid.

3573
3574 Now there's an August 9 -- or August 29, 2019 notice of violation. And they noticed that
3575 they were failing to cover waste on a weekly basis, and they were having problems with
3576 their leachate management system.

3577
3578 And the one thing I think is important to note is that failing to cover is very important.
3579 Because that is a big fire hazard. Because what does fire need? It needs oxygen. And
3580 you put the dirt down and you roll it and to keep the oxygen out. So by not covering it,
3581 you get fires. So when they act as if somehow these fires just occur and that's just the
3582 way life goes, that is not the case. It is from poor maintenance and poor practices. That's
3583 why there was a fire.

3584
3585 And then there's the February 12th notice of violation. Again, in that one they noticed --
3586 they noted that they had accepted industrial waste into the landfill. Mr. Schmidt said that
3587 it was just rock salt. Well that's not what the letter said. It said rock-salt and end-process
3588 cotton -- some product. And let's be clear. Let's go -- taking a step back in time why they
3589 were originally violated, as they call it, back in March 22, 2018 by this Board, was for
3590 accepting bauxite mud, which is a byproduct of a chemical process, and paper sludge,
3591 which is a byproduct of a recycling process. That they both contain chemicals.

3592
3593 I'm not quite sure what is in this cotton material, but it's certainly not used to melt ice, like
3594 Mr. Schmidt was talking about. And, frankly, I'm not sure when you look at the NOV and
3595 the dates of the inspection, I'm not sure when that was accepted. And by accepting that,
3596 I want to be very clear, they violate -- if they accepted end-process raw cotton. It is an
3597 industrial waste that they violated not only DEQ regulations and Henrico County
3598 regulations. They violated an order of the Circuit Court of Henrico County. And we're
3599 going to be looking to make a determination about that in all likelihood.

3600
3601 They also were not -- and this goes back to what we were talking about before. DEQ said
3602 they were not following their fire control plan and they were, again, failing to cover waste
3603 on a weekly basis. Which leads to, of course, more fire. And they were continuing to
3604 have problems with their leachate management system.

3605
3606 So then, on April 2nd, DEQ requested, and this goes to the gamesmanship that I was
3607 talking about, they called it a case decision. DEQ said, hey, we need you to update your
3608 gas management plan. Because it was emitting gas at higher levels than is allowed under
3609 code -- or under the regulations and that creates a potential fire hazard. We want to see
3610 a new leachate management plan, a closure plan, because they had been closed as of
3611 at least November of 2019 when the Supreme Court of Virginia denied their repetition, or
3612 their petition for appeal, rather. And they also wanted a new fire and safety plan.

3613
3614 So instead of accommodating and working with DEQ they went to court to appeal that
3615 and called it a case decision. If you read the letter, it doesn't say it's a case decision. I

3616 don't think the person who wrote it meant it as a case decision. They were trying to work
3617 with it. And, in any case, moving along.

3618
3619 Then on June 16, there was another notice of violation and it says, Again, you failed to
3620 begin closure proceedings. And they also talked about the failure to update financial
3621 assurance regulation. And that's very important. Because there's a about whether or not
3622 there's enough money on the bond to close this place down. And there's nothing --
3623 keeping this open is not going to make that better.

3624
3625 During the trial, as it were, that was the appeal of the previous revocation I talked to the
3626 owner of The East End Landfill and asked him what assets TEEL has. None. They don't
3627 have any employees, they don't have a bank account, they have none -- it's wholly -- it is
3628 a piece of paper owned by Select Recycling, another company.

3629
3630 So if they just walk away there's no actual company with assets to attach. The only thing
3631 -- the only thing there is, is bond. And that's why that is important. And they have not
3632 satisfied DEQ with their financial assurances. And that's not going to get better. So
3633 allowing them to continue to keep that place open and accept more waste then, it's not
3634 going to make that any better.

3635
3636 Now back to the subsurface fires. On October 26th TEEL called Henrico Fire and they
3637 said, hey, we've got a fire. Henrico Fire Division was there for about a week. That's what
3638 that looked like. That's the landfill right there that they want to re-open. If you look at that
3639 trash, it's uncovered, burning, and that went on for months. Months that went on.

3640
3641 Now, in addition, in the February notice, the February 20, 2020 -- that's a lot of 20s --
3642 notice of violation, DEQ noted that on October 30 -- and this goes to the point you were
3643 raising about there being multiple inspections being referenced in the NOV. They noted
3644 that there was a sediment basin on October 30 that was filled with water that they thought
3645 was contaminated with leachate. They came back and, about a month later, and the
3646 basin was gone. Or it was empty.

3647
3648 And -- why don't I just do this. So there's the picture of the basin on October 30. Okay?
3649 See that? Filled with kind of murky-looking water? Actually, three weeks later, not a
3650 month, three weeks later that's what it looks like. It's empty. You can see how they
3651 emptied it. They put a pump and they pumped it. And where did they pump it? They
3652 pumped it into our sanitary sewer. Our being Henrico County's sanitary sewer. And to
3653 be quite clear, that is a violation of the Henrico County Code section 23.116.

3654
3655 And I can tell you, I asked someone to just give me a ballpark of about how much water
3656 that was. And it came out to roughly 200,000 gallons. Now what's kind of interesting is
3657 they have an industrial discharge permit, and they have to pay for their discharge into our
3658 sanitary sewer. That's more -- that is more water than they paid for, for the entire year.

3659
3660 So somehow they pumped that thing dry, and they got around there with the industrial
3661 discharge permit, and they didn't pay Henrico County for that. Which is another thing that

3662 we're going to need to get to the bottom of. And it's a difficult process to try to figure out.
3663 But it gives you some idea about what's going on there and the trepidation that we had
3664 regarding this company.
3665

3666 Now I talked about uncovered waste. That was mentioned several times in the NOVs
3667 that were issued by DEQ. So I just want to give you a picture. There. There's a picture
3668 of uncovered waste. October 30, 2019. And look at the pile and notice there's a little
3669 ridge on the last portion. If you look at the back portion of it, there's a little bit of a ridge.
3670 And because there it is again. Thirty days later it's still there. Uncovered. Thirty days.
3671 DEQ told them to cover it. They couldn't be bothered for 30 days.
3672

3673 The industrial waste. They violated DEQ regulations and a final order of the Circuit Court
3674 of Henrico County if they allowed industrial waste into -- if they accepted industrial waste
3675 into that landfill. Make no mistake, that's what the evidence that we have right now
3676 suggests strongly. And, again, there's been no rebuttal for that. I mean, there're no
3677 rebuttal under oath from TEEL. And there it is. There's a big pile of waste. And then --
3678 that's November 20th -- then December, huh, it's twice as big.
3679

3680 And if you look in the background, I mean, look at that. All that trash just laying there
3681 uncovered. I mean, I think Mr. Nelson described this place as a -- what was the term?
3682 Environmental wasteland, or something to that effect. And I think he referred to that at a
3683 hearing before the Central Virginia Waste Management Authority. That was years ago.
3684 It hasn't changed.

3685 That's what this landfill is and represents. And it is a blight on the county and a blight on
3686 the surrounding people. We're dealing with a company that they don't -- they can -- if you
3687 talk to TEEL everyone in the world apparently is crazy and is somehow coming after them.
3688 And they're being treated unfairly by the world.
3689

3690 And one thing I've learned, if someone tells me the world is crazy, that's not what's going
3691 on. What's going on here is that they don't want to follow the rules, and they haven't for
3692 years. And now they're coming to you asking you to take as a just -- rely on them, trust
3693 us. Have they given you any, any reason to trust them? And I would submit that the
3694 answer to that is a resounding no.
3695

3696 And I would ask you, on behalf of Joe Emerson, the Zoning Administrator, to deny this
3697 application and make it clear that TEEL is not going to be re-opened. In fact, keep in
3698 mind, the Department of Environmental Quality has issued a case -- they have issued
3699 one case decision. They said, we are going to try to make you close. That's what DEQ
3700 wants, and that's what's appropriate. And I'm asking you to please do the same thing.
3701 Thank you very much.
3702

3703
3704 Mr. Green - Thanks.

3705
3706 Mr. Gilbody - Oh. I'm sorry. Mr. Chairman, members of the Board, if you
3707 have any questions.

3708
3709 Mr. Green - Any questions from members of the Board?
3710
3711 Mr. Johnson - I think we're good.
3712
3713 Mr. Green - No.
3714
3715 Mr. Gilbody - Thank you very much.
3716
3717 Mr. Green - Thanks. Mr. Blankinship, can we take two minutes before we
3718 deliberate.
3719
3720 Mr. Blankinship - Yes, sir.
3721
3722 Mr. Green - Two minutes?
3723
3724 **[Break in Audio]**
3725
3726 Mr. Green - We've heard from the applicant in support. We heard from
3727 those who are in opposition. Do we have anybody else speaking in favor, in support or
3728 opposition, Mr. Blankinship?
3729
3730 Mr. Blankinship - No, sir. I do not believe so.
3731
3732 Mr. Green - Okay. Based on that, the public hearing is now closed and --
3733
3734 Mr. Schmidt - Excuse me. I'm sorry. I believe -- am I entitled to a rebuttal?
3735
3736 Mr. Blankinship - Yes. Yes, you are. My mistake. If you wish to rebut. Yes.
3737
3738 Mr. Schmidt - And, Mr. Green, I do apologize. I could see you groaning
3739 internally at the thought of having to listen to us some more about this. But just real briefly
3740 I'd like to address some of the points that Mr. Gilbody brought up on behalf of his client,
3741 Mr. Emerson.
3742
3743 Let's start with the last thing first. He said, you know, there was a case decision saying
3744 we've got to close. Well that's exactly the case decision that I handed up to you, but the
3745 DEQ has not (indiscernible) to court. It's not the case decision.
3746
3747 And we can talk about the leachate basin. I mean, yes there's a lot of pictures and he's
3748 shown you a lot of pictures of that landfill. That's how you fight landfill fires. You dig them
3749 up, you expose it so you can put the water on it and put out the fires. And that water
3750 doesn't just magically disappear, it goes somewhere. In this case it rolled in the drainage
3751 ditch and went into the sediment pond.
3752

3753 Now it's been in contact with garbage. It's leachate. So what do you do? You get rid of
3754 it through the leachate disposal system. What does that do? You hook it up to the county.
3755 So we do what we're supposed to.
3756

3757 And then they want to tell us that's the evidence that we're a bad actor because we're
3758 doing the kinds of things that one does when one is fighting fire and one is responsibly
3759 disposing of leachate. So I want to make that clear to this Board. He wants to talk about
3760 cotton. Okay, great. He doesn't know where it went. There's a picture of it sitting in a
3761 30-yard container. That went to another landfill. Because it was, it's an industrial waste.
3762 We can't accept it in the landfill. We haven't put anything in that landfill since November.
3763 That's not what we're here to do.
3764

3765 Now when he says that there was a determination that the bauxite mud and et cetera was
3766 industrial waste, that's not in the final order. I've attached a copy of the final order. It
3767 doesn't say it was industrial waste, it merely says that we violated condition 20. There is
3768 a portion in there that says we can't take anymore mud or sludge. Okay. Fine. We didn't.
3769 cotton isn't mud or sludge. It didn't go in a landfill. So, again, I'm not really sure why
3770 we're talking about it in front of this Board.
3771

3772 We're talking about fly ash in 2020. That was two owners ago. That got wrapped up in
3773 2013. There's no indication of that under the ownership, of the current ownership that fly
3774 ash ever went in that landfill. So, again, there was a problem in the past, it got rectified,
3775 conditional use permit was issued with new conditions to keep it from happening again,
3776 and there's no evidence that it ever happened. The system worked.
3777

3778 They want us to talk about Central Waste Management District. I think, again, that's
3779 another can of worms. Came here, got a conditional use permit for an expansion, the
3780 county then decided they didn't like the idea of the expansion and even though the county
3781 had issued us a conditional use permit, they then went to the Central Waste Management
3782 Authority and asked that it be removed from the Regional Solid Waste Management Plan.
3783 Which is something that you normally have to have approval for to get a permit to operate
3784 the landfill at the end of the day. Okay. So they went and they advocated for it.
3785

3786 Then they turned around and (indiscernible) to sue the DEQ to tell them, stop processing
3787 the expansion permit. Because they'd been removed from the Regional Waste Plan.
3788 Well, that went to court and the court said, County, You're wrong.
3789

3790 DEQ's duty to start processing and looking at that application doesn't end because there's
3791 been a subsequent issue with the Regional Waste Management Plan. All that was
3792 required was, was it approved at the time, or on the agenda, to be a part of the plan? And
3793 it was. Then you sit there and you process the application.
3794

3795 It's a significantly different thing than the way it was characterized. And I think that's
3796 important. Because that's what Mr. Gilbody was doing. He was characterizing. He was
3797 telling you what he thinks. He's advocating for his client. His client's not here. Okay. So
3798 when he says that TEEL has no witnesses, it sounds like he's here on behalf of Mr.

3799 Emerson. Mr. Emerson's not here. Under the rules of evidence, lawyers cannot give
3800 testimony. They cannot testify for their witnesses. We advocate. That's what he's done.
3801 I don't see any other witnesses for the county.

3802
3803 So I would ask that you take that into consideration when you make this decision and you
3804 take that into consideration when you think about the things that the county has said about
3805 TEEL here today. We are asking to fill up the landfill and that's it.

3806
3807 They didn't like us using alternative daily cover material. We said, fine. We won't do that.
3808 But that's what we're here for. And the fact that we can argue about why the landfill got
3809 torn apart so we can fight a fire versus pretty pictures, that's why the DEQ does its job
3810 and the county does something different.

3811
3812 We answer to the DEQ on those issues and we're answering to the DEQ on those issues.
3813 And, again, the stuff that he is talking about, they haven't decided to pick up. We talked
3814 to them about it and we haven't heard back. So when we talk about that these are
3815 endangering humanity. Those are the kinds of things the DEQ will be breathing down our
3816 necks about if that was truly the case. Thank you.

3817
3818 Mr. Green - Excuse me, your name again was.

3819
3820 Mr. Schmidt - I'm sorry?

3821
3822 Mr. Green - Your name again was?

3823
3824 Mr. Schmidt - Paul Schmidt, S-c-h-m-i-d-t. and I'm with the law firm of Poole
3825 Brook Plumlee in Virginia Beach.

3826
3827 Mr. Green - Okay.

3828
3829 Mr. Schmidt - Are there any further questions? I'm sorry.

3830
3831 Mr. Green - Any other questions?

3832
3833 Mr. Schmidt - Thank you.

3834
3835 Mr. Johnson Thank you.

3836
3837 Mr. Green - Any questions from the Board? Mr. Schmidt has asked us to
3838 take into consideration the fact that the Planning Director was not present. So I hope that
3839 we will take that into consideration since he -- that was a request that he had. The public
3840 hearing is now closed, and the motion would be in order. What is the pleasure of the
3841 Board?

3842
3843 Mr. Johnson - Mr. Chairman, it was good that you had -- that was a good
3844 relationship here. But I move that we deny the conditional use permit. Now this property

3845 was used for landfills for many years, but at much lower intensity. Since it became The
3846 East End Landfill, it has grown much larger and much more intense. With that increase
3847 in truck traffic, the noise, the odor, and visible impacts. In addition, the owners have
3848 operated the landfill with little to no regulations of state and local laws regulation.
3849

3850 They have a history of violating, including coal ash -- of violations of coal ash, individual
3851 waste -- industrial waste. Also a failure to control fires, failure to cover the face of the
3852 landfill, and excessive high and steep slopes, and also erosion control violations.
3853

3854 Tracking the mud on the highway when the county had attempted to bring the operation
3855 into compliance, the applicant had responded with the lawsuit and appeals all the way to
3856 the supreme court. The terminal impacts this case are so well documented, the Board
3857 was forced to revoke a previous permit. I see no reason to issue a new permit.
3858

3859 Mr. Pollard - I second.

3860
3861 Mr. Green - There's a motion by Mr. Johnson to deny and Mr. Pollard --
3862 we have a second. And seconded by Mr. Pollard. Is there any discussion by the Board?
3863

3864 The only thing that I'm going to say is that I've been sitting on this Board for a number of
3865 years and for someone to come before us and not follow the rules that we would like to
3866 put in place by swearing in, regardless of you being a lawyer and you have certain
3867 cannons that you follow, we also like to conform to our rules. Is what I consider -- goes
3868 back to Mr. Gilbody's contention of rule following. And so that's what I want to say.
3869

3870 I've never seen an individual come before this body since I've been here who's not sworn
3871 in. It's constitutional and I would like to do that.
3872

3873 Is there any other discussion?
3874

3875 Mr. Johnson - Yeah. Mr. Chairman, also I just want to reiterate, since this is
3876 my area, I want to make sure that the people in the -- you know, because that's a large
3877 landfill. And also the people that -- we got new houses all the way around there now and
3878 to make sure that the people are healthy. You know. Make sure that they are protected
3879 as well. And, also, for their safety and the welfare of all those people. You know.
3880 Because I know I haven't been on the Board as long as you have, but these are the things
3881 that we have to take in consideration as well.
3882

3883 Mr. Green - Yes. And I'm sure Mr. Gilbody and the Planning Department
3884 as well as the county attorney will do everything they can to protect the -- and will do
3885 everything to protect the citizens of Henrico County. I have no doubt that that's not being
3886 done.
3887

3888 And I'm sure that there're multiple measures in place to monitor an array of concerns that
3889 regular citizens have. Not only us, but citizens have to protect the interests of our -- of
3890 our county. That's why we are where we are and doing as well as we're doing. Because

3891 I think we have some very good, dedicated individuals. So I think you also had a Planning
3892 Commission who is going to protect that and protect the interests as well as the Board of
3893 Supervisors. And then, like I said, it was mentioned.

3894
3895 So, given the fact that the motion was made by Mr. Johnson to deny and seconded by
3896 Mr. Pollard, all in favor of the motion say aye. All opposed of the motion to deny. All
3897 opposed -- against the motion say nay. It is denied.

3898
3899 On a motion by Mr. Johnson, seconded by Mr. Pollard, the Board **denied** case **CUP2020-**
3900 **00040: The East End Landfill, LLC's request for a conditional use permit pursuant**
3901 **to Section 24-116(d)(3) of the County Code to operate a construction demolition**
3902 **debris landfill at 1790 Darbytown Road (Parcels 809-707-1585 and 808-706-6679),**
3903 **zoned B-3, Business District and M-2, General Industrial District (Varina).**

3904
3905
3906 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5
3907 **Negative:** 0
3908 **Absent:** 0

3909
3910
3911 Mr. Blankinship - All right, Mr. Chair. The last case is Conditional Use Permit
3912 2020, number 41, Curles Neck Properties, LLC.

3913
3914 **CUP2020-00041 CURLES NECK PROPERTIES, LLC requests a conditional use**
3915 **permit pursuant to Sections 24-52(d) and 24-103 of the County Code to extract**
3916 **materials from the earth at 4721 Curles Neck Road (Parcels 833-666-1289 and 834-**
3917 **666-2189) zoned Agricultural District (A-1) (Varina).**

3918
3919 Would everyone who intends to speak to this case --

3920
3921 Mr. Green - Excuse me. Before -- excuse me. Sorry, Blankinship. Before
3922 the County Attorney leaves, I would like to offer him congratulations on your promotion
3923 and I wish -- we all wish you well. You've presented before us and now we see that we
3924 have Mr. Gilbody presenting for us. And we hope that you're successful in your new job.
3925 And we all -- we all wish you well. We applaud you for that.

3926
3927 Mr. Pollard - Thank you.

3928
3929 Mr. Tokarz - [off microphone]

3930
3931 Mr. Green - Okay. Sorry, Mr. Blankinship.

3932
3933 Mr. Blankinship - That's all right. Would everyone who intends to speak to this
3934 last case please stand and be sworn in. Raise your right hand, please. Do you swear
3935 the testimony you are about to give is the truth, the whole truth, and nothing but the truth,
3936 so help you God?

3937
3938 Unknown Speaker - I believe so.
3939
3940 Mr. Blankinship - Thank you. Mr. Madrigal.
3941
3942 Mr. Madrigal - All right. Thank you, Mr. Secretary. Mr. Chair, members of
3943 the Board. I'll try to be brief. Before you is a request to allow the extension of a mining
3944 permit in the A-1 District. On October 27, 2016, the Board approved a CUP which
3945 authorized the excavation of sand and gravel from the 68-acre site. At the request of the
3946 applicant the Board approved a CUP for a period of 10 years rather than the standard 2-
3947 year term subject to following condition.
3948
3949 The CUP would expire on October 31, 2026. On or about every two years the Board
3950 would hold a public hearing to consider the renewal of this use permit. The permit would
3951 only be renewed in two-year increments unless the board finds that the applicant is in
3952 violation of any of the associated conditions of approval, or that the operation has had a
3953 substantial detrimental impact on nearby property. Which could include excessive noise,
3954 traffic, or negative environmental impacts.
3955
3956 The Board held a hearing on October 25, 2018 and extended the use permit because the
3957 applicant had not yet broken ground on this project. That still remains the case today.
3958 As a result, staff is not aware of any reason that the CUP should not be extended for
3959 another two years. By approving the original request, the Board determined that the
3960 proposed use is consistent with both the comprehensive plan and the zoning ordinance
3961 and will not have any detrimental impacts on nearby property.
3962
3963 Staff is not aware of any changes in these circumstances since the CUP was approved.
3964 In conclusion, based on the facts, staff recommends renewal of the CUP subject to the
3965 existing conditions that are in place. This concludes my presentation and I'll be happy to
3966 entertain any questions.
3967
3968 Mr. Green - Any questions from the Board?
3969
3970 Mr. Johnson - No questions.
3971
3972 Mr. Blankinship - All right.
3973
3974 Mr. Green - Shall we hear from the applicant.
3975
3976 Mr. Lewis - Good afternoon. My name is Monte Lewis, I'm with Lewis &
3977 Associates. We're civil engineers representing Dr. Cabell, who owns this property as
3978 Curles Neck. Good news, we're not renting the mansion – no -- nobody's going to come
3979 here to rent. And it won't be a landfill. And lord knows I don't need two more cats.
3980
3981 Like the planner said, this is a renewal of a plan that we had approved four years ago
3982 now. They have since, you know, we have permits from the mining, State Mining

3983 Commission, state for the wetlands and we're just here for another two-year renewal until
3984 next time.

3985
3986 Work has not started. Nothing's changed on the site since we were here four years ago,
3987 really. But if you have any questions, I would be glad to answer them.

3988
3989 Mr. Green - Questions from the Board?

3990
3991 Mr. Johnson - Well I'm looking at the report and all, and what you've been
3992 doing in the past, and especially since -- you're not coming out of one out on the public
3993 facilities, you're using the water system as well. But I'm impressed because they have
3994 never had any violations in Virginia nor any other state. So that kind of caught my
3995 attention there. That's all. It did not --

3996
3997 Mr. Lewis - Well, they actually got some awards for reclaiming some of
3998 those ponds. So if you'd been by there you'd just see pond after pond after pond and
3999 thousands of geese around them. But I don't -- they do very well in reclaiming. That's a
4000 tough thing to do.

4001
4002 Mr. Johnson - Yes. And that's an impressive background to have. You
4003 know. Of all the years and then no violation.

4004
4005 Mr. Lewis - This is probably the last permit that they will ever get in Curles
4006 Neck. It's -- most of the land has been depleted of sand and gravel.

4007
4008 Mr. Green - Okay. Anyone else wish to speak? Board members have any
4009 comments? Does anyone wish to speak in opposition to this request? Public hearing is
4010 now closed, and a motion would be in order. What is the pleasure of the Board?

4011
4012 Mr. Johnson - Mr. Chairman, I move that we approve the conditional use
4013 permit subject to the conditions recommended by staff. The Board has already
4014 determined that the use should be allowed on the site and nothing has changed. Which
4015 calls us now to renew the permit.

4016
4017 Mr. Green - Is there a second?

4018
4019 Mr. Johnson - We have no cause to remove the permit.

4020
4021 Mr. Green - Second?

4022
4023 Mr. Reid - Second.

4024
4025 Mr. Johnson - Sorry. This thing is kind of --

4026

4027 Mr. Green - Okay. There's a motion by Mr. Johnson to approve and
4028 seconded by Mr. Reid. Is there any discussion? Hearing no discussion, all in favor say
4029 aye. All in favor say no. So approved.
4030

4031 On a motion by Mr. Johnson, seconded by Mr. Reid, the Board **approved** case **CUP2020-**
4032 **00041 CURLES NECK PROPERTIES, LLC's** request for a conditional use permit
4033 pursuant to Sections 24-52(d) and 24-103 of the County Code to extract materials from
4034 the earth at 4721 Curles Neck Road (Parcels 833-666-1289 and 834-666-2189) zoned
4035 Agricultural District (A-1) (Varina). The Board approved the request subject to the
4036 following conditions:

4037
4038 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of the
4039 County Code.
4040

4041 2. The applicant shall submit a continuation certificate extending the financial guaranty in
4042 an amount of \$216,000, guaranteeing that the land will be restored to a reasonably level
4043 and drainable condition, consistent with the elevation of the land prior to the beginning of
4044 excavation. In the event of termination of that financial guaranty, this permit shall be void,
4045 and excavation shall cease. Within 180 days of termination, the applicant shall restore
4046 the land as provided for under the conditions of this use permit. Termination of such
4047 financial guaranty shall not relieve the applicant from its obligation to indemnify the
4048 County of Henrico for any breach of the conditions of this use permit.
4049

4050 3. The applicant shall maintain the approved environmental compliance plan to the
4051 Department of Public Works (DPW) for review and approval. The applicant shall
4052 continuously satisfy DPW that erosion control measures are in accordance with the
4053 approved plan and are properly maintained. As site conditions change, updated plans
4054 and bonds may be required as determined by DPW.
4055

4056 4. The applicant shall maintain the approved mine license from the Virginia Department
4057 of Mines, Minerals and Energy.
4058

4059 5. The applicant shall maintain the posts delineating the areas approved for mining under
4060 this permit. These posts shall be so located as to clearly define the area in which the
4061 mining is permitted.
4062

4063 6. Throughout the life of this permit, the applicant shall comply with the Chesapeake Bay
4064 Preservation Act and all state and local regulations administered under such act
4065 applicable to the property, and shall furnish to the Planning Department copies of all
4066 reports required by such act or regulations.
4067

4068 7. Hours of operation shall be limited to Monday through Friday, 6:00 a.m. to 6:00 p.m.
4069 when Daylight Saving Time is in effect, and 7:00 a.m. to 5:00 p.m. at all other times.
4070

4071 8. No operations of any kind are to be conducted at the site on Saturdays, Sundays, or
4072 national holidays.
4073

- 4074 9. All access to the property shall be from the established entrance onto New Market
4075 Road or by barge from the James River.
4076
- 4077 10. The applicant shall maintain gates at the entrance to the property. When the site is
4078 being excavated, the gates shall be locked at all times, except when authorized
4079 representatives of the applicant are on the property.
4080
- 4081 11. Before excavation begins, the applicant shall post and maintain a sign at the entrance
4082 to the mining site stating the name of the operator, the use permit number, the mine
4083 license number, and the telephone number of the operator. The sign shall be 12 square
4084 feet in area and the letters shall be three inches high.
4085
- 4086 12. Before excavation begins, the applicant shall post and maintain "No Trespassing"
4087 signs every 250 feet along the perimeter of the property. The letters shall be three inches
4088 high. The applicant shall furnish the Chief of Police a letter authorizing the Division of
4089 Police to enforce the "No Trespassing" regulations, and agreeing to send a representative
4090 to testify in court as required or requested by the Division of Police.
4091
- 4092 13. All material excavated from the property shall be moved by barge on the James River.
4093 No trucks hauling material excavated from the property shall travel on New Market Road.
4094
- 4095 14. All roads used in connection with this use permit shall be effectively treated with
4096 calcium chloride or other wetting agents to eliminate any dust nuisance.
4097
- 4098 15. The applicant shall maintain the property, fences, and roads in a safe and secure
4099 condition indefinitely, or convert the property to some other safe use.
4100
- 4101 16. Before beginning any work on the site, each structure to be demolished shall be
4102 documented with an architectural survey and photographed, and an archeological survey
4103 shall be performed for the area to be mined. The applicant shall provide copies of the
4104 resulting documents to the Department of Recreation and Parks. If, during excavation,
4105 the applicant discovers evidence of cultural or historical resources, or an endangered
4106 species, or a significant habitat, it shall notify appropriate authorities and provide them
4107 with an opportunity to investigate the site.
4108
- 4109 17. If water wells located on surrounding properties are adversely affected, and the
4110 extraction operations on this site are suspected as the cause, the affected property
4111 owners may present to the Board evidence that the extraction operation is a contributing
4112 factor. After a hearing by the Board, this use permit may be revoked or suspended, and
4113 the operator may be required to correct the problem.
4114
- 4115 18. Open and vertical excavations having a depth of 10 feet or more, for a period of more
4116 than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect the public
4117 safety.
4118

4119 19. Topsoil shall not be removed from any part of the property outside of the area in which
4120 mining is authorized. Topsoil shall be stockpiled within the authorized mining area and
4121 provided with adequate erosion control protection. Sufficient topsoil shall be stockpiled
4122 on the property for respreading in a layer five inches deep. If the site does not yield
4123 sufficient topsoil, additional topsoil shall be brought to the site to provide the required five-
4124 inch layer of cover. All topsoil shall be treated with a mixture of seed, fertilizer, and lime
4125 as recommended by the County after soil tests have been provided to the County.
4126

4127 20. The reclamation of the property shall take place simultaneously with the mining
4128 process. The final grading of the site shall be consistent with the elevation of the land
4129 prior to the beginning of excavation as shown on the approved reclamation plan.
4130 Reclamation shall not be considered completed until the mined area is covered
4131 completely with permanent vegetation.
4132

4133 21. If it is necessary to bring topsoil or fill material to the site for reclamation, such material
4134 shall be brought in by barge on the James River. No trucks hauling topsoil or fill material
4135 to be placed on the property shall travel on New Market Road.
4136

4137 22. The operator shall submit a quarterly report stating the origin, nature, and quantity of
4138 any off-site generated material deposited on the site, certifying that no hazardous material
4139 was included. The material to be deposited on the site shall be limited to imperishable
4140 materials such as stone, bricks, tile, sand, gravel, soil, asphalt, concrete and like
4141 materials, and shall not include any hazardous materials as defined by the Virginia
4142 Hazardous Waste Management Regulations.
4143

4144 23. A superintendent, who shall be personally familiar with all the terms and conditions of
4145 Section 24-103 of the County Code, and this use permit, shall be present at the beginning
4146 and conclusion of operations each work day to see that all the conditions of the Code and
4147 this use permit are observed.
4148

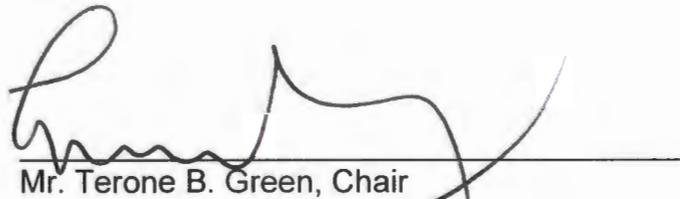
4149 24. A progress report shall be submitted to the Board every year on or about October 31.
4150 This progress report shall include how much land has been mined to date of the report,
4151 how much land is left to be mined, how much reclamation has been performed, when and
4152 how the remaining amount of land will be reclaimed, and any other pertinent information
4153 about the operation that would be helpful to the Board.
4154

4155 25. This permit shall expire October 31, 2026. On or about October 27, 2022, and October
4156 24, 2024, the Board will hold a public hearing to consider renewal of this use permit. The
4157 permit will be renewed in two-year increments unless the Board finds that the applicant
4158 is in violation of any of these conditions, or that the operation has had a substantial
4159 detrimental impact on nearby property. Examples of detrimental impacts may include
4160 excessive noise, excessive traffic, or environmental impacts such as water or air pollution.
4161

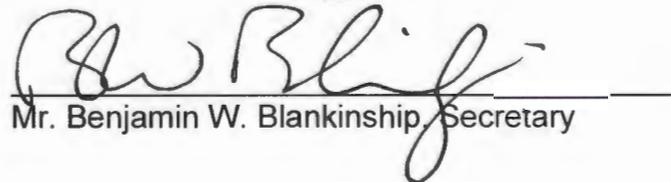
4162 26. Reclamation of the property shall be completed within one year of either the
4163 termination of this permit, or the final cessation of excavation at the property, whichever
4164 occurs sooner.
4165

4212
4213
4214 **Affirmative:** **Bell, Green, Johnson, Pollard, Reid** **5**
4215 **Negative:** **0**
4216 **Absent:** **0**
4217
4218
4219 Mr. Blankinship, anything else?
4220
4221 Mr. Blankinship - No, sir.
4222
4223 Mr. Green - The only thing I would like, Mr. Blankinship, is it possible for
4224 us, or at least myself to get a paper packet mailed back to me?
4225
4226 Mr. Blankinship - Do you want to get paper packets again?
4227
4228 Mr. Green - Yeah. I'd like to.
4229
4230 Mr. Blankinship - Yes, sir.
4231
4232 Mr. Johnson - Is yours mailed to you?
4233
4234 Mr. Reid - Yeah.
4235
4236 Mr. Green - Does anybody else wish a paper packet?
4237
4238 Mr. Johnson - I've requested that already.
4239
4240 Mr. Blankinship - Yeah. Mr. Reid and Mr. Johnson have been getting them. Mr.
4241 Pollard or Mr. Bell? Do you want your reports by way of a paper packet?
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4243 Mr. Bell - Yes. If they are all getting it.
4244
4245 Mr. Pollard - I'm all right with the electronic version. I prefer it.
4246
4247 Mr. Green - I like the paper. Yeah. I'd like to go back to paper.
4248
4249 Mr. Pollard - That would be green.
4250
4251 Mr. Green - Printing all that off in my office is --
4252
4253 Mr. Bell - Well I still printed one before I started to read or do anything
4254 else. You know. You get used to use it for notes, you know, and that's great. That's real
4255 great.
4256
4257 Mr. Pollard - I printed ones when I'm reading up on them.

4258
4259 Mr. Green - Yeah. I would print it, but just this (indiscernible) to print.
4260
4261 Mr. Johnson - Yeah. My wife is always on the computer, so she was like,
4262
4263 Mr. Green - There's the problem!
4264
4265 Mr. Johnson - Well I have to have something that doesn't change back and
4266 forth --
4267
4268 Mr. Green - Well you took a lot of your ink.
4269
4270
4271 Mr. Johnson - Enjoy your day off. Have a nice one
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4273 Mr. Blankinship - So he's got one in the can already. I think we can just take
4274 half an hour at the beginning of the next meeting walk you through --
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Mr. Terone B. Green, Chair



Mr. Benjamin W. Blankinship, Secretary